
EVERY PROFESSOR SHOULD SEE THEIR COURSE SYLLABUS AS A LEGAL CONTRACT

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ABSTRACT

In this era of frequent lawsuits, faculty should be proactive in protecting themselves against possible student legal actions. In this paper, various Court actions concerning student lawsuits are discussed. Although the Courts have stayed away from ruling in favor of changing student grades, other student actions have been upheld. A well written syllabus is protection for both the Professor and the Student. A discussion is presented surrounding course policies and procedures. Syllabus content recommendations are made that should allow the professor the most possible control over all aspects of the course. Lastly, a disclaimer statement which addresses the faculty's right to change or modify course content at any time should be included.

Keywords: Syllabus, Course Specifications, Student lawsuit, Contract, Online Syllabus

INTRODUCTION

The authors of this paper teach programming and computer forensics courses in the School of Computer and Information Systems. An incident that occurred in a programming class during the 2012/2013 academic year prompted the need to review policies, guidelines and rules in the course syllabus, in particular, the java course in which the problem occurred. A student had copied code from the Internet and turned it in as his own. Since copying code is considered plagiarism the student was given a failing grade in the course and did not graduate. The student complained to the University Academic Standards Committee that the code was "open source" and therefore it was not plagiarism. After a heated debate of the committee, the grade was upheld and the student was forced to repeat the course. In a recent study, 52% of the College students surveyed feel that copying of code from the Internet is cheating and 59% feel copying of code from a fellow student is cheating. It is interesting that students in the survey seemed to consider copying programming code from another student as being more malicious than downloading code from the Internet [2].

After this cheating event, the authors began to examine what had happened and realized that changes needed to be made to address the issue in order to avoid similar problems in future classes. Why did the committee have such a hard time coming to the obvious conclusion? Had the syllabus not been specific enough about copying of code? The syllabus did say "Copying of code is considered cheating". What could be changed so this does not happen in the future?

SYLLABUS AS A CONTRACT

Some may see the Syllabi as both a contract and a learning tool [25]. One purpose of a syllabus is to convey rules and regulations [12]. Faculty members see the syllabus as a learning tool in that it provides the student with an outline of the topics and requirements for the course. One might say that it acts as a legal contract in the classroom. The question then remains; do the courts see a course syllabus as a contract? One definition of a contract, according to Black's Law Dictionary [5], is an agreement between two or more parties creating obligations that are enforceable

or otherwise recognizable at law. A contract is negotiated. The basic requirements for an agreement of a contract are mutual agreement and consideration. Mutual agreement is reached after one party has made an offer and the offer is accepted by the other party. Consideration is when something of legal value (the contract) is given in exchange for a promise (money, property or services) [9]. Under the terms of a contract, the course syllabus does not act as a legal contract, therefore is not enforceable by law since the professor sets the terms without any input or negotiations from the students. If students do not like the terms of the syllabus they can always withdrawal from the course. The American Association of University Professors feels that once a University selects an individual to teach a course, the professor has full academic freedom to design and present the material without interference from "laws that cast a pall of orthodoxy over the classroom". Although a syllabus is not considered to be a legal document, in this litigious society, it is a good idea for a professor to treat it as one.

In 2009, Davis conducted a study to explore and compare student and faculty expectations for the course syllabi [7]. Students in this study felt that the syllabus was more of a "nuts and bolts" document about the course and not a learning tool for the course. They seemed most interested in the grading policies, professor contact information and assignment deadlines. Adult students were most interested in what attributes do they need to possess in order to get the best possible grade in the most efficient manner. The adult student also saw himself as a partner with the faculty member in the learning process, something with which many Professors may not agree [21].

THE COURTS AND ACADEMIA

Grades determine if the student not only passes a course, but in many cases, if the student continues on in his chosen program. Traditionally the courts have stayed away from hearing student grade disputes, but that may be changing. There have been a number of Court actions, especially about grading procedures listed on a particular syllabus. For example, "A legal studies/sociology student received a lower than expected grade. The professor changed his grading policy at the conclusion of the semester. The Judge dismissed the suit [6].

