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Colleen Sanders
Clackamas Community College

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Let Us Get You Into College¹: Community College Librarians, Barnes & Noble, and OER

by **Colleen Sanders**
Part-Time Reference Librarian,
Clackamas Community College
colleen.sanders@clackamas.edu



COLLEEN SANDERS is a Part-Time Reference Librarian at Clackamas Community College. She has served on OLA's Communications Committee and is currently vice-chair of the Library Instruction Round Table (https://www.olaweb.org/lirt_home). She will be co-presenting on her article's topic at the 2019 OLA/WLA Joint Conference in the session Reading the Fine Print: Libraries Defending Academic Freedom, Students' Rights & OER (<https://tinyurl.com/y6j8j6ta>). If you'd like to learn more about Colleen's work, see the Open Oregon Educational Resources webinar Open Education for Student Success (<https://tinyurl.com/y2nwm9c>). Her recent presentation Cut the CRAP: Teaching Credibility Beyond the Acronyms (<https://tinyurl.com/yxnsh55j>) focuses on alternative pedagogical approaches to information evaluation. She has shared her assessment work in the ACRL-Oregon presentation Geek Out, Don't Freak Out! How to Chill Out and Learn to Love Assessment (<http://bit.ly/acrl-or-feb19>). She will be co-presenting at ACRL 2019 in Cleveland at the session entitled Getting Uncomfortable is Good for You: Turning Narrative into Action with Allyship and Advocacy (<https://tinyurl.com/y59355mg>). Colleen facilitates the Pacific Northwest Critical Librarianship Community, an inter-institutional group of library workers growing their critlib understanding and practice. If you'd like to join in a conversation space dedicated to anti-oppression work in all areas of the library, please e-mail pnwcritlib@gmail.com.

Introduction

Clackamas Community College (CCC) became the first Oregon community college to contract with Barnes & Noble Education (BNED) for bookstore services in July 2018. Administration selected outsourcing "in order to keep offering bookstore services ... and retain financial sustainability" (A. Mahar, personal communication, Nov. 21, 2017). The college-run bookstore's contribution to the general fund was shrinking with each budget cycle, whereas BNED guaranteed a minimum annual commission of \$200,000 (Agreement, 2018, p. 13). This article describes the steps CCC librarians took to influence the contract after discovering objectionable language including, but not limited to,² faculty use of Open Educational Resources (OER) and linking to OER in the learning management system

¹ Tagline for BNED's brand partnership page (<https://partnerships.bncollege.com/>) (as of 10/01/2018). This offer addresses potential investors.

² Other areas included the presence of credit cards at cashier tills and on the textbook website; replacing college staff positions with BNED employees; collection and safety of student data; BNED's website auto-populating student shopping carts with required and recommended books and supplies as they register for classes; CCC access to textbook data; exclusivity of printing services; BNED's textbook discovery platform & partnerships with select publishers; whether course reserves could be framed as competition; whether BNED would work with the library to ensure faculty wouldn't be offered materials already owned by the library; who would provide point of need technical support for BNED products and systems.



(LMS). Librarians were concerned about the impact bookstore privatization may have on students. 62 percent of CCC students self-reported in a spring 2018 college survey that they have “difficulty paying for books and supplies” (CCC, 2018a, p. 3), and course reserves are the library’s most heavily-used service. After a deep read of BNED’s service proposal and sample contract, librarians identified campus partners, raised specific questions at meetings, met with administration, and sought guidance from the OER community to inform an advocacy strategy. While administrators invited faculty input during the contract drafting process and incorporated many of the proposed changes, the signed document retains OER restrictions. It remains to be seen if and how BNED will enforce them. Beyond the contract, this exploratory process uncovered a long list of questions worth asking, as well as details about BNED’s OER products and services.

