Chapter 5. Rethinking Contract Negotiations

In chapters 5 through 8, I reconsider key elements of LBG in an attempt to move the practice forward, centering on the concerns of students with disabilities and neurodivergencies. My ultimate goal is to crip labor and LBG in order for it to be a more fully equitable grading practice. In this chapter, I discuss a few concerns that impact the first set of practices involved in LBG, contract negotiations. I focus on questions of "forced intimacy"; the incorporation of universal design for learning (UDL) principles in contracts; the need to understand student differences as emergent in contract negotiations and the larger grading ecology; the paradoxes in democratic processes of contract negotiations; and the centrality of practices of compassion in my version of LBG that affect contract negotiations and the ecology at large.

Forced Intimacy in Contract Negotiations

The first set of activities for most LBG ecologies are, or should be, negotiations of their terms. I discuss contract negotiations in chapter 4 of the LBG book (130/126) and offer a more in-depth discussion of a contract negotiation with a specific group of students in another place (*Antiracist Writing Assessment* 184-194). While it doesn't automatically solve concerns about normative, ableist, and neurotypical standards of labor, I've always included robust processes of student-driven negotiation in order to account for the needs of my students in front of me. It can easily push students with disabilities or illnesses to out themselves in ways that may stigmatize or shame them. For instance, Carillo explains that "[a]ssessments like labor-based grading contracts that depend on learners' requests for accommodations rather than instructors' proactive attempts at inclusivity create a situation that disability justice advocate Mia Mingus [2011] has coined 'forced intimacy'" (30-31). Mingus explains that forced intimacy is the condition in which students with disabilities must "disclose their disability to able-bodied people in order to gain access to what is already accessible to normative bodies" (Carillo 31; Mingus n.p.). Thus, democratic processes of contract negotiation that rely on students to suggest changes or processes that rely on students bringing up their own disabilities for accommodation later, can participate in forced intimacy.

But do all disclosures of disability fall under the category of forced intimacy? How shall we know when they do not? What are the conditions in which disclosing one's disability is not forced? Could it be a compassionate practice of sharing with others, not so that someone might "fix a problem" but to attend to each other and acknowledge the different laboring conditions that exist in the course, or to

honor and value such laboring with disability as an important part of who we are and who is always among us? Of course, this version of intimacy requires trust that may be hard to cultivate given the history of forced intimacy that most with disabilities have experienced. And that history rightly begs a question: Why must the individual with a disability be the one who must always trust others and allow intimate contact or disclose intimate information in educational situations such as contract negotiations?

Mingus also offers an alternative to forced intimacy, which she calls "access intimacy." She explains it both affectively and functionally:

> Access intimacy is not charity, resentfulness enacted, intimidation, a humiliating trade for survival or an ego boost. In fact, all of this threatens and kills access intimacy. There is a good feeling after and while you are experiencing access intimacy. It is a freeing, light, loving feeling. It brings the people who are a part of it closer; it builds and deepens connection. Sometimes access intimacy doesn't even mean that everything is 100% accessible. Sometimes it looks like both of you trying to create access as hard as you can with no avail in an ableist world. Sometimes it is someone just sitting and holding your hand while you both stare back at an inaccessible world.
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> It has looked like relationships where I always feel like I can say what my access needs are, no matter what. Or i [sic] can say that I don't know them, and that's ok too. It has looked like people not expecting payment in the form of emotional currency or ownership for access. It has looked like able bodied people listening to me and believing me. It has looked like people investing in remembering my access needs and checking in with me if there are going to be situations that might be inaccessible or hard disability-body-wise. It has looked like crip-made access. It has looked like crip solidarity. (Mingus, "Access Intimacy, n.p.)

While Mingus is discussing access intimacy in mostly physical ways, ways that negotiate and critique the built places around us, her ideas are translatable to contract negotiations and grading ecologies more generally. Our assessment ecologies are built environments students and teachers control. That is, access intimacy can be a priority in collaborative processes that decide on things like due dates, late policies, labor expectations, and labor instructions. This is particularly an issue for those teachers who believe that students' voices are important to collaboratively building a course together, which I do.