The courts, for the most part have not gone against faculty positions on grade assignment, as long as the grades were not arbitrary or capricious [20]. One court decision read in part: "In the absence of demonstrated bad faith, arbitrariness, capriciousness, irrationality or a constitution or statutory violation, a student's challenge to a particular grade or other academic determination relating to a genuine substantive evaluation of the student's academic capabilities, is beyond the scope of judicial review" [20]. Even though this particular research details an older case, it still reflects the views of the courts today.

In February of 2013, the courts rejected a Lehigh University student's grade law suit. The student had charged that she was a victim of breach of contract and sexual discrimination when she was awarded a C-plus grade. The professor had given her that grade because of poor class participation. The court said that the student failed to meet her burden of proof. A lawyer for Lehigh told the judge: "I think if your honor changed the grade, you'd be the first court in the history of jurisprudence to change an academic grade." The court ruled in favor of the University [15].

A student from the University of Massachusetts tried to sue when he received a C instead of the A- he thought he deserved. But the court threw out the case. "Does the court really want to put itself in the business of reviewing, under some constitutional or federal statutory doctrine, the propriety of the grades which a student has received?" argued the University attorney. The court in this case answered a resounding "NO" [19].

Although the courts are reluctant to change grades, a faulty member may find himself with a large legal bill in defending his assigned grades [22]. So being clear and fair about grading is imperative.

Can a student create a cause of action to refund tuition money if the Professor does not adhere specifically to the course syllabus? In "Paynter v. New York University", an appellate court held that it would be an "error to substitute its judgment for that of university administrators" in second guessing a decision to cancel classes". In "Barngrover v. Maack", a Missouri appellate court found that an instructor was not bound to comply with the "minute subdivisions" of prospectus (or catalog) descriptions, and within "reasonable limits" he or she had the discretion to allocate classroom time to each topic as he or she wished".

Although courts have sympathized with student complaints of educational malpractice, they are very wary of getting involved in causes of action. “Educational Malpractice” is a claim generally based on contract law and is a claim which is generally unsuccessful for the student/plaintiff. The claim arises from the duty assumed by a professional not to harm the individuals relying on the professional’s expertise [18].

But courts are beginning to look at the specific services that the school has advertised for a course, such as the number of contact hours and the topics listed in the course description document. A number of recent cases have opined that a school may be liable in contract if it failed to deliver these services in connection with a course.

A student was expelled from Dental School in her third year and suited the University. She claimed that the lawsuit stemmed from an incident involving two faculty members who fought her request to take exams in a separate setting to accommodate her attention deficit disorder. The court found in her favor and awarded the student 1.7 million dollars. Spelling out the accommodations that will be made for students with disabilities is also an area that must be address in a syllabus [24]. Those with disabilities are a protected class of individuals and it is very important for the Professor to address their special needs.

In an article in the Chronicle of Higher Education, disgruntled law-school graduates who can't find jobs are suing various law schools saying that the schools lied about their job prospects of high paying jobs when they get out [14]. Currently there are more students in law school than can potentially find a job as a lawyer. The median starting salary has declined from \$72,000 in 2009 to \$60,000 in 2012 for students graduating from law school [26].

WHAT TO INCLUDE IN A SYLLABUS?

A syllabus should not only tell the student how the course will change them and enhance their educational experience, but also should contain the bureaucratic ground rules of the course. Is there a good model for a syllabus? According to Parks [29], who surveyed the literature on syllabi, there is no agreement as to what is a best syllabus. In this era of frequent lawsuits, faculty needs to be proactive in protecting themselves. According to Carnegie Mellon University, “Syllabi serve several important purposes, the most basic of which is to communicate the instructor’s course design (e.g., goals, organization, policies, expectations, requirements) to students” [16].

In a study conducted by Marcis and Carr [23], college students and professors were asked what they thought should be included in a syllabus. They both agreed that the following areas should be included:

- ✓ Grading scales.
- ✓ Assignment information.
- ✓ Required reading.
- ✓ Participation requirements.
- ✓ Late assignment policies.
- ✓ Faculty contact information.

There are many ways to create a syllabus. Some professors create a great deal of detail, while others keep it very simple. Table 1 in the Appendix contains a list of items that officials at Carnegie Mellon University see as necessary.