CCC librarians did not anticipate assuming an advocacy role in the bookstore contract negotiations, nor did we expect OER to appear in BNED’s sample contract. Much of the signed contract is language unique to CCC as a result of administration incorporating faculty input, although the documents share much in common. This article intends to support local colleagues who find themselves in a similar situation; a likely scenario, given that the contract defines Cooperative Agreement as allowing “other State of Oregon community colleges [to] participate in without conducting a request for proposals process” (Agreement, 2018, p. 33). It does not define which institutions are included in Section 13’s “POCC (Participating Oregon Community Colleges)” (p. 27) that may opt into cooperative purchasing. More information about how librarians can navigate these waters needs to be easily discoverable, as CCC librarians found themselves having to act on a very short timeline largely without precedent.

State of OER

OER AT CCC

CCC does not have an OER position or program, although some CCC faculty members have independently created³ or adopted OER for their courses. Instructors continue to autonomously spearhead OER projects, and five faculty secured just over \$10,000 in Oregon House Bill 2729 funding⁴ for two projects in the 2018–2019 academic year (Open Oregon Educational Resources, 2018).

With current staffing levels, CCC Library is unable to provide the level of OER support faculty required to have a significant impact. Librarians respond to faculty questions with an OER LibGuide, searching advice, and forwarding their inquiry to OER listservs. CCC’s Instructional Support and Professional Development (ISPD) department funds a total of two hours of OER work per week, which enables a librarian to maintain contact with the local OER community and attend workshops. We rely heavily on Oregon’s Statewide Open Education Coordinator, Amy Hofer, for support.

With the signing of the contract, BNED has become the primary OER infrastructure on campus. BNED offers full courses and ancillaries that an instructor could customize to some degree, or use as-is. The end product is sold at a relatively modest price point,

³ See <https://tinyurl.com/y2o45jsf> for a list of OER created by CCC faculty.

⁴ HB 2729 (<https://tinyurl.com/y4b9253v>) mandates the Higher Education Coordinating Commission partner with public higher education institutions to develop a statewide OER program.



although students only retain perpetual digital access to materials so long as they can log into the course through the LMS (B. O’ Reilly, personal communication, Nov. 7, 2018).

BNED’s OER-BASED PRODUCTS

Although BNED applies the term OER to its products (BNED, 2017), they do not meet the criteria for OER as they are not “free and openly licensed educational materials” (What is OER?, 2016). BNED uses openly licensed content and in-house content developers to build courses on LoudCloud, its proprietary courseware platform. LoudCloud is a learning environment separate from the LMS, although faculty can align auto-graded assignments to the LMS gradebook. The fee for students to purchase BNED’s OER-based products is \$25, plus an additional \$14 if they desire a print copy. The \$39 sum comes in under the \$40 limit for courses to be designated Low-Cost Textbook (LCT) in the CCC catalog.

BNED currently offers 38 complete courses (Barnes & Noble Education, n.d.) through LoudCloud, some of which use OpenStax texts. This catalog of courses is under expansion, and each includes “e-text, video, auto-graded practice quizzes, in-class activities, discussion questions, homework, and assessments. Instructor resources include a test bank and lecture slides” (n.d.). Some course content can be modified, but textbook and quiz questions have specific editing limitations. “Any customizations an instructor makes is owned by the instructor, BNED does not have rights to the custom content” (L. Schmit, personal communication, Nov. 5, 2018), although it is unclear whether the entirety of a remixed course could be shared on a public OER repository.

Contract Negotiations

TIMELINE

Eight months passed between the announcement CCC would explore a new bookstore service model and the signed contract (Figure 1). Ten weeks after BNED was announced the recipient, the contract was signed. The seven-week window for faculty comment on the con-