But knowing about access intimacy, or wanting it, isn't a solution. I'm still learning how to design access intimacy into a grading ecology, and it isn't easy given the contexts that our students already live and work in. For example, I'm

not sure how you design trust in the ways that Mingus describes it outside of building relationships with each other, which take time, willingness, and opportunity. I think it is possible to design the conditions that will encourage such relationships. That is, I think we can build grading ecologies that help us all cautiously and mindfully step into relationships of compassion and trust over time. I think doing this is mostly about our orientations toward each other and the course. Most importantly, the conditions in a course that afford such orientations must be thoughtfully arranged with access intimacy in mind.

Perhaps one way to imagine a first step is to build ecologies that *avoid* forced intimacy, which is not the same as building access intimacy. What I mean is that a LBG ecology should make conditions that do not need such intimate disclosures by anyone in order for everyone to move through them successfully. At the same time, an ecology that avoids forced intimacy may also engender access intimacy, when or if needed. This is what I hear at the heart of Carillo's concerns. How can my students and I create grading conditions in which very little to no disclosure of disability or illness is necessary to make those conditions fair and equitable? How can we build a grading ecology that already accounts structurally for everyone? I think a working definition of disability, along with the assumption that such a definition can help us negotiate our grading contract in meaningful ways, is a good start to making such conditions. But it's not the only thing needed.

Now, I do feel strongly that democratic processes of contract negotiation are necessary for a good LBG ecology to work. This means if a student is going to participate in such negotiations, they may disclose information about themselves. And so, I have been sensitive to this issue before I had a name for it ("forced intimacy"). It is important to make clear up front to students that they should not disclose any disabilities, illnesses, or other life factors that may affect what they propose for the contract or how they may vote on any given proposed changes. That is, no one should have to disclose anything about themselves to offer a revision or vote on a proposed contract change. Voting can be anonymous, and proposing can be too.

This framing doesn't completely solve the problem of forced intimacy, nor the problems that individual and medical definitions of disability create in a contract, particularly if such negotiations function, not as structural changes, but as individual "fix-its" to ableist and neurotypical labor expectations and conditions. Additionally, anonymous negotiations may not solve all ableist and neurotypical biases in the grading ecology. Any student who wishes to change the labor expectations in our contract might disclose at least that they cannot accomplish such labor under the current guidelines and conditions. This means the template contract and how negotiations are structured and framed, require a definition of disability and discussions of universal design for learning (UDL) that inform any proposed changes. That is, such discussions should orient students toward the kinds of changes they should make to the contract.

UDL Principles in Contract Negotiations

In the LBG book, I discuss the definition of universal design for learning (UDL) from the Higher Education Opportunity Act of 2008 and the three principles offered by the National Center for Universal Design (228-229/224-229) as two ways to talk specifically with students about UDL. Such a definition and principles can frame contract negotiations. The definition of UDL centers on flexibility and a reduction or elimination of barriers in instruction and learning. I think these two simple ideas are good goals to set for contract negotiations: How do we make our grading contract flexible enough so that everyone can learn and succeed in this course? What barriers to learning and progress are there in our grading contract? To engage with such questions, the three principles of UDL can guide discussions and any possible revisions to the contract. Here's how I present those three principles in the book:

> (1) "provide multiple means of representation," or offer information and learning to students in a variety of ways; (2) "provide multiple means of action and expression," or offer a variety of ways to do the learning; and (3) "provide multiple means of engagement," or offer a variety of reasons why students should do or engage with the learning asked of them [National Center for Universal Design]. (229/225)

Much of principles 2 and 3 above affect assignments and the measures used to determine completion and grades. I come back to these ideas in the next few chapters as a way to address more deeply concerns about labor expectations, their measures used in grading, and labor standards. The biggest hurdle initially for students and teachers, I think, will be the nature of these principles. UDL principles are ones about course and curriculum design, which are not necessarily the same as course assessment design. And if the negotiated contract is anything, it is an assessment ecology design document. This creates a wrinkle when using UDL principles directly in contract negotiations and design. UDL speaks to learning design, not assessment design.

