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December 19, 2007

Ardon Alger, Faculty Senate President
Jon Ausubel, English Professor
Marie Boyd, Librarian
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Chaffey College Faculty Senate
Chaffey Community College District
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Re: May Instructors Assign Incomplete or Failing Grades
for the Purpose of Discouraging Cheating by Students?
Legal Opinion 07-12

Dear Professors Alger, Ausubel, Boyd and Cosand:

On October 17, 2007, you wrote to Chancellor Woodruff requesting a legal opinion on two issues regarding the ability of a faculty member to penalize a student for suspected cheating or academic dishonesty. Specifically, you asked:

1. May an instructor discourage cheating by giving a student a grade of "Incomplete" in response to an egregious cheating incident? The instructor would not change the Incomplete to a passing grade until the student completed a module designed to discourage cheating.
2. May a faculty member issue an F grade to a student at any time during the semester, after census, when a cheating incident occurs?

For the reasons which follow, we conclude that neither of these practices is permissible.

Before turning to your specific questions, we will first briefly review the principles we discussed in Legal Opinion L 95-31 concerning using grading practices to punish students for suspected cheating or academic dishonesty. In that opinion we observed that "an instructor would be justified in giving a student a failing grade on a particular assignment or examination if the student were found to have plagiarized in preparing that assignment or cheated on the particular examination." However, we went on to conclude that "an instructor cannot automatically give a student an 'F' grade for the entire course where the student is only known to have cheated or plagiarized with respect to one of several assignments that count toward the final grade."

We reached that conclusion for two reasons.

First, we noted that under title 5, section 55002(a)(2)(A) the grading of courses is to be based on "measurement of student performance in terms of the stated course objectives" and "demonstrated proficiency in subject matter." We then illustrated the consequences of these requirements by saying "If a student legitimately gets 'A's' on assignments which account for 90% of the grade in a course, then he or she has certainly demonstrated a high degree of proficiency in the subject matter even if plagiarism or cheating is discovered in connection with one assignment worth 10% of the grade."

Second, we indicated that allegations of cheating should be handled through the student discipline process because,

"Plagiarism and cheating are serious allegations and, especially where a student is to be penalized for such conduct, he or she is probably entitled to some level of due process. At a minimum this should include the right to know the evidence on which the charges are based and the opportunity to present countervailing evidence or testimony. The student disciplinary process provides a mechanism for ensuring that these procedural requirements have been met." ¹

If an instructor mistakenly believes that a student has cheated on one of several assignments and gives the student an F on that assignment, the student may still be able to pass the course if he or she completes other assignments with sufficiently high scores, so long as the disputed assignment is not weighted so heavily that it effectively determines the grade in the entire course. However, assigning a student a failing grade in the entire course has more serious consequences because the grade will be recorded on the student's transcript and be factored into his or her GPA. If passing the course is a prerequisite to enrollment in another course or program, the stakes are even higher. In these circumstances we think students should be accorded the due process protections afforded by the student disciplinary process.

These principles remain as true today as they did 12 years ago when Legal Opinion 95-31 was written. We now proceed to apply them to the questions you have posed.

You first ask if it might be possible for an instructor to give a student thought to have cheated an Incomplete and require that the student complete a "module" designed to discourage cheating before the incomplete is removed.

¹ How due process requirements apply in the context of higher education and what type of procedural safeguards are required are complex issues. "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." (*Cafeteria Workers v. McElroy* (1961) 367 U.S. 886, 895) It may even be that student disciplinary procedures in use at some community colleges go beyond whatever minimal requirements may be imposed by due process considerations.

However, we need not address these issues in this opinion. Since we conclude that the regulations of the Board of Governors do not permit the proposed practices, determining whether the practices would be constitutionally permissible is unnecessary.

