

**June 29, 2010 DOJ/ED Dear Colleague Letter**



June 29, 2010

Dear College or University President:

We write to express concern on the part of the Department of Justice and the Department of Education that colleges and universities are using electronic book readers that are not accessible to students who are blind or have low vision and to seek your help in ensuring that this emerging technology is used in classroom settings in a manner that is permissible under federal law. A serious problem with some of these devices is that they lack an accessible text-to-speech function. Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities – individuals with visual disabilities – is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

The Departments of Justice and Education share responsibility for protecting the rights of college and university students with disabilities. The Department of Justice is responsible for enforcement and implementation of title III of the ADA, which covers private colleges and universities, and the Departments of Justice and Education both have enforcement authority under title II of the ADA, which covers public universities. In addition, the Department of Education enforces Section 504 with respect to public and private colleges and universities that receive federal financial assistance from the Department of Education. As discussed below, the general requirements of Section 504 and the ADA reach equipment and technological devices when they are used by public entities or places of public accommodation as part of their programs, services, activities, goods, advantages, privileges, or accommodations.

Under title III, individuals with disabilities, including students with visual impairments, may not be discriminated against in the full and equal enjoyment of all of the goods and services of private colleges and universities; they must receive an equal opportunity to participate in and benefit from these goods and services; and they must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others.<sup>1</sup> Under title II, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor subjected to discrimination by, public universities and colleges.<sup>2</sup> Both title II and Section 504 prohibit colleges and universities from affording individuals with disabilities with an opportunity to participate in or benefit from college and university aids,

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<sup>1</sup> 28 C.F.R. § 36.201(a); 28 C.F.R. § 36.202(a); and 28 C.F.R. § 36.202(c) (2009).

<sup>2</sup> 28 C.F.R. § 35.130(a) (2009).

benefits, and services that is unequal to the opportunity afforded others.<sup>3</sup> Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others.<sup>4</sup> A college or university may provide an individual with a disability, or a class of individuals with disabilities, with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others.<sup>5</sup>

The Department of Justice recently entered into settlement agreements with colleges and universities that used the Kindle DX, an inaccessible, electronic book reader, in the classroom as part of a pilot study with Amazon.com, Inc. In summary, the universities agreed not to purchase, require, or recommend use of the Kindle DX, or any other dedicated electronic book reader, unless or until the device is fully accessible to individuals who are blind or have low vision, or the universities provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use. The texts of these agreements may be viewed on the Department of Justice's ADA Web site, [www.ada.gov](http://www.ada.gov). (To find these settlements on [www.ada.gov](http://www.ada.gov), search for "Kindle.") Consistent with the relief obtained by the Department of Justice in those matters, the Department of Education has also resolved similar complaints against colleges and universities.

As officials of the agencies charged with enforcement and interpretation of the ADA and Section 504, we ask that you take steps to ensure that your college or university refrains from requiring the use of any electronic book reader, or other similar technology, in a teaching or classroom environment as long as the device remains inaccessible to individuals who are blind or have low vision. It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students.

Congress found when enacting the ADA that individuals with disabilities were uniquely disadvantaged in American society in critical areas such as education.<sup>6</sup> Providing individuals with disabilities full and equal access to educational opportunities is as essential today as it was when the ADA was passed. In a Proclamation for National Disability Employment Awareness Month, President Obama underscored the need to "*strengthen and expand* the educational opportunities for individuals with disabilities," noting that, "[i]f we are to build a world free from unnecessary barriers . . . we must ensure that every American receives an education that prepares him or her for future success." <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-disability-employment-awareness-month> (September 30, 2009) (emphasis added).

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<sup>3</sup> 28 C.F.R. § 35.130(b)(1)(ii) and 34 C.F.R. § 104.4(b)(1)(ii) (2009).

<sup>4</sup> Cf. 28 C.F.R. § 35.130(b)(1)(iii) and 34 C.F.R. § 104.4(b)(1)(iii) (2009).

<sup>5</sup> 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv) (2009).

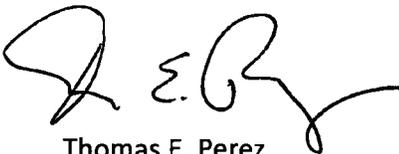
<sup>6</sup> 42 U.S.C. § 12101(a) (1990).

Technology is the hallmark of the future, and technological competency is essential to preparing all students for future success. Emerging technologies are an educational resource that enhances learning for everyone, and perhaps especially for students with disabilities. Technological innovations have opened a virtual world of commerce, information, and education to many individuals with disabilities for whom access to the physical world remains challenging. Ensuring equal access to emerging technology in university and college classrooms is a means to the goal of full integration and equal educational opportunity for this nation's students with disabilities. With technological advances, procuring electronic book readers that are accessible should be neither costly nor difficult.