Take the second UDL principle above, "provide multiple means of action and expression" in ways of learning. A teacher might translate this to mean offering an open-ended way to meet a conventional writing project assignment. So students choose the form of action and expression that best meets their learning needs, affordances, and limitations. They might do papers, videos, podcasts, charts, journals, comic strips, etc. But "providing" for such means of expression isn't the same as assessing the range of things that a teacher ends up getting. How shall such assessing occur for all of the different learning products students make? What different processes will the teacher need to invent and how will students be informed about those processes? What standards will be used to determine grades or completion on such a wide variety of products? How will students be informed

of the various standards or expectations of each kind of performance when they choose the means of expression they do?

When such UDL principles are used to design the learning experiences in a course, it is more likely that students will experience uneven or mysterious assessment ecologies. Each student's "means of expression" cannot be assessed in the same ways or even with the same processes and standards. This likely will create unevenness, inconsistency, or mystery in the grades a teacher gives, the criteria for completeness of work done, or the feedback teachers provide to students. Additionally, and perhaps most importantly, some teachers may be very experienced at judging a product like a paper or even a podcast, but have very little experience judging a video, a comic strip, or a series of tweets. So I wonder how are these UDL principles also applicable to the assessment ecologies in our courses?

While UDL principles are for learning, not assessing, they could be refashioned for assessment purposes. The focus on "multiple means" in each of the three principles suggests one value. Perhaps one universal design for assessment principle is to design assessment ecologies that *afford multiple and collaborative means of judging and assessing student performances and learning, which includes standards or expectations that are responsive to all students' needs and learning conditions*. What I think this amounts to is classroom assessment ecologies that value and accept multiple ways of expressing learning and languaging and multiple ways of judging that learning and languaging, while also valuing student collaboration in those processes. This is not simply talking about students' rights to their own languages, which is important. It entails crafting assessment ecologies that expect and use in central ways the multiple means of expressing and judging in the room, which includes the multiple sets of expectations for learning and languaging that will be resident in any group of students. In short, we might use this simple principle of multiplicity to make our grading ecologies' policies, structures, and processes of judgement more flexible.

So, how might LBG accomplish this universal design for assessment (UDA) principle, either in the ecology at large or in contract negotiations? How might LBG afford multiple means of judging and assessing student performances and learning that are collaboratively made with students? One good place to begin this work is in contract negotiations. In fact, over the almost two decades that I've used contracts, this is where most of my revisions and changes emerge. Innovation and bold change often come from those who are positioned in fresh or unconventional ways. I can't think of any fresher people to our courses' assessment ecologies than our students.

Now, without framing contract negotiations with such UDL principles, proposing a particular change to a contract, say a more flexible due date on labors assigned, can suggest something about that student, like they are lazy or not prepared for the course. This is a good reason to make all such proposals anonymous, or perhaps all proposed changes are put forward for discussion by the

teacher only, even though they come from students. It's also a good reason for the teacher to take special note of any concerns by students when raised, and not consider them special cases but potential weaknesses in the current ecology. However, a strong framing that focuses attention and discussion on the need for a definition of disability and the use of UDL/UDA principles as a way to guide our work seems vital.

Students' Differences Emerge

Stephanie Kerschbaum's discussion of the various differences in students as emergent has bearing on my discussion. Kerschbaum explains that each student's differences emerge through the processes of "interpersonal interaction" (9). We can't know our differences until we begin interacting with each other. She draws on Niyogi De and Donna Uthus Gregory's "Decolonizing the Classroom" to explain the practice of "taxonomizing difference," which considers a more robust set of "determinants" to student difference than broad categories such as race, gender, class, etc. She explains that "the expansion of available categories refuses to treat racial and ethnic categories as monolithic or governed by stereotypes by recognizing the variation within categories" (8). Knowing that someone like me is Japanese American doesn't tell you much about the difference I bring to a classroom we may be in together. Difference is always relative to someone or something else. The substance of any difference, of my own subject positioning comes from how we engage together, in our relations, and in the processes we engage in together, how, for example, I engage my individual history growing up in North Las Vegas in the 1970s and 80s in a single-parent, working-poor household, going to schools that served predominantly low income Black students. It is through our interactions that we come to understand the local diversity of everyone around us, as well as ourselves.