Title 5, section 55023(e) describes the "I" symbol as follows:

"Incomplete: Incomplete academic work for unforeseeable, emergency and justifiable reasons at the end of the term may result in an 'I' symbol being entered in the student's record. The condition for the removal of the 'I' shall be stated by the instructor in a written record. This record shall contain the conditions for the removal of the 'I' and the grade assigned in lieu of its removal. . . . A final grade shall be assigned when the work stipulated has been completed and evaluated, or when the time limit for completing the work has passed."

It is not at all clear that the "I" symbol can be used to address cheating as you suggest. The language quoted above from section 55023 stipulates that this symbol is used to denote "Incomplete academic work," but in the scenario you describe, there is no indication that the student has failed to complete the academic work for the course. We assume the theory is that if a student cheated on an assignment, he or she has not "completed" that assignment because the submitted material does not demonstrate that the student has actually achieved the learning objective related to that assignment. However, this cannot be what the regulation means because, if an Incomplete could be assigned whenever a student has not demonstrated mastery of a particular part of the curriculum, it could be applied anytime a student gets an F on a particular assignment.

Moreover, section 55023 also says that the incomplete academic work must be the result of "unforeseeable, emergency and justifiable reasons." A case could be made that cheating is a "justifiable reason" for giving a student an Incomplete, but the wording of the regulation suggests that all three conditions must be met and it is difficult to see how cheating could be characterized as an "emergency."

Finally, even if section 55023 could be construed to permit use of the Incomplete in the way you suggest, we think the proposal would nevertheless suffer from the defects we discussed in Legal Opinion L 95-31. It still involves penalizing a student for alleged misconduct without affording him or her any opportunity to rebut the allegations. Further, asking the student to complete a module designed to discourage cheating means that this part of his or her grade will not be based on an evaluation of the extent to which he or she has achieved the learning objectives of the course. It would, therefore, be inconsistent with the grading standards required by section 55002.

Your second question essentially asks if the instructor can immediately assign an F grade to a student while the course is still in progress if the student is suspected of cheating. This approach, though creative, is also impermissible for several reasons.

First, section 55002(a)(2)(A) also says that the grading for a course "culminates in a formal, permanently recorded grade based upon uniform standards." This reflects the universal understanding that grades are to be awarded at the end of a course and that grading should be uniform. Grading one student after six weeks of the course and others at the end of the course can hardly be said to involve uniform application of grading practices.

Second, you again propose to simply award an F grade, albeit prematurely, to a student who has cheated on a particular assignment, regardless of the quality of the work done by the student on other assignments up to that point in time. This is unacceptable for the same reasons discussed in Opinion 95-31.

Finally, giving a student an F grade for the entire course before it has concluded amounts to involuntarily dropping the student from the course. However, this is only permissible in limited circumstances. Subdivision (l) of section 55003 permits a student to be enrolled in a course pending confirmation that he or she meets a prerequisite and dropped if it is later determined that the prerequisite was not met. It then goes on to provide that “[o]therwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct.”

We recognize that student cheating is a problem and that faculty are justifiably interested in seeking ways to discourage it. However, we remain convinced that unless and until the Board of Governors changes its policies on grading, it is not permissible to give a student either a failing grade or an incomplete because a student has cheated on a particular assignment. Moreover, whether a student has actually cheated is a factual question which is best resolved through an adjudicatory process according students a reasonable measure of due process. Absent such safeguards, faculty would simply be imposing punishment on student conduct they believe is improper without any reliable process for confirming that this belief is accurate. A faculty member who was disciplined for alleged plagiarism in preparation of an academic paper without any opportunity to have such allegations objectively reviewed would no doubt strenuously object to such a procedure.

If you have any further questions, you may call Assistant General Counsel Ralph Black at (916) 327-5692.

Sincerely,

Steven Bruckman,
Executive Vice Chancellor and General Counsel

Ralph Black
Assistant General Counsel

RB/rs/fr

cc: Diane Woodruff, Chancellor
Carole Bogue-Feinour, Vice Chancellor for Academic Affairs

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