We would like to work with you to ensure that America's technological advances are used for the benefit of all students. The Department of Justice operates a toll-free, technical assistance line to answer questions with regard to the requirements of federal laws protecting the rights of individuals with disabilities. For technical assistance, please call (800) 514-0301 (voice) or (800) 514-0383 (TTY). Specialists are available Monday through Friday from 9:30 AM until 5:30 PM (ET) except for Thursday, when the hours are 12:30 PM until 5:30 PM. These specialists have been trained specifically to address questions regarding accessible electronic book readers. Colleges, universities, and other stakeholders can also contact the Department of Education's Office for Civil Rights for technical assistance by going to OCR's Web site at <http://wdcrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

We appreciate your consideration of this essential educational issue and look forward to working with you to ensure that our nation's colleges and universities are fully accessible to individuals with disabilities.

Sincerely,



Thomas E. Perez  
Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice



Russlynn Ali  
Assistant Secretary  
for Civil Rights  
U.S. Department of Education

## DCL Q & A



## **Electronic Book Reader Dear Colleague Letter: Questions and Answers about the Law, the Technology, and the Population Affected**

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### **What are the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973?**

- ❖ The Americans with Disabilities Act of 1990 (ADA) is a federal law prohibiting discrimination on the basis of disability. The Department of Justice (DOJ) is responsible for enforcement and implementation of title III of the ADA, which covers private colleges and universities. DOJ and the Department of Education (ED) both have enforcement authority under title II of the ADA, which covers public universities.
- ❖ Section 504 of the Rehabilitation Act of 1973 is a federal law prohibiting discrimination on the basis of disability in all programs or activities that receive Federal financial assistance. ED enforces Section 504 with respect to public and private colleges and universities that receive Federal financial assistance from ED.

### **What are electronic book readers and what are accessible text-to-speech functions?**

- ❖ Electronic book readers, or e-book readers, are handheld devices that allow users to read digital books and other materials by displaying content on screens (often referred to as “e-ink technology”). Though features vary, e-book readers can hold a digital library of books, provide access to online content like newspapers and magazines, allow the user to highlight passages, look up word definitions, and link to reference materials.
- ❖ Some e-book readers have accessible text-to-speech functions that allow users who are blind or have low vision to hear the on-screen content read aloud, navigate device controls, and select menu options.

### **How many students with disabilities could be affected by inaccessible electronic book readers?**

- ❖ *Postsecondary Education (PSE)*: According to NCES, as of 2003-2004, about 230,000 PSE students are blind, have low vision, or have learning disabilities. (Such disabilities, which may involve difficulty accessing print information, are often called “print” disabilities).

- ❖ *Elementary and Secondary Education (ESE)*: In the 2006-2007 school year, NCES estimates 29,000 ESE students had visual impairments, including blindness; about 2.6 million ESE students had a specific learning disability, which likely includes some students with a “print” disability.

### **What does the Dear Colleague (DCL) do? Why did DOJ and ED issue it?**

- ❖ The DCL expresses the position of DOJ and ED that it is impermissible under federal law for colleges and universities to use electronic book readers in classroom settings that are not accessible to students who are blind or have low vision, unless those students are provided an equally effective accommodation or reasonable modification that allows those students to receive all the educational benefits of the technology.
- ❖ The DCL highlights recent settlement agreements with several colleges and universities. In summary, the colleges and universities agreed not to purchase, require, or recommend use of the Kindle DX, or any other electronic book reader, unless or until the device is accessible, or unless the colleges and universities provide a reasonable accommodation or modification that is accessible to students who are blind or have low vision.
- ❖ The DCL encourages colleges and universities to take steps to ensure that they refrain from using electronic book readers, or other similar technology, that is inaccessible to individuals who are blind or have low vision to the extent that a reasonable accommodation or modification for this type of technology does not exist or is not available.
- ❖ Colleges and universities can obtain technical assistance by contacting the DOJ toll-free telephone line at (800) 514-0301 (voice) or (800) 514-0383 (TTY). Colleges and universities may also seek technical assistance by going to ED’s Office for Civil Rights website at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

## May 26, 2011 DCL FAQ



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 26, 2011

### Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter<sup>1</sup>

#### General Issues

1. Does the June 29, 2010, Dear Colleague Letter (DCL) on access to electronic book readers impose new legal obligations?

**A: No.** The DCL discusses long-standing law. Specifically, it addresses key principles of Federal disability discrimination law: the obligation to provide an equal opportunity to individuals with disabilities to participate in, and receive the benefits of, the educational program, and the obligation to provide accommodations or modifications when necessary to ensure equal treatment. Under Section 504 of the Rehabilitation Act of 1973 (Section 504), these legal standards apply to entities that receive Federal financial assistance, including elementary, secondary, and postsecondary institutions. (In this FAQ, the term “schools” refers to all these types of institutions.) Under Title II of the Americans with Disabilities Act (ADA) of 1990 (Title II), these obligations apply to entities of state and local government, including public schools.<sup>2</sup>

The DCL outlines concerns on the part of the Department of Justice (DOJ) and the Department of Education (Department), raised in the context of their resolution of several cases, regarding compliance with these long-standing requirements.

