



U.S. Department of Justice

Civil Rights Division

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

December 18, 2009

Edward J. Reeves, Esq.
Stoel Rives LLP
900 SW Fifth Ave, Suite 2600
Portland, OR 97204-1268

Re: Letter of Resolution, D.J. No. 202-61-117
Reed College

Dear Mr. Reeves:

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 Reed College 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 participating in a pilot program 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, Reed College is participating in a pilot program with six other universities under an agreement with Amazon.com, Inc., that began in the fall 2009 semester. The object of this pilot program 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 college, 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 college's future 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 this pilot program. The Department of Justice and Reed College have decided that it is in their interest to resolve this matter amicably. In consideration of the agreement by Reed College to undertake the actions set forth below, the United States will close its investigation of this matter.

Reed College agrees to the following actions:

1. The College 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 Reed provides reasonable accommodation or modification for this type of technology to individuals needing such accommodation or modification due to visual impairments.
2. The College 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 it provides reasonable accommodation or modification for this type of technology to its students with visual impairments.
3. The phrase "other dedicated electronic book reader" means any wireless, hand-held, dedicated electronic book reader that has been or will in the future be produced or offered by Amazon.com or any other corporation, such as but not limited to the Barnes and Noble nook, the Sony PRS-600, PRS-700, PRS 505 or upcoming Sony Daily Edition, and others.
4. An 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 the college setting is equally as effective for individuals with visual impairments as it is for others.
5. Reed College will commit a policy reflecting the terms of this agreement to writing within 30 days of the date of the last signature below.
6. Reed College agrees that its commitments in paragraphs 1-5, herein, will take effect on the date following the last day of the pilot project with Amazon.com, Inc., which will terminate no later than the conclusion of the spring 2010 semester.

7. As used in this agreement, reasonable accommodation or modification shall be determined on a case-by-case basis, which takes into consideration the needs of the student with a visual impairment. In addition, Reed will be informed by the factors listed in subparagraphs A. 1-3 and B. in determining the accommodation or modification.

A. Students with visual impairments should be able to --

- 1) Access and acquire the same information,
- 2) Engage in the same interactions, and
- 3) Enjoy the same services as sighted students.

B. Students with visual impairments should enjoy ease of use that is substantially equivalent to that provided to sighted students.

This agreement does not constitute a finding by the United States that Reed is in full compliance with the ADA, nor an admission by Reed College 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 Reed College. As indicated in paragraph 6, above, this agreement also has no effect on Reed College's current pilot program testing the Kindle DX. This agreement also is not intended to preclude other pilot programs or product testing designed to evaluate the features, including accessibility features, of new technologies so long as reasonable accommodation or modification is provided.

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 Reed 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,

THOMAS E. PEREZ
Assistant Attorney General

Civil Rights Division

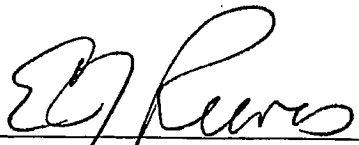
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