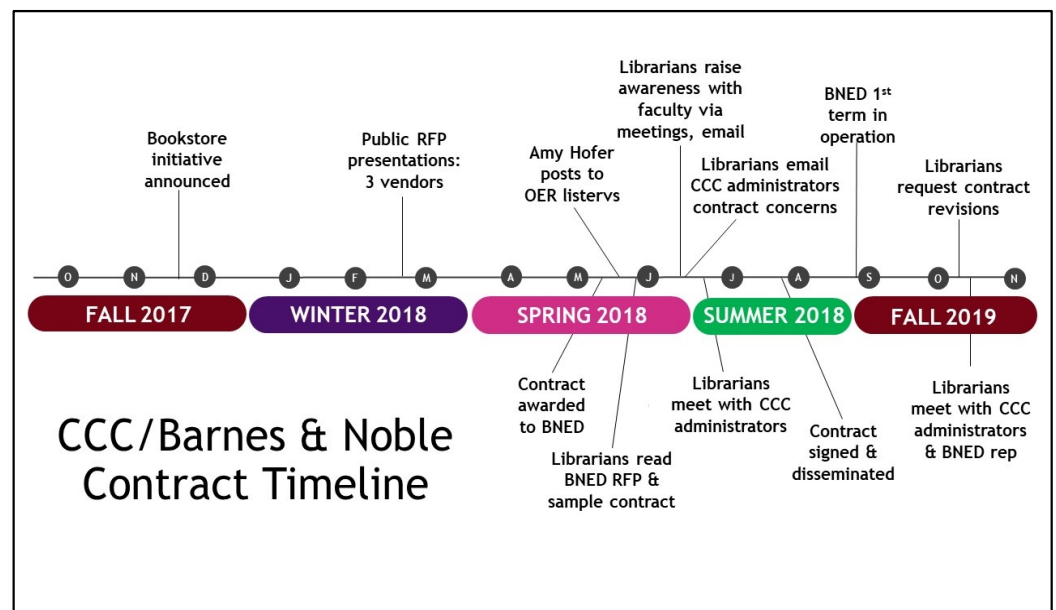


Figure 1

tract, May 7 to June 27, occurred during the second half of spring term 2018. The college held public informational sessions with BNED, and e-mails from administration solicited comments, questions, and concerns about the pending contract. On May 22, librarians requested to view the draft contract and were promptly invited to visit the executive offices to read BNED's service proposal, the document submitted to administration during the request for proposals (RFP) process. This proposal included the sample BNED contract, and librarians found multiple instances of this contract with OER language intact signed by other colleges.⁵ Much of CCC's final contract retains sample contract language in addition to custom language, but the first time librarians read the actual text of the CCC contract was July 25, when the signed document was shared with the CCC community. BNED moved into the campus retail space during August and opened its doors for business fall 2018.

OER Areas of Concern

EXCLUSIVITY

CCC's RFP prompted each vendor to provide a "non-exclusive digital delivery program that addresses the changing types of course materials, including providing digital course materials" (Barnes & Noble College, 2018c, p. 34). BNED declined to meet this request, emphasizing its service model requires BNED be designated the exclusive distributor of required or recommended materials in all formats. Contractual expressions of exclusivity became the crux of much of the librarians' advocacy. Section 7a of BNED's sample contract provided that BNE would be the "exclusive retail buyer and seller of all required, recommended, or suggested course materials and supplies, including ... open educational resources ("OER") available for purchase, and materials published or distributed electronically" (p. 2).

The librarians sought clarification; what OER are available for purchase? Did this indicate that publishers such as OpenStax, which provide free digital access but also print-on-demand services, could be excluded due to the ability to receive payment for services? Would the contract affect faculty development of OER? Would this impact CCC Library's print or digital course reserves?

Librarians were unsuccessful at obtaining shared definitions of key terms, and BNED's characterization of OER exemplifies the confusion. Section 2.4J of the signed CCC contract states that "not all OER materials are free" (Agreement, 2018, p. 4), despite OER being free by definition (What is OER?, 2016). This is not a semantical argument when it lives in a legally binding document. Librarians at the University of Central Florida (UCF) learned the value of a well-worded contract after BNED issued them a take-down notice for a research guide educating students about textbook affordability options. Upon appealing this infringement to UCF's legal counsel, librarians learned "existing textbook affordability legislation was not written strongly enough to override the exclusivity clause of the bookstore contract" (deNoyelles et al., 2017, p. 106).