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<sup>1</sup> The Department of Education has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This document does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

<sup>2</sup> The Department of Justice is responsible for enforcing Title III of the ADA, which prohibits discrimination on the basis of disability by private schools, among other entities.

Specifically, some postsecondary institutions were using electronic book readers that are inaccessible to students who are blind or have low vision. As explained by the DCL, application of our long-standing nondiscrimination requirements means that schools must provide an electronic book reader (*i.e.*, the technology that the school uses to provide educational benefits, services, or opportunities) that is fully accessible to students who are blind or have low vision; otherwise schools must provide accommodations or modifications to ensure that the benefits of their educational program are provided to these students in an equally effective and equally integrated manner.

For the purposes of assessing whether accommodations or modifications in the context of emerging technology, and, more specifically, electronic book readers, meet the compliance requirements, the DCL provides a functional definition of accessibility for students who are blind or have low vision. Under this definition, these students must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students. In addition, although this might not result in identical ease of use compared to that of students without disabilities, it still must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology. The DCL uses the term “substantially equivalent ease of use” to describe this concept. For more information and for examples that meet this standard, see Questions 11, 12, and 14.

**2. Does the DCL apply in the context of students with other disabilities that affect the ability to use printed materials?**

**A: Yes.** Other disabilities, such as specific learning disabilities, may make it difficult for students to get information from printed sources (often called “print disabilities”). In its provision of benefits, services, and opportunities, a school must ensure that these students are not discriminated against as a result of inaccessible technology.

**Example:** A student has a learning disability in reading but does not have impaired vision. The student is currently receiving audiobooks on cassette tape for her history class because she cannot readily process printed information. The school is replacing the history textbooks with electronic book readers as the principal means of conveying curriculum content, including all homework assignments. In this example, the electronic book readers provide greater functionality than audiobooks provide, with the result that an audiobook would not afford the benefits of the educational program in an equally effective and equally integrated manner. For this reason the school may not continue to rely on audiobooks to provide equal access to the curriculum. For more information on the differences between traditional alternative media, such as audiobooks, and emerging technology, such as electronic book readers, see Question 12.

**3. Does the DCL mean that schools cannot use emerging technology?**

**A: No.** On the contrary, the Department encourages schools to employ innovative learning tools. Because technology is evolving, it has the capability to enhance the academic experience for everyone, especially students with disabilities. Innovation and equal access can go hand in hand. The purpose of the DCL is to remind everyone that equal access for students with disabilities is the law and must be considered as new technology is integrated into the educational environment.

**4. Does the DCL apply to elementary and secondary schools?**

**A: Yes.** The DCL grew out of complaints filed with the Department’s Office for Civil Rights (OCR) and DOJ that concerned postsecondary education. However, the principles underlying the DCL — equal opportunity, equal treatment, and the obligation to make accommodations or modifications to avoid disability-based discrimination — also apply to elementary and secondary schools under the general nondiscrimination provisions in Section 504 and the ADA. The application of these principles to elementary and secondary schools is also supported by the requirement to provide a free appropriate public education (FAPE) to students with disabilities. For more information, see Question 13.

**5. Does the DCL apply to all school operations and all faculty and staff?**

**A: Yes.** All school operations are subject to the nondiscrimination requirements of Section 504 and the ADA. Thus, all faculty and staff must comply with these requirements.

Section 504 and the ADA require that covered entities designate at least one person to coordinate their compliance efforts, and that they adopt and publish grievance procedures to resolve complaints of noncompliance. In addition, postsecondary schools often designate certain staff or offices (sometimes referred to as disability student-services offices) to assist students with disabilities.

The law applies to all faculty and staff, not just a Section 504 or ADA coordinator or staff members designated to assist students with disabilities. All faculty and staff must comply with the nondiscrimination requirements of Section 504 and the ADA in their professional interactions with students, because these interactions are part of the operations of the school. So, for example, if an adjunct faculty member denies a student who is blind an equal opportunity to participate in a course by assigning inaccessible course content, the school can be held legally responsible for the faculty member’s actions. Therefore, schools should provide, and faculty and staff should participate in, professional development about accessibility and emerging technology, and about the role of faculty and staff in helping the school to comply with disability discrimination laws.

### **Applying the DCL in Different Contexts**

**6. Does the DCL apply beyond electronic book readers to other forms of emerging technology?**

**A: Yes.** The core principles underlying the DCL — equal opportunity, equal treatment, and the obligation to make modifications to avoid disability-based discrimination — are part of the general nondiscrimination requirements of Section 504 and the ADA. Therefore, all school programs or activities — whether in a “brick and mortar,” online, or other “virtual” context — must be operated in a manner that complies with Federal disability discrimination laws.

