



U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYA  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

December 22, 2009

Jeanine Arden-Ornt, Esq.  
Office of General Counsel  
Case Western Reserve University  
10900 Euclid Avenue  
Adelbert Hall, Room 311  
Cleveland, OH 44106-7020

Re: Letter of Resolution, D.J. No. 202-57-146  
Case Western Reserve University

Dear Ms. Arden-Ornt:

As you know, this matter began with complaints filed by the National Federation of the Blind (NFB) and the American Council of the Blind (ACB) with the Department of Justice, on behalf of the organizations and their members who are current and prospective college students, alleging that Case Western Reserve University has violated title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12182, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 947(a), by using the Kindle DX, an innovative, hand-held electronic book reader that is not accessible to students with visual impairments, in a classroom setting. According to the complaints, Case Western Reserve University is participating in a pilot program with six other universities under contract with Amazon.com, Inc., that began in the fall 2009 semester. The object of this IRB-approved pilot is to test the utility of the Kindle DX in a classroom setting.

The Department of Justice is responsible for the enforcement and implementation of titles II and III of the ADA. The Department decided to investigate this matter because the Kindle DX is inaccessible to an entire class of individuals with disabilities — individuals with visual impairments. According to its product descriptions, the Kindle DX provides several benefits that make it a potentially superior tool to a standard textbook, including the ability to download all textbooks instantaneously, the ability to carry all textbooks on a hand-held device that weighs just over a pound, the ability to search words and concepts instantly on the device's web browser, while retaining all the characteristics of a standard text book, such as annotating, highlighting, and taking notes. Under title III, blind students must be provided with "full and equal access" to all of the goods and services of the university, 28 C.F.R. § 36.201(a); must be provided with an equivalent opportunity to participate in and benefit from its goods and services, 28 C.F.R. § 36.202(a), (b); and, must not be provided different or separate accommodations unless doing so is necessary to ensure access to goods and services that is equally as effective as that provided to others, 28 C.F.R. 36.202(c).

The Department of Justice remains concerned with the university's continuing use, if any, of the Kindle DX or any other electronic book reader that is not fully accessible to individuals with visual impairments after the conclusion of the pilot program. The Department of Justice and Case Western Reserve University have decided that it is in their interest to resolve this matter amicably. In consideration of the agreement by Case Western Reserve University to undertake the actions set forth below, the United States will close its investigation of this matter.

Case Western Reserve University agrees to the following actions:

1. The University will not purchase a Kindle DX or any other dedicated electronic book reader for use by students in its classes, curricula, or other programs unless or until such electronic book reader is fully accessible to individuals with visual impairments or Case Western Reserve University provides a reasonable modification for this type of technology to individuals needing such modification due to visual impairments, as defined in paragraph 7.
2. The University will not require, recommend, or promote use of the Kindle DX or any other dedicated electronic book reader by students in classes, curricula, or other programs unless or until the device is fully accessible to students with visual impairments or Case Western Reserve University provides a reasonable modification for this type of technology to individuals needing such modification due to visual impairments, as defined in paragraph 7.
3. The phrase "other dedicated electronic book reader" means any wireless, hand-held, electronic book reader marketed as a dedicated device for the express purpose of being used exclusively as an electronic book such as but not limited to the Amazon Kindle and Barnes and Noble nook.
4. A dedicated electronic book reader will be considered fully accessible to individuals with visual impairments if all uses of the device that are available to individuals without disabilities are available to individuals with visual impairments in a manner, which ensures that its use in the university setting is equally as effective for individuals with visual impairments as it is for others.
5. Case Western Reserve University will commit a policy reflecting the terms of this agreement to writing within 30 days of the date of the last signature below.

6. Case Western Reserve University agrees that its commitments in paragraphs 1-4, herein, will take effect on the date following the last day of the pilot project with Amazon.com, Inc., which will terminate on the date that Case Western Reserve University reports the final results of its pilot to Amazon, Inc.
7. Reasonable modification in this context means that blind individuals may access and acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

This agreement does not constitute a finding by the United States that Case Western is in full compliance with the ADA, nor an admission by Case Western Reserve University of fault or noncompliance with the ADA.

The decision to close our file in this matter does not affect the rights of private individuals or of the complainants to enforce their rights under the ADA against Case Western Reserve University. As indicated in paragraph 6, above, this agreement also has no effect on Case Western Reserve University's current pilot program testing the Kindle DX.

Please countersign and return a copy of this letter to us, indicating your agreement with the representations and terms set forth herein. Once we have received your countersigned copy, we will consider this matter resolved. We will take no further action on this matter unless we become aware of new information suggesting that Case Western Reserve University is not complying with its obligations under the ADA or this agreement.

We appreciate your cooperation. If you have questions or concerns regarding this agreement, please do not hesitate to contact the Department.

Sincerely,

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