ONLINE CLASSROOMS

Sample contract Section 7b designates BNED as the "exclusive retail (e-commerce) entity permitted to ... place a link on the LMS" for textbook or course materials (Barnes & Noble College, 2018c, p. 3). If BNED claims exclusive rights to materials disseminating electroni-



⁵ See College of the Sequoias sections 7a & 7b (<https://tinyurl.com/yxw3bkgf>).

cally, were faculty teaching online specifically implicated? Did this mean that faculty would not be able to share links to non-BNED OER in Moodle? Librarians noted that this section appeared to be in violation of CCC's faculty contractual protection of academic freedom, which states, "instructors are entitled to freedom in discussion [of] the subject, regardless of delivery method" (FTFA, 2016, p. 55). How BNED intended to monitor and enforce LMS linking was not defined, although CCC was named as the responsible party for removing offensive links (Agreement, 2018, p. 2).

TRANSPARENCY

BNED systems integrate with CCC's student enrollment and financial aid systems. BNED owns and tracks textbook and OER adoption information. Would CCC have access to this data, and how would this affect the workflow for mandatory reporting of LCT and OER adoptions to the state of Oregon as mandated in Oregon House Bill 2871⁶? BNED's proposal revealed that it has partnerships with OpenStax and XanEdu for providing access to "OER and copyright clearance for over 8 million pieces of content" (Barnes & Noble College, 2018c, p. 32). BNED has its own digital reader, Yuzu, and proprietary OER courseware. Would this lead to increased workloads for CCC's Library, Distance Learning (DL) or Information Technology (IT) staff? Did BNED provide accessible point-people for troubleshooting technology? Who were the "content develop specialists" who would "perform time-consuming research for you," and the "expert editors" who "will help you design and edit a custom text or original book" (p. 32)? Is it appropriate for a third-party bookstore services provider to be influencing course materials, and by extension pedagogy, and how would the college implement quality control? Librarians entered into conversations with colleagues, administration, and the OER community with many questions.

Strategy

Librarians spent two weeks analyzing the proposal and the sample contract, generating a detailed list of questions, concerns, and requests for language to be clarified or rewritten (Appendix B). We sought assistance from Amy Hofer, who posted on our behalf to OER listservs soliciting input from multiple OER communities. We also e-mailed Director of Open Education at Creative Commons Cable Green for advice on our negotiations. These two sources generated useful input, which we used to craft our approach.

Librarians attempted to raise awareness at key campus meetings, and through this process, more faculty joined the conversation. We delivered a lengthy e-mail detailing our concerns about BNED's proposal and sample contract to administration, who met with us shortly thereafter. They guaranteed us that academic freedom was not at risk and that the final contract would not restrict faculty's ability to use and share OER. The signed contract showed significant changes, although many questions remain. After reading the signed contract, librarians sent a follow-up list of questions and proposed amendments (Appendix C).

⁶ HB 2871 (<https://tinyurl.com/y5oo83hg>), among other things, requires public institutions to track and report OER adoptions to the state of Oregon.



The Contract⁷

Administration delivered on the promise to include certain protections. The contract bans credit card advertisements from the bookstore website and cashier tills (Agreement, 2018, p. 5). It preserves faculty's ability to share affordable textbook options such as CCC Library course reserves and the student government textbook library (p. 12). Yet language pertaining to OER is scattered across five separate sections, and cross-referencing them leads to more questions than clarity as to what is permitted.

CONTRADICTORY OER PROVISIONS

Much of the OER language is positive. Section 2.4J states "CCC can utilize OER platforms that give free content in addition to for-purchase content," (p. 4). Taken alone, this assertion is cause for celebration. But while the contract states "CCC faculty have complete academic freedom to select OER of their choice and inform students about their selected OER" (p. 4), it also never explicitly protects faculty rights to link in the LMS and includes language indicating that sharing non-BNED OER is a contract violation. Multiple sections (1.2; 4.15K; 4.16B; 4.16C) hold phrasing that seemingly limit faculty's abilities to adopt, share, and access OER content independently of BNED OER-based products.