**7. Does the DCL apply to online courses and other online content, such as online applications for admission, class assignments, and housing?**

**A: Yes.** The principles in the DCL apply to online programs that are part of the operations of the school, *i.e.*, provided by the school directly or through contractual or other arrangements.

**8. Does the DCL apply to pilot programs or other school programs that are of short duration?**

**A: Yes.** The complaints discussed in the DCL were based on pilot programs that were part of the schools’ operations. As noted in Question 5 above, all school programs and activities are subject to the nondiscrimination requirements of Section 504 and the ADA.

**9. Does the DCL apply when planning to use an emerging technology in a class or school where no students with visual impairments are currently enrolled?**

**A: Yes.** Schools that are covered under Section 504 and the ADA have a continuing obligation to comply with these laws. Therefore, the legal obligations described in the DCL always apply. Just as a school system would not design a new school without addressing physical accessibility, the implementation of an emerging technology should always include planning for accessibility. Given that tens of thousands of elementary, secondary, and postsecondary students have visual impairments and that the composition of the student body at a given school may change quickly and unexpectedly, the use of emerging technology at a school without currently enrolled students with visual impairments should include planning to ensure equal access to the educational opportunities and benefits afforded by the technology and equal treatment in the use of such technology. The planning should include identification of a means to provide immediate delivery of accessible devices or other technology necessary to ensure accessibility from the outset.

### **Putting the DCL's Principles Into Practice**

#### **10. What questions should a school ask in determining whether emerging technology is accessible, or can be made accessible, to students with disabilities?**

**A:** Schools should begin by considering accessibility issues up front, when they are deciding whether to create or acquire emerging technology and when they are planning how the technology will be used. To that end, schools should include accessibility requirements and analyses as part of their acquisition procedures. Schools should keep in mind their obligation to ensure that students with disabilities receive the benefits of the educational program in an equally effective and equally integrated manner. Among the questions a school should ask are:

- What educational opportunities and benefits does the school provide through the use of the technology?
- How will the technology provide these opportunities and benefits?
- Does the technology exist in a format that is accessible to individuals with disabilities?
- If the technology is not accessible, can it be modified (see Question 11 below about additional questions related to modifications), or is there a different technological device available, so that students with disabilities can obtain the educational opportunities and benefits in a timely, equally effective, and equally integrated manner?

**Example:** A school intends to establish a Web mail system so that students can: communicate with each other and with faculty and staff; receive important messages from the school (*e.g.*, a message about a health or safety concern); and communicate with individuals outside the school. The school must ensure that the educational benefits, services, and opportunities provided to students through a Web mail system are provided in an equally effective and equally integrated manner. Before deciding what system to purchase, the school should make an initial inquiry into whether the system is accessible to students who are blind or have low vision, *e.g.*, whether the system is compatible with screen readers and whether it gives users the option of using large fonts. If a system is not accessible as designed, the school must take further action to determine whether an accessible product is available, or whether the inaccessible product can be modified so that it is accessible to students who are blind or have low vision.

**11. The DCL states that where accessible technology is not available, a school can comply with Section 504 and the ADA if it provides students with disabilities “accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” From a practical standpoint, what questions should schools ask to determine if this standard can be met?**

**A:** In making this determination, the questions a school should ask include:

- What educational opportunities and benefits does the school provide through the use of this technology?
- What can the school do to provide students with disabilities equal access to the educational benefits or opportunities provided through the use of the technology?
- How will the educational opportunities and benefits provided to students with disabilities compare to the opportunities and benefits that the technology provides to students without disabilities? Three relevant questions are:
  - Are all the educational opportunities and benefits that are available through the use of the technology equally available to students with disabilities through the provision of accommodations or modifications (*i.e.*, do students with disabilities have the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students)?
  - Are the educational opportunities and benefits provided to students with disabilities in as timely a manner as those provided to students without disabilities (*i.e.*, do the time frames under which opportunities and benefits are received by students meet the requirement that students with disabilities be provided benefits and opportunities in an equally effective and equally integrated manner)?
  - Will it be more difficult for students with disabilities to obtain the educational opportunities and benefits than it is for students without disabilities (*i.e.*, does ease of use for students with disabilities meet the requirement that students with disabilities be provided benefits and opportunities in an equally effective and equally integrated manner)?

Example: A high school teacher creates an online course that includes instruction, posting of assignments and other course content, and a forum where students can discuss their course work with the teacher and each other. The teacher would like to incorporate video clips into the course, but is unable to obtain the video clips with audio

descriptions. As a modification, the teacher creates separate audio descriptions for each video clip that narrate what is taking place in the video, and places them in a separate section of the online course. The online course includes links that enable persons who use screen readers to bypass the video clips completely and instead listen to the audio descriptions. Here, the use of detailed audio descriptions that are a part of the online course would provide students with disabilities access to the same opportunities and benefits in an equally effective and equally integrated manner. Schools should also think about whether other accommodations may be needed to provide equal access. For example, a student who uses a screen reader may need extra time to take an online examination because it may take time for the screen reader to process information displayed on a screen and provide that information to the student.