Thus, variation in known categories can only be understood through interactions and in particular situations that make such differences salient, and perhaps important to notice and take into account in contract negotiations. Any differences we might notice in a group of students, or that are salient, are "dynamic, relational, and emergent," springing out of interactions and situations that continue to evolve in the classroom (Kerschbaum 57). Such an insight explains students' differences as contingent on social interaction and the ecologies those people are a part of. It also explains the importance of keeping the intersectional identities of students in mind when designing and negotiating any grading contract, which Carillo also reminds us to do (38-39).

Finally, this view of student difference can lead to, what Kerschbaum calls, "learning with" students, which counters "learning about" their differences. Learning with students means that students and teachers are "co-participants" even as power relations are not fully equal, and course processes focus on noticing "how selves and others move together in shared social space" (58). She

offers a useful table of questions that can define inquiry based on "learning with" versus "learning about" our students, questions that she explains, "invite us to better understand our students and our relationships with them" (74-75). For instance, typical questions a teacher might ask to learn *about* student differences in their classroom might be: "What differences are present in the classroom?" or "What groups do individuals belong to?" However, to learn *with* students, a teacher might reorient those questions: "How do individuals position themselves alongside others?" or "How are individuals positioned by others?" (74).

The point I wish to make by discussing Kerschbaum's focus on emergent differences in students and "learning with" orientation is that these ideas can help frame contract negotiations in ways that resist ableist and neurotypical biases. Contract negotiations require that we know each other in relation to each other. Such framing can leverage the unique constitution of the present group of students who are trying to build a grading ecology together over a semester. But there is a tension in this.

On the one hand, a LBG contract needs to set up and frame anti-ableist and neurodivergent structures as well as antiracist and linguistically just ones. As Carillo points out, and as I discuss in Chapter 2, these two goals can be at cross-purposes, at least in my original conception of LBG. On the other hand, to learn with each other in the ways that Kerschbaum identifies, we have to find ways to confide with each other, to know each other in some intimate ways, to learn with each other and with our differences, maybe not fully so, but enough to do the work of the ecology. Given Mingus' real concerns about forced intimacy, this is paradoxical too, and perhaps even unfair, for students with disabilities. In the worst cases, any disclosures of disability or neurodivergency will participate in forced intimacy. In the best cases, such disclosures in contract negotiations, or in the ecology afterwards, would be a form of access intimacy. Perhaps this second outcome can only occur at midpoint negotiations when we know each other better, have had more time together and more interactions, and of course, only if any disclosures are voluntary.

Regardless, contract negotiations are vital to learning with each other. They are vital to making a usable contract that is controlled by students. They are also a part of how we learn with each other. Since around 2007, all of my courses begin with narratives of introduction that position each student for others in the course in the ways each student wishes to be known. We learn who we are and about our differences through these short narratives. We begin our interactions with each other by positioning ourselves in the ways we feel are most salient, the ways we want others to understand us, the pronouns we prefer, and any other information that we want to be known by. No one is forced to say anything about themselves they do not wish to disclose, and I provide them with this warning with the instructions to this first assignment. These activities set up other "learning with" practices in the course, such as labor journals, which are read and responded to in respectful and compassionate ways by colleagues and me. Ultimately, these

are some ways to make the conditions in the assessment ecology amenable to compassionate student orientations and course conditions that afford opportunities for access intimacy if needed, while we work hard to make our assessment conditions fair enough for all.

A Paradox in Democratic Processes

What complicates any contract negotiations is that in democratic processes, the numerical minority usually gets ignored or voted down. This is a problem if we wish to listen and respond in real ways to minority voices and positions, which I believe is important to do. At the same time, I cannot dictate important things, such as what counts as labor, if all students are going to have agency and choice in that grading ecology. They must have real choices and control in the ecology. That is, I cannot create conditions in which only those students whom I agree with or whom I view as being fair to others have a voice in negotiations. I have to allow agency to all. Still, too often the majority's decisions hurt or ignore the needs of the minority, and if I'm trying to create grading ecologies that are socially just, I have to frame decisions in ways that make clear that our job is to hear everyone and create conditions that allow everyone to prosper, even when it may feel to some like we are "lowering our standards."

And yet, this goal, to structure and frame our discussions about our contract in ways that help us better attend to the minority voices in the room, isn't that simple either. I'm really speaking about fairness as it intersects with student agency in assessment ecologies. I mean, I believe I know from research and experience what kinds of structures will make for an equitable grading ecology. Over the last twenty years, I've researched, thought through, and tried out in past courses, contract structures, and ways to measure labor that most or all of my students have not had the opportunity to do. So there's an argument that, writing teachers generally know better what makes for a good grading ecology.