PERSISTENT EXCLUSIVITY LANGUAGE

Section 4.15K simultaneously names BNED as CCC's OER provider as it enables faculty to "access OER for courses through Open Oregon Educational Resources, as prescribed through state grant agreements" (p. 12). It broadly enables faculty to "use OER through other sources as desired" (p. 12), yet that latitude is juxtaposed with other hyper-specific OER provisions. Section 4.16B says, "CCC faculty have the ability to share required, recommended, or suggested course materials and supplies in their classrooms with students. Classroom and information sharing can occur in the physical environment" (p. 13). The latter clause conspicuously excludes online classrooms, a concern further underscored in 4.16C, which puts this freedom under the "exclusivity provisions" (p. 13) of Section 1.2, which retains the exclusivity language described earlier limiting linking in the LMS.

Perhaps most alarming is Section 1.2, which names BNED as "the exclusive retail (e-commerce) entity permitted to either place a link on the LMS," requiring CCC to "prohibit all third parties, including but not limited to publishers, sellers of textbooks and course materials, and providers of open education resources from placing direct links within the LMS" (p. 1). It may serve readers to know that this contract section is contingent upon CCC opting into BNED's First Day program, an inclusive access model where students pay for their textbook as a course fee and are given an access code to the digital content on the first day of class. The inclusive access model in and of itself is cause for objection, as it buries textbook costs within a course fee, thereby stripping students of agency in textbook purchasing options. Librarians learned in fall 2018 that multiple CCC courses were already using the First Day program, thus enabling the exclusivity section.

Section 4.15K also references an "OER program at CCC," which does not exist, then goes on to imply that the program works "in partnership with B&N College ... to develop



⁷ The full text of CCC's contract with BNED (<http://tinyurl.com/yyjpv98k>) is available in Appendix A.

and use OER” (p. 12). This phrasing forces librarians to speculate how this may be applied if and when CCC initiates a college-driven OER program. While BNED’s Portland regional manager verbally assured CCC librarians that “our intention is never to prohibit use of links to OER” (L. Schmit, personal communication, October 15, 2018), the signed contract leaves faculty in a state of uncertainty as to what is and is not permitted.

PROPRIETARY INFORMATION

BNED’s information systems integrate registration, financial aid, and textbook adoption data. The availability of the latter has widespread applications for OER, library services, and college-wide assessment. Section 8.3 of the contract designates such data as part of BNED’s proprietary information subject to confidentiality. “B&N College also creates a computer database containing, among other things, course book information. These forms and the database are B&N College proprietary information, created at substantial cost and expense to B&N College and used in connection with its business, the retail sale of course materials” (Agreement, 2018, p. 16). This is identical to the text UCF librarians cite as a barrier to advancing textbook affordability on campus. According to deNoyelles et al., “gaining access to the university’s required textbook list, in order to further pursue low-cost or open materials” required multiple interested groups partnering to petition “high level campus administrators and regional bookstore managers” along with a Higher Education Opportunity Act (HEOA) request (2017, p. 108). It is not yet known if CCC will need to repeat that process to receive textbook adoption data from BNED.

CCC’s contract is set for a 3-year term, with the option to extend to a total of 5 years (Agreement, 2018, p. 2). If CCC does not renew the contract, will it lose textbook adoption information for that time period? Will access to this data as well as growing dependence on BNED’s services and systems incentivize contract renewal? Much of the contract’s application can only be learned in real time as the partnership unfolds.