**12. Are there circumstances under which it would be appropriate for a school to provide traditional alternative media, such as books on tape, to a student who is blind or has low vision?**

**A: Yes.** Traditional alternative media can still be used as an accommodation under appropriate circumstances. For example, if a school provides printed books to students in a class, books on tape may be an appropriate accommodation for a blind student. The DCL does not require schools to use emerging technology. If, however, a school chooses to provide emerging technology and proposes traditional alternative media as an accommodation or modification to provide equal access to the educational opportunities and benefits provided to all students, the alternative media must provide access to the benefits of technology in an equally effective and equally integrated manner. Some forms of emerging technology may readily offer students educational opportunities and benefits that traditional alternative media cannot replicate.

**13. If a student who is blind or has low vision makes a request for a particular emerging technology, and that technology currently is not used for all students, must the school provide it?**

**A: Not necessarily, because such decisions are individualized.** The DCL does not change the requirements and processes by which elementary and secondary schools must provide a free appropriate public education, or FAPE, to students with disabilities; nor does the DCL change the processes by which postsecondary schools provide academic adjustments and auxiliary aids to students with disabilities. Rather, the DCL discusses the issue of how Section 504 and the ADA apply if schools choose to incorporate emerging technology into their instruction or other programs or activities for all students.

At the elementary and secondary school levels, if parents believe that their child with a disability requires a particular emerging technology as part of the child's right to FAPE, even though that technology currently is not used for all students, an individualized decision about providing a specific technology should be made through the processes

used by the school district to make educational decisions consistent with Section 504 or the Individuals with Disabilities Education Act as applicable. At the postsecondary level, a decision about whether to provide a particular emerging technology as an auxiliary aid or service, even though such technology currently is not used for all students, is an individualized one that should be made through any procedure that the school may have established to consider students' requests for auxiliary aids or services. Postsecondary institutions' procedures must comply with Section 504 and the ADA.

**14. Must a school always provide the same form of emerging technology to a student who is blind or has low vision as it provides to all other students?**

**No:** The legal duty imposed by Section 504 and Title II is to provide equal opportunity — that is, to provide the student who has a disability with access to the educational benefit at issue in an equally effective and equally integrated manner. As described more fully in Question 1, a school must apply this standard in determining whether the use of a particular technological device for a student with a visual impairment is appropriate.

**Example:** A school library plans to make electronic books available to students by loaning electronic book readers. The school does not, prior to purchase, make necessary inquiries about whether the book readers are accessible to students who are blind or have low vision.

The school subsequently determines that the book readers are not accessible. In an effort to ensure that the educational benefits, *i.e.*, the same library books, are available in an equally effective and equally integrated manner to students with visual impairments, the school purchases a few small, light-weight tablet computers for the library. These tablet computers are designed to serve as a platform for electronic books, as well as other visual and audio media. If the tablet computers can access those electronic books and have accessible text-to-speech<sup>3</sup> functions that allow users to hear the on-screen content read aloud, navigate device controls, and select menu items with the same ease of use afforded by the electronic book readers to sighted students, the tablet computers will then provide the same content and functionality to students with visual impairments.<sup>4</sup> In this example, the tablet computers have those features. As a result, the accommodation or modification would meet the standards articulated in the DCL because it provides the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students, as well as meet the standards in the DCL for ease of use.

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<sup>3</sup> A text-to-speech function is software that provides audio for the printed words, enabling a person to hear instead of having to see the printed material.

<sup>4</sup> The text-to-speech function of the tablet computers provides, for example: electronic book text that is accurate and presented in proper reading order; descriptions of graphical and other non-textual material (*e.g.*, a narrative description of a photograph); and proper presentation of material contained in tables (*e.g.*, properly associating row and column headers with their respective cell data).

In addition, the school purchases the tablet computers in sufficient numbers to loan them to students with visual impairments under the same terms and conditions as it provides the electronic book readers to sighted students. Here, the timely provision of electronic books on accessible tablet computers provides students with visual impairments access to the same educational opportunities and benefits in an equally effective and equally integrated manner.

An accommodation that would not be appropriate in this example would be simply providing a student with an aide to read an electronic book to the student. An aide who is available to read the electronic book to the student only at the school during designated times would not be equivalent to the access provided to sighted students using electronic book readers who would be able to read their library books any time and at any location.

### **Other Federal Guidance**

**15. Is there any other information available from the Federal government that offers additional guidance about accessibility and emerging technology?**

**A: Yes.** Additional sources of guidance and information include:

#### **U.S. Department of Education**

- U.S. Department of Education Office of Educational Technology, National Education Technology Plan, <http://www.ed.gov/technology/netp-2010>.
- Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, <http://www2.ed.gov/about/bdscomm/list/aim/index.html>.