There are also many syllabus templates on the Internet available to the Professor. The following Web addresses are links to just a few:

<http://www.biola.edu/offices/clear/media/downloads/Syllabus%20Template.pdf>

<http://office.microsoft.com/en-us/templates/syllabus-TC001018408.aspx>

http://www.englishraven.com/ttools_syllabus.html#anchor_49

<http://www.dominican.edu/about/forfaculty/courseinfo/syllabustemplate.html>

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One professor constructs a grading contract to show what the student must do to receive a specific grade [8]. For example, the following list is what a student must do to receive a “B” in one of the writing courses:

- attend class regularly—not missing more than a week’s worth of classes

- meet due dates and writing criteria for all major assignments
- participate in all in-class exercises and activities
- complete all informal, low stakes writing assignments (e.g. journal writing or discussion-board writing)
- give thoughtful peer feedback during class workshops and work faithfully with your group on other collaborative tasks (e.g., sharing papers, commenting on drafts, peer editing, on-line discussion boards, answering peer questions)
- sustain effort and investment on each draft of all papers
- make substantive revisions when the assignment is to revise—extending or changing the thinking or organization—not just editing or touching up
- copy-edit all final revisions of main assignments until they conform to the conventions of edited, revised English
- attend conferences with the teacher to discuss drafts
- submit your midterm and final portfolio

Some Professors ask their students to sign the syllabus stating that they agree to adhere to all requirements within. Professor Hatch at the Colorado State University requires his students to sign that they have read and accept the terms of the course syllabus [13]. His text at the bottom of his syllabi is as follows: (note that he repeats the words “Read the Syllabus” a number of times)

“Read the syllabus: It is a lot of trouble to prepare such a detailed syllabus. You should assume I had a reason for it. You must read every word in the syllabus before the second class. Students are expected to read this syllabus in its entirety. This syllabus and the addendum contain essential information. Please read them carefully. PLEASE READ THE SYLLABUS CAREFULLY AND KEEP IT WITH YOU WHENEVER YOU COME TO CLASS. ALL THE INFORMATION ON THE SYLLABUS IS IMPORTANT AND INCLUDES EVERYTHING YOU NEED IN ORDER TO DO WELL IN THIS CLASS. YOU WILL ALSO BE ABLE TO DOWNLOAD THE SYLLABUS ON WEBCT IF YOU SOMEHOW LOSE THIS COPY. PLEASE DO NOT ASK ME TO SEND YOU A COPY.

I have read this syllabus and agree to the schedule and procedures stated therein.

Print name: _____ (Signed) _____ Student ID: _____
Date: _____”

Another Professor requires his students to take a quiz on the Syllabus. In an article titled “The Syllabus Quiz” [27], the effectiveness of developing a syllabus quiz to enhance understanding of course policies and procedures was evaluated. It was interesting to see that only 60% of the students returned the quiz even though they were told they would get extra credit for the quiz.

A syllabus should also include a statement concerning students with disabilities, such as:

Students who may be eligible to receive learning support or physical accommodations must contact the Center for Student Success to schedule an appointment with a counselor and to learn more about accommodation procedures. To receive accommodations in this course, arrangements must be made through the Center for Student Success.

Although it is almost always up to the Professor as to what should be included in a syllabus, the following sections can be used as a guideline:

- General Information about the course - Department Name, Course Number, Course Title, Credit Units, Semester Offered, Course Meeting Days, Course Meeting Time, Course Meeting Place, Prerequisites
- Instructor Information – Name, Phone, Email, Office Location, Office Hours. The author also included a statement stating that email is the best way to contact the Professor.
- Classroom Behavior- "professors can no longer assume that there is a commonly understood set of behaviors that will be adopted within the classroom" [10]. Some areas to be considered are:
 - ✓ No hats, exceptions are head-coverings worn for religious or cultural reasons
 - ✓ no texting,

- ✓ no surfing,
- ✓ no smart phones
- ✓ no tablets
- ✓ no tweets
- ✓ respect for others

The author makes it very clear that when lecturing is going on in class, no gaming, texting, etc...will be tolerated