The First Term

ON THE GROUND

After reading the signed contract librarians sent a second lengthy e-mail to the administration seeking amendments to clarify specific OER provisions (Appendix C). The administration expressed a preference to leave the contract as-is with the possibility of revision should conflict arise. Librarians requested action on contractual guarantees of a Bookstore Advisory Group (Barnes & Noble College, 2018c, p. 19) and information posted on BNED’s retail spaces educating students about CCC Library course reserves (Agreement, 2018, p. 4). Partnering with the bookstore manager, librarians are working on designing shelf tags with QR codes to educate students about the existence of course reserves while they shop for textbooks. Librarians have held discussions with BNED officials about making course reserves-related information available on BNED’s CCC bookstore website.

As of this article’s publication, BNED is in its second operational term at CCC. Librarians have attended every BNED information session on campus to learn about the textbook discovery service, FacultyEnlight, as well as LoudCloud. New information surfaces regularly, such as on September 28, 2018, when a librarian in California posted to the LibOER listserv. Her husband, a professor using an OpenStax textbook, received an e-mail from BNED educating him about using LoudCloud as an alternative platform to OpenStax. BNED has confirmed that they intend to do the same LoudCloud marketing at CCC



for faculty currently using OER in their courses. Librarian advocacy resulted in contract section 2.4J, “XanEdu and B&N College do not provide course design work and support,” (Agreement, 2018, p. 4). However, librarians learned at an October 15 LoudCloud demonstration that after adopting BNED OER, faculty are paired with a BNED employee in New Jersey to co-design the course.

ANALYSIS

The friction within partnerships between nonprofit educational institutions and for-profit companies is well-documented, and this article’s purpose is not to invoke that debate nor align definitively with one side. In an era of shrinking budgets and dipping enrollment numbers, a growing number of colleges are outsourcing services to third-party vendors. BNED alone operates over 760 college bookstores nationwide (Barnes & Noble College, 2018b), a fact cited by CCC administrators as evidence of BNED’s capability and compatibility with the college’s values. Yet librarians remained concerned whether the contract, once applied, would fully align with CCC’s access- and equity-driven mission (CCC, 2018b), given Barnes & Noble College exists to generate a profit (Barnes & Noble College, 2018a). To their non-college audience, BNED presents students as under-tapped financial markets on its Brand Partnership website, offering potential investors “access to 6 million+ college students, parents, and alumni ... wielding \$143 billion in purchasing power” (BNCBP, 2018).

BNED promises to turn a profit where the college bookstore could not because the service model is very different. Outsourcing may alleviate administrative financial discomfort as “doing so allows them to provide an essential service and share in the profits without exposing themselves to the risks of running a business” (Pulley, 2000). However, faced with shrinking returns and outsourcing options, administrators must consider the role of a community college bookstore. Is it a source of income or a core student service? Is it possible to be both? Is it a false dilemma that the bookstore either generates profit or cannot exist? Is outsourcing an appropriate option that preserves the integrity of a community college mission to serve disadvantaged and underrepresented student groups?

The bookstore represents different things to its various stakeholders. Students, faculty, and administration may differ in satisfaction with the bookstore, as the groups interact with it on different terms (2000). All parties involved believe they are acting in students’ best interests, even when they generate drastically different solutions to the bookstore situation. There are many factors and questions worth considering when a college announces it is exploring alternative models; the first should be to collaboratively determine the role of the bookstore at each institution. Does it provide a key service to students, or does it exist to contribute to the bottom line? The two not being mutually exclusive, which of these aspects ought to take precedence? Is it worth subsidizing a bookstore because of the core services it provides? Or if the traditional textbook model has become too expensive for student and college alike, has the time come to invest in exploring a sustainable approach to more affordable course learning materials? Access to course materials has a profound effect on student success. When is it appropriate for profit to be a primary decision-making factor?

FUTURE OF OER AT CCC

It remains to be seen how the contract with BNED will impact students, faculty, and the future of OER at CCC. The librarians are hopeful this will be a mutually beneficial collaboration that centers on student success. From a short-term, quick-fix perspective, perhaps it



is better that a student can now pay \$39 for a BNED OER rather than \$150 for a Pearson textbook. Once a tipping point of support for OER is achieved, perhaps that student will be able to access that material for free. Perhaps LoudCloud will create a convenient on-ramp to OER usage, and more faculty will commit time to explore true OER adoption. The presence of turnkey courses may enable access to OER-based curriculum that, in the absence of a local OER program, faculty may not achieve otherwise.