#### **U.S. Department of Education Grantees**

##### **Accessible Media Production and Dissemination**

- National Instructional Materials Access Center (NIMAC), <http://www.nimac.us>.
- Bookshare for Education, <http://www.bookshare.org>.
- Described and Captioned Media Program, <http://www.dcmp.org>.
- Learning Ally (formerly Recording for the Blind & Dyslexic), <http://www.learningally.org>.

- National Instructional Materials Accessibility Standard Center (NIMAS Center), <http://aim.cast.org/collaborate/NIMASCtr>.
- The American Printing House for the Blind (APH), <http://www.aph.org>.
- The World Wide Web Consortium (W3C), <http://www.w3.org/standards/>.
- The Center for Implementing Technology in Education (CITED), <http://www.cited.org>.
- The Family Center on Technology and Disability (FCTD), <http://www.fctd.info>.

#### Technical Assistance and Training

- National Center on Accessible Instructional Materials (AIM Center), <http://aim.cast.org>.

#### **U.S. Department of Justice**

- Advance Notice of Proposed Rulemaking, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43,460 (July 26, 2010), *available at* <http://www.regulations.gov/#!documentDetail;D=DOJ-CRT-2010-0005-0001>.
- ADA Best Practices Tool Kit for State and Local Governments, Chapter 5: Website Accessibility Under Title II of the ADA, <http://www.ada.gov/pcatoolkit/chap5toolkit.htm>.

#### **Architectural and Transportation Barriers Compliance Board (U.S. Access Board)**

- Advance Notice of Proposed Rulemaking, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards (regarding Section 508 of the Rehabilitation Act), 75 Fed. Reg. 13,457 (March 22, 2010), *available at* <http://www.access-board.gov/sec508/refresh/notice.htm>. (*Note: Section 508 of the Rehabilitation Act applies only to the Federal government.*)

#### **U.S. General Services Administration**

- Section 508.gov website, [www.Section508.gov](http://www.Section508.gov).

**PENN STATE SETTLEMENT WITH  
NATIONAL FEDERATION OF THE BLIND (NFB)**

**Signed OCT. 11, 2011**

 AccessAbility

Published on *AccessAbility* (<http://accessibility.psu.edu>)

[Home](#) > Settlement Between Penn State University and National Federation of the Blind

Signed, Oct. 11, 2011

# Settlement Between Penn State University and National Federation of the Blind

This document also available in RTF format. <sup>[1]</sup>

## The Pennsylvania State University Docket #03-11-2020

The Pennsylvania State University ("University") and the National Federation of the Blind ("NFB") mutually agree to enter into this voluntary Resolution Agreement (Agreement) as part of the U.S. Department of Education, Office for Civil Rights (OCR) Early Complaint Resolution (ECR) process to resolve the issues the Complainants raised in complaint #03-11-2020 ("OCR Complaint").

### PREAMBLE

WHEREAS, the NFB is the largest advocacy organization of blind individuals in the United States, whose members include current and future students and faculty of the University;

WHEREAS, the NFB desires to ensure that current and future students and faculty of the University who have vision impairments enjoy equal access to all educational opportunities, services and information provided by the University;

WHEREAS, the University is one of the largest public systems of higher education in the United States and strives to maintain strong academic leadership and a commitment to equal access to educational information and services for all students and faculty;

WHEREAS, the University must provide students, faculty and staff with disabilities the same benefits, programs, and services, but when technically unfeasible to do so, may provide an Accessible alternate benefit, program or service.

WHEREAS, the Parties desire to resolve amicably all matters raised in the OCR Complaint;

WHEREFORE, the following terms and conditions of this Agreement have been agreed to by the Parties after full discussion and good faith negotiations:

## DEFINITIONS

"Accessible" means fully and equally accessible to and independently usable by blind individuals so that blind students and faculty members are able to acquire the same information engage in the same interactions and enjoy the same services as sighted students and faculty, with substantially equivalent ease of use.

"Electronic and information technology" or "EIT" includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks, Automated Teller Machines (ATMs) and transaction machines, internet and intranet websites, electronic books and electronic book reading systems, search engines and databases, course management systems, classroom technology and multimedia, personal response systems ("clickers"), and office equipment such as classroom podiums, copiers and fax machines.

"Information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

### I. Accessibility Audit:

A. The University shall complete an accessibility audit of its electronic and information technologies ("EITs") no later than February 15, 2012 that will examine the accessibility and usability of the EITs provided by the University to students, prospective students, staff and faculty who are blind. The audit shall examine various aspects of the University's EITs, including but not limited to, University websites, application processes, library services, course management systems, access to classroom podiums and LCD devices, course registration software, personal response systems ("clickers") and banking arrangements offered to students and faculty, including website and ATM access.