Even given this, I don't think knowing what seems best from my perspective, as informed as it is, is enough to mitigate the feeling of unfairness, of being pushed around in yet another course, of being told what is "good for you" by yet another teacher. This feeling will affect a student's ability to engage meaningfully in a course, and even learn. The only way out of this kind of feeling, as I can discern it now, is to give students real power to decide on the grading ecology. I'm still learning how to do this framing better through an antiracist, anti-ableist, and pro-neurodivergent framing, a framing that works at considering as much of the intersectional positionings of everyone in the course through learning with each other.

As you may hear in my discussion, I don't believe we ever escape the paradox or tension I'm thinking through. The paradox is formed in the negotiation processes themselves: Democratic processes hold an assumption that the will of the majority is an important part of fairness in decisions, but often social justice

projects seek to critique and reimagine that assumption. They remind us that power, such as the power of the majority, is often oppressive and harmful to the minority. Power does not equate to fairness for all. Might does not make right by default. In fact, power often creates conditions that subvert social justice and equitable conditions. Decisions should account for the will of the minority in the community as well, the will of those historically ignored and harmed, the will of those who have not been represented up to that point. This is the case for students with disabilities and neurodivergencies, as much as it is for raciolinguistically diverse students who do not come to the classroom languaging in the elite White masculine hegemonic ways that are usually expected and rewarded. Democratic processes that lean only on majority-rule, then, can elide the intersectional oppressions and harm done through those decisions. And yet again, this does not mean, in my opinion, that we abandon democratic processes of negotiation.

I understand this tension to be an ongoing one, a tension that is never fully resolvable, even as we strive together toward contingent resolutions, learning with each other. I don't see this tension as something to "get passed" or resolve. It's one to notice as it comes up and recognize what it means in the classroom community in order to work through it together, to compromise. The best way I've found to create conditions that allow us to do this kind of work together is to simultaneously discuss and co-draft the course's charter for compassion.

Our charter for compassion is taken from Karen Armstrong's work on this topic. I dedicate an entire chapter in the LBG book (chapter 5) to explain why and how I use it. Opening our discussions with agreements about acting compassionately (and not feeling it) with each other in concrete ways. We read some of the literature on compassion and build lists of compassion practices that we all agree we'll use in our work together. This framing has been critical to equitable contract negotiations in my courses for about a decade now, just as they are critical to all of our other work together in the semester.

I cannot emphasize enough how important the charter for compassion has been to my grading ecologies and to my contract negotiations. I think it sets up conditions for access intimacy, but I don't expect that from anyone. When we have thought carefully about, discussed, and agreed upon, a list of compassion practices that we'll all try to do in our work together, I believe trust can be built in the ecology in explicit ways. While surely not universal or guaranteed, I think this means that we move significantly closer to access intimacy and away from forced intimacy in the ways that Mingus defines them.

Thus, after framing negotiations with our charter for compassion, a definition of disability, and principles of UDL, I can imagine versions of the following questions guiding more equitable contract negotiations and decisions that foreground accessibility:

- How well does our current contract provide **flexible labor requirements and eliminate barriers** to learning and progress?

- Are the ways we **define labor expectations clear, flexible, and fair** enough to allow every student the ability to understand what they must do, plan successfully, and do their work for the course?
- Is there enough **flexibility in what you are asked to do** (labor) in order to accomplish the learning goals of the course?
- Are the **labor expectations of assignments**, which include due dates, late policies, and guidelines for completion of labors, flexible enough for everyone to engage and succeed in the ways available to them in the semester or term?
- Are there **multiple means of judging and assessing** your performances, learning, and labor, and what ways will you collaborate in those assessments and evaluations in the course?

While there are more things to discuss and consider in such contract negotiations, these kinds of questions, when honestly reflected upon by students, feel like a good framing that can lead to fair and equitable decisions. Of course, a fair and equitable grading ecology isn't just about getting students to agree upon the contract, it's also about how what is agreed upon, the measures of labor to be used, are used in the ecology to produce grades in equitable ways, which I turn to in the next chapter.