In the long term, though, commodifying free content when a rapidly growing, faculty-driven open movement already exists may not be the most efficient way forward with textbook affordability. A sustainable college-led OER program that both uses and contributes to the body of truly open educational resources on the web is a systemic reform requiring institutional funding. A recent report by Oregon's Textbook Affordability Workgroup found that "faculty incentives and support were needed for open education resources (OER) to be effective" (TAW, 2014, p. 7). In the absence of institutional support to adopt and develop OER, BNED has stepped up and made OER adoption and creation seem effortless. An October press release announced BNED offered mini-grants of up to \$2,500 (plus \$1,000 bonus to departments) to faculty to develop new OER for use in the LoudCloud platform (Barnes & Noble Education, Inc., 2018). But building local OER content on proprietary platforms could backfire, especially if the college opts not to renew the contract, BNED goes out of business, or the LoudCloud courses faculty have built their programs around are removed from the BNED offerings.

It is not yet known how the annual \$200,000+ commission will be earmarked at CCC, nor who will contribute to that decision-making process. These funds represent an opportunity to invest in student success, perhaps through a position dedicated to helping faculty adopt OER across the curriculum and educate the college community about textbook affordability, open access, and equitable access to information. With new leadership at the presidential and dean levels, in addition to a transition to a Guided Pathways model, there is reason to be optimistic about upcoming equity measures at CCC.

Conclusion


CCC librarians continue to show up for campus conversations and advocate for students, faculty, and OER. In the absence of positive, direct language that, as Cable Green advised, "takes OER completely off the table" (personal communication, June 8, 2018), interested faculty are left to interpret the contract as they design their courses and Moodle shells. Amy Hofer's advocacy on our behalf through the OER community yielded actionable, strategic advice that aided us in our process. Ultimately, it was the feedback from the experts in the OER community and our own attempts to interpret the contract that resulted in change. To maximize our story's findability, CCC librarians also contributed a post to the Open Oregon Educational Resources blog⁸ on this topic and are presenting at the 2019 Oregon/Washington Library Associations Joint Conference⁹. The issue is garnering regional attention and we have been approached by multiple colleges undergoing similar negotiations; also, the Oregon Community College Library Association (OCCLA) request-



⁸ <https://openoregon.org/a-barnes-noble-experience/>

⁹ <https://www.wla.org/2019-ola-wla-conference-home>

ed CCC Librarians draft a position statement to be shared with administrators at colleges considering bookstore outsourcing. This document distills our philosophy and experience-informed insight into a tool we hope will be helpful for our colleagues.

Librarians may not be legal experts, but we are researchers and collaborators. Advocacy works, and timing is important. If your college announces it is considering outsourcing bookstore services, find a seat at the table. Show up to forums, ask questions, and grow your support network amongst faculty, who may be unaware of the implications of this contract. The more allies in holding student success and open education at the forefront of negotiations, the better. Know that all parties involved (administration, faculty, and BNED) believe they are making the best choices for student success from each of their unique perspectives. Reach out to students and engage them, perhaps through student government or the student newspaper. You may not be allowed to see contracts before they are signed, but remain vocal, especially if you are one of the unnamed “POCC (Participating Oregon Community Colleges)” (Agreement, 2018, p. 27). Know that support networks exist, and use them. 

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Appendices

Appendix A: The Contract (<http://tinyurl.com/yypjv98k>)

Appendix B: June 6 CCC Library Contract Concerns E-mail (<https://tinyurl.com/yxw5b8w9>)

Appendix C: October 8 CCC Library Contract Concerns E-mail (<https://tinyurl.com/yxeqcqul>)