B. The audit shall be conducted in a professional manner and benchmarked by appropriate processes.

C. By March 31, 2012, the University shall develop an EIT corrective action strategy ("Strategy") based on the audit findings. The Strategy shall include dates by which corrective action shall be completed. The dates agreed to in this Agreement shall be incorporated into the University's Strategy.

D. No later than April 15, 2012, the University shall disseminate the Strategy among its colleges and campuses and post it on the following website: <http://accessibility.psu.edu> [2].

### II. Policy Statement on Accessibility and Implementing Procedures:

A. The University shall develop an EIT Accessibility Policy Statement that continues to demonstrate its commitment to implementing accessibility of EIT to blind and other print

disabled students, as required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. This Policy shall be posted on a University website no later than August 31, 2011, and shall disclose that an audit is taking place and that a Strategy will be disseminated and posted by April 15, 2012.

B. No later than May 30, 2012, the University shall develop procedures to implement its EIT Accessibility Policy across all disciplines. The University shall disseminate its Policy and procedures to all levels of University personnel, including senior academic leadership (deans and chancellors), department heads, faculty and staff.

C. No later than August 15, 2012, the University shall conduct training, instruction and support at all levels about the University's EIT Accessibility Policy and procedures and shall list the tools and techniques that are available for faculty and staff to comply with the Policy and procedures so that the University's Accessibility Policy and procedures are effectively and consistently implemented.

D. No later than July 15, 2012, each University campus shall hire or designate a staff person with responsibility and commensurate authority, to monitor the University's EIT Accessibility Policy and procedures.

E. No later than August 15, 2012, the University shall provide and make readily available to faculty and staff, who develop or post content on the website or through other EITs, information on how to make digital information Accessible and how to use automated tools to check and ensure the accessibility of content.

F. No later than August 15, 2012, the University shall include one full-time personnel at each campus who will attend its annual accessibility conference and interact with the University Park Adaptive Technology Committee to ensure accessibility for each campus.

G. The University will distribute its policies on accessibility to all staff and will provide additional instruction and support to both staff and faculty in 2011. The University will provide presentations and workshops to the senior academic leadership (deans and chancellors), department heads, and IT staff early in the fall semester.

H. The University will maintain a rich set of web resources which will be located at <http://accessibility.psu.edu> <sup>[2]</sup> and will provide both tools and training to the webmasters.

### **III. Procurement:**

A. No later than October 15, 2012, the University shall develop and institute procedures that require the University to purchase or recommend only EITs that will provide the same programs, benefits and services that they do to individuals without disabilities, except that when it is technically unfeasible to do so, in which case the procedures must require the University to provide Accessible alternate EITs. The Vice Provost shall work in consultation with the Office of Disability Services and/or other departments to provide students with access to the EIT services and information provided by the University.

B. The University shall effectuate these obligations by, among other things, implementing as part of its RFP process language that bidders meet the accessibility standards set forth in WCAG 2.0 Level AA for web-based technology, and Section 508 of the Rehabilitation Act and the Americans with Disabilities Act for other EIT; requiring or encouraging, at the

University's discretion, as part of any contract with its vendors, provisions in which the vendor warrants that any technology provided complies with these standards and any applicable current federal disability law.

#### **IV. Library Services and Library Website:**

A. The University's library website shall be Accessible in accordance with WCAG 2.0 Level AA no later than October 15, 2012. The University shall conduct an accessibility scan monthly thereafter to ascertain whether any new posted content is accessible. The University shall notify content authors if corrections to their pages are needed and of reasonable timelines for corrections to be made. The University shall note if corrective action has been taken during the next monthly scan.

B. No later than October 15, 2012, the University shall implement a search engine that is Accessible in accordance with WCAG 2.0 Level AA that can search across all Library collections, including, but not limited to, e-journals, databases and e-books.

#### **V. University Websites:**

The University shall adopt WCAG 2.0 level AA standards for all University websites no later than October 15, 2011. No later than October 15, 2014, all pages hosted on the University's websites that have been published or updated on or after August 1, 2009 shall be Accessible to blind users. Any other pages shall promptly be made accessible upon request. This requirement shall not apply to pages found at [www.personal.psu.edu](http://www.personal.psu.edu) <sup>[3]</sup>; however, the University shall provide resources to authors of pages at that site to give guidance on making such pages accessible.

#### **VI. Course Management Systems:**

The University shall select an Accessible course management system that complies with the Section 508 Guidelines to replace ANGEL no later than January 3, 2012. A small pilot utilizing the new system will be instituted and the number of pilots will increase until completion on or about August, 2014. Consideration will be given to include blind students and faculty in the pilots to the extent possible and provide Accessible alternatives until the new system is fully implemented.

#### **VII. Classrooms:**

No later than September 15, 2011, the University shall implement system changes that will allow a blind faculty member to control the classroom podium and LCD equipment without the assistance of another individual. In the interim, the University shall make a technician available to provide assistance in the classroom or remotely.