- Course Description – Taken from the School course catalog
- Texts and Resources – Required textbooks and any other readings etc...
- Student Learning Outcomes – By the end of the course, what the student should be expected to have learned. This may also include a section on outcomes assessment
- Online Components of the Course – Any online requirements, such as blogging. Include what can be expected as to email communication from the Professor. The maximum length of time for an email response. Always answer their emails. You may not be able to answer the student question at the time the student emailed, but respond that they will be answered later. It is important that students not feel ignored. Include your policy on answering emails over the weekend.
- Academic Honesty Honor Code – Contact your institution to see if there is a University wide written policy. You should be very specific as to what is considered cheating. For example, the incident earlier described in this paper might not have gone so far if there was a more specific statement about copying code. For example, the words stating: Nothing, including open source code may be copied and turned in. All code is to be original code written by the student only. In a recent study, students were asked if their Instructor included this area on their syllabus. All Professors did have this on their syllabi, but only 50% of the students answered that the topic was present [2].
- Course Topics- Many Professors like to include a week by week schedule of course topics. Be sure that you indicate that the schedule is subject to change.
- Assessment and Grading – This is a section that always grabs the attention of the student. Be very specific as to how the grade is calculated. This should include what kinds of assignments will be given and how they are assessed. You should build some flexibility into this section. Also include your policy on late assignments and extra credit. Include the actual breakdown as to the calculation of the final grade. If you wish to deviate from this calculation during the semester, be sure to put it in writing to the students. And as was said before, it is essential that you have a statement stating your syllabus is subject to change. At the time of writing of this paper, the Author has been answering questions as to why points were taken off for final project C++ and Java code. This will lead the author to put in writing next semester, that syntax errors in the code will significantly reduce the grade on any programming assignment. Some Professors will not even accept code with syntax errors.
- Exams – policy on missing an exam and conduct during an exam.
- Student Expectations – such things as class attendance, class participation and lateness
- Student Disability Statement – Contact your school for any policy that may exist. Again, this is one area where the courts have ruled in favor of the student with a disability.
- Policy on class participation along with specifics on how this area may be factored into the grade.
- Policy for grade dispute. Students may challenge their grades. There are even are web sites to guide the student in how to dispute a grade. So, stating this area as clear as possible will result in less grief for the Professor in the end [17].
- Course Disclaimer – Always state that the syllabus is subject to change. Any changes that you make should be provided to the student in writing.

SYLLABUS FOR ONLINE CLASSES

One can argue that the course syllabus is the starting point for any class. It is important to note that there are differences between a traditional on-ground syllabus and non-traditional syllabus used for distance education. On the first day of class at a brick-and-mortar institution, the Professor usually takes the time to review the syllabus, answer questions and make clarifications as to the requirements of the course. In an online environment, those first day speeches are missing so the course syllabus becomes extremely important to students and details of the course

expectations and requirements must be heightened [4]. Since the syllabus is most likely the instructor's first interaction with the student, tone is important and should convey enthusiasm for the course content. A syllabus for on-ground courses is usually an abbreviated version of the course requirements, whereas the online syllabus needs to be written so that no verbal explanation is necessary and can stand alone to serve the student.

Although the staple elements of a syllabus are provided in the above sections, it is important to note that with online delivery the instructor needs to add as much detail as possible to avoid confusion for the online learner. People choose to take online classes for many reasons such as distance (they may live in another state or country), they have children to take care of at home, disabilities, or the hours in which they work or travel for their job. The course syllabus for online classes should act as a road map for the learner. Details of an online syllabus should be clearly defined with as much detail as possible. Instructors teaching online classes for the first time tend to not add enough detail to the syllabus which can cause problems throughout the semester. When thinking in legal terms, it is possible in the future that the online syllabus could be considered a contract. "Increasingly, the syllabus has come to be the contract between students and instructor [28]." Students rely on the material within the syllabus to be current, relevant and explanatory in regard to dates and times when assignments are due, course delivery and requirements.

There are many similarities between the on-ground course syllabus and online syllabus. Even though the above items should be included in the syllabus there are many differences. It is imperative for instructors to outline the time commitment in which they are able to show to students the exact contact hours of the course delivery and the time needed to complete the material. Due dates and times are imperative to creating a successful online syllabus. As mentioned above, the syllabus can act as a road map for the online student. Often times, students print out the syllabus the first day of class and depend on the instructions, due dates and times of assignments and requirements to be accurate. Many online learners plan their schedules around the due dates of the syllabus. When discussing due dates of assignments, time zones must be taken into consideration since students could be taking this class from another state or country. Additionally, to avoid confusion, details on how to submit the assignments through the online learning system is extremely important especially if they students are taking an online class for the first time.