#### **VIII. Clickers:**

No later than August 15, 2011, any personal response system ("clicker") utilized by the University shall include an Accessible option that is available to blind students at the same price and at the same time as the clicker that is available to sighted students.

## **IX. Bank (ATM and Website Accessibility):**

The University shall request that any bank website that is reported as inaccessible to the Vice Provost of Affirmative Action's office be fully Accessible within three (3) months of the University's request and shall also request that the Automated Teller Machines (ATMs) on each University campus be voice-guided; that is, the ATM meets the requirements of <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> [4]. If the ATM is neither made Accessible within three (3) months after the University's request nor are plans for accessibility made within that time, the bank shall be requested to remove the ATM.

## **X. Terms of Agreement:**

This Agreement shall become effective upon execution by the parties and continue in effect until 90 days after the actions contemplated by Section VI of this Agreement have been completed; however, if necessary to resolve any lingering accessibility issues with the course management system, the parties may agree to further extend the term of this Agreement. The parties agree that this agreement resolves OCR complaint #03-11-2020 and understand that OCR will close the complaint upon the effective date of this Agreement.

## **XI. Grievance Procedure:**

The University shall disseminate if in place or develop a grievance procedure whereby a student or faculty member may make a complaint to the Vice Provost for Affirmative Action ("Vice Provost") of the University or his designee regarding an EIT accessibility barrier he or she is confronting. The grievance procedure shall be posted on the websites for the Office of Disability Services, the Affirmative Action Office and the Office for Educational Equity. The procedure shall include a mechanism whereby the Vice Provost or his designees shall investigate the complaint and respond to the Complainant within 60 days of the filing of the complaint, however, the investigation period may be extended for an additional 30 days when the person investigating the complaint believes it necessary for an equitable resolution of the matter or for additional lengths of time with the consent of the Complainant.

## **XII. Reporting Requirements:**

A. The University shall provide NFB with a report on the first anniversary of this Agreement which summarizes the progress it is making in meeting its obligations as set forth in this Agreement. Additional communication will occur before and after the first anniversary to address any possible delays or other obstacles encountered with the implementation of this Agreement. The NFB's contact person is: Daniel Goldstein, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 1700, Baltimore, MD 21202. The University's contact person is: Vice Provost of Affirmative Action, 328 Boucke Building, University Park, PA 16802.

B. The parties agree that any delays in taking any of the actions provided for pursuant to this Agreement caused by third parties and Acts of God, force majeure, or events beyond the control of the University, including acts of war or the inability to acquire material or services, will not be deemed to violate the compliance dates set forth herein as long as the University makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

### **XIII. Dispute Resolution:**

A. Any dispute between the Parties arising out of, or related to, this Agreement, shall be subject to the following dispute resolution process.

#### **1. Notification of Non-Compliance and Opportunity to Cure or Address**

If at any time a Party believes that another Party has not complied with any provision of this Agreement, the complaining Party shall deliver prompt written Notice to the other Party identifying the provisions of the Agreement that are the subject of the Notice, a statement of the breach and what remedial action is requested. The Party receiving this Notice shall respond in writing within twenty (20) business days of its receipt within its position as to whether a noncompliance exists and the steps that the receiving Party will take, if any, to cure the alleged noncompliance.

#### **2. Meet and Confer**

Within twenty (20) business days after receipt of the response to the Notice or as soon as practicable, the Parties shall meet and confer, if agreed upon by both parties, to attempt to reach an agreement regarding the matters stated in the Notice. If the Parties are able to agree on the matters stated in the Notice, they shall work together in good faith to resolve the matters and agree upon an appropriate modification of the Agreement, if one is needed. Any Party may agree to extend any of the deadlines for an opposing Party set forth in this section without the necessity of modifying the Agreement.

#### **3. Right to File Claim**

If a meet and confer is agreed upon and the Parties cannot resolve the matters stated in the Notice within forty-five (45) days after they meet and confer, the Parties may agree to mediate. If the Parties cannot agree, the Party who served Notice may bring suit in the United States District Court for the Middle District of Pennsylvania.

### **XIV. Non- Disparagement Clause:**

Neither party shall disparage the other.

### **XIV. Governing Law:**

The terms and conditions of this Agreement shall be governed, interpreted and construed, and all disputes arising hereunder determined, in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its choice of law rules.  
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**Webmaster Contact:** [accessibilityweb@psu.edu](mailto:accessibilityweb@psu.edu)

**Source URL:** <http://accessibility.psu.edu/nfbpsusettlement>

**Links:**

[1] [http://accessibility.psu.edu/files/webstandards/Penn\\_State\\_Agreement\\_FINAL.rtf](http://accessibility.psu.edu/files/webstandards/Penn_State_Agreement_FINAL.rtf)

[2] <http://accessibility.psu.edu>

[3] <http://www.personal.psu.edu>

[4] <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>