When creating an online syllabus explicit instructions should be included for every assignment, weekly forum, project and exam. Instructions should include the date and time in which the assignment is due, minimum word or page count, an explanation of how the assignment will be graded to include a rubric, due dates and times and how participation reflects within the online classroom should be outlined. Remember, the instructor must provide the details that they would verbally tell students in the classroom. The course requirements should be broken down by week linking the material back to the course objectives. It is extremely important to remember to include contact information and office hours. Students taking online classes are not expected to meet for office hours. Virtual and on-ground office hours should be included along with options such as providing a cell, Skype and information on how often the instructor checks email.

Additional items that should be included in an online syllabus are:

- Visual representation of assessments, calendar and timeline of course work
- Technical support contact information
- Support information for the Learning Management System (Blackboard, D2L, eCollege)
- Hardware and software requirements for the course
- A list of auxiliary devices such as headsets, web cam, microphones

Since the syllabus is an important aspect of the class it might benefit the students to include the syllabus in a weekly graded forum. As part of the forum, ask students not only to read the course syllabus but to discuss a few aspects that they find interesting or concerning in the discussion. Adding the syllabus as a required forum gives the student time to ask questions and address their concerns in regard to the information. The syllabus should clarify the "rules of engagement" for the online class, thereby providing valuable guidance and direction while motivating and inspiring students to do their best [4].

CONCLUSIONS

Even though the Courts do not see the syllabus as a contract, one should treat it as such. In constructing a sound syllabus, educational malpractice may be avoided.

- One should continually be reminded that the specific course hours must be met along with covering the advertized topics in the course catalogue.
- Include disclaimers in your course syllabus, such as changing the schedule and topics when deemed necessary. You may need to change your course policies and you should not feel compelled to stick to your syllabus outline if it doesn't seem to be working or if you feel that the course should go in a different direction.
- Communicate to your students

The last point is perhaps the most important one. Students need to be kept informed of everything surrounding the course. Always answer emails promptly. To take this one step further, the authors send a blind copy of all emails sent to students to their email accounts. These emails are saved for one semester, just in case there may be some question concerning the student and the course. Refer to the syllabus often during the semester, thus conveying to the students that it is the main location of course management information. In conclusion, take care of your students, but also protect yourself through your syllabus. "A learning-centered syllabus can decrease student anxiety and promote their involvement in the course [8].

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APPENDIX

COMPONENT	DESCRIPTION
Title page	Course number and title, semester and year, number of units, meeting times and location, instructor and TA information (e.g., name, office, office hours, contact information)
Course description	A brief introduction to the course: scope, purpose and relevance of the material.
Course objectives	Skills and knowledge you want students to gain.
Course organization	Explanation of the topical organization of the course
Materials	Required (and/or optional) books (with authors and editions), reserve readings, course readers, software, and supplies with information about where they can be obtained
Prerequisites and co-requisites	Courses students need to have taken before yours (or at the same time); prerequisite skill sets (e.g., programming languages, familiarity with software). Provide advice on what students should do if they lack these skills (e.g., drop the course; get outside help; study supplementary material you will provide)
Course requirements	What students will have to do in the course: assignments, exams, projects, performances, attendance, participation, etc. Describe the nature and format of assignments and the expected length of written work. Provide due dates for assignments and dates for exams.
Evaluation and grading policy	What will the final grade be based on? Provide a breakdown of components and an explanation of your grading policies (e.g., weighting of grades, curves, extra-credit options, the possibility of dropping the lowest grade)

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Course policies and expectations	Policies concerning attendance, participation, tardiness, academic integrity, missing homework, missed exams, recording classroom activities, food in class, laptop use, etc. Describe your expectations for student behavior (e.g., respectful consideration of one another's perspectives, open-mindedness, creative risk-taking). Let students know what they can expect from you (e.g., your availability for meetings or e-mail communication).
Course calendar	A day-to-day breakdown of topics and assignments (readings, homework, project due-dates)
Advice	How to use the syllabus; how to study for the course (how to read efficiently and effectively, whether readings are to be done before or after the class they pertain to, when to start assignments, approved forms of collaboration, etc.); how to seek help.

Table 1 Carnegie Mellon University Suggested Syllabus topics