



U.S. DEPARTMENT OF EDUCATION

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OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION

DISTRICT OF COLUMBIA OFFICE
District of Columbia, North Carolina, South Carolina, Virginia

Date:

Margaret A. Browne, Esq.
Office of General Counsel
University of Virginia
P.O. Box 400225
Charlottesville, Virginia 22904

Re: OCR Case No. 11-09-2094
Letter of Resolution – University of Virginia Darden School of Business

Dear Ms. Browne:

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 Departments of Justice and the Department of Education, on behalf of the organizations and their members who are prospective students, alleging that the University of Virginia Darden School of Business (“Darden”) has violated Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12131, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794(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, Darden either is participating or has participated 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 pilot is to test the utility of the Kindle DX in a classroom setting.

Darden does not admit to fault or noncompliance with the ADA in its operation of its pilot program. In addition, Darden reports, through its counsel, that representatives from the schools with the pilot program asked Amazon for assurances that it was making the Kindle DX accessible to persons with visual impairments, and that Amazon assured the representatives that it was working on developing such software.

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. The Departments decided to jointly investigate this matter, believing it to be of great importance 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 II, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of public universities and colleges.¹ 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, benefits, and services that is unequal to, or not as effective as, the opportunity afforded others.² Similarly, individuals with disabilities must be provided with aids, benefits or services that are as effective in providing an equal opportunity to achieve the same result or the same level of achievement as others.³ A college or university may *only* provide an individual with a disability, or a class of individuals with disabilities, with a different or separate aid, benefit, or service if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others.⁴ Title II also requires colleges and universities to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.⁵

The Department of Education and the Department of Justice remain concerned with Darden'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 Departments and Darden have decided that it is in their interest to resolve this matter amicably. In consideration of the agreement by Darden to undertake the actions set forth below, the Department of Education and the Department of Justice will close the investigation of this matter.

Darden School of Business agrees to the following actions:

1. It will not require, purchase, or incorporate in its curriculum or other programs 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 any student with visual impairments taking classes at Darden or Darden provides a reasonable modification/accommodation⁶ for this type of technology to individuals needing such modification/accommodation due to visual impairments, as defined in paragraph 5. However, Darden will not prohibit students or program participants from using this type of technology or other devices in the classroom or otherwise.
2. The phrase "other dedicated electronic book reader" means any wireless, hand-held, electronic book reader that has been or will in the future be

¹ 28 C.F.R. § 35.130(a) (2009).

² 28 C.F.R. § 35.130(b)(1)(ii) and 34 C.F.R. § 104.4(b)(1)(ii) and (iii) (2009). See also 34 C.F.R. § 104.4(b)(2).

³ *Cf.* 28 C.F.R. § 35.130(b)(1)(iii) and 34 C.F.R. § 104.4(b)(1)(iii) (2009).

⁴ 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv) (2009).

⁵ 28 C.F.R. § 35.160 (a).

⁶ OCR and DOJ generally use the term "modification" in this context, but many Colleges and Universities use the term "accommodation" to mean the same thing.

produced or offered by Amazon.com or any of the competitors of Amazon.com in the electronic book market, such as but not limited to the Barnes and Noble Nook.

3. 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 Darden setting is equally⁷ as effective for individuals with visual impairments as it is for others.
4. Darden agrees that its commitments in paragraphs 1-3, herein, will take effect on July __, 2010. Darden further agrees to adopt a policy reflecting the terms of this agreement within 30 days of the date of the last signature below and to provide a copy to OCR and DOJ.
5. Reasonable modification/accommodation in this context means that students with visual impairments taking classes at Darden 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 Department of Education and the Department of Justice that Darden is in full compliance with the ADA and Section 504, nor an admission by Darden of fault or noncompliance with the ADA or Section 504. Neither the Department of Education nor the Department of Justice renders judgment about Darden's pilot program. Notwithstanding anything as may be to the contrary, this agreement shall be interpreted and construed consistent with the ADA and Section 504 as these statutes shall be in effect and amended from time to time. If the statutes or regulations are amended, Darden is entitled to follow the amendments to the extent they are inconsistent with this agreement.

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 Darden. This agreement has no effect on Darden's former pilot program (2009 fall semester) testing the Kindle DX.

Please have the Dean of the Darden School of Business countersign and return a copy of this letter to us, indicating agreement with the representations and terms set forth herein. Once we have received the 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 Darden is not complying with its obligations under the ADA or Section 504.

⁷ The word "equally" should be interpreted in this agreement consistent with the way that it is used in the applicable regulations and not necessarily in accordance with the common meaning of the word.

We appreciate your cooperation. If you have questions or concerns regarding this agreement, please do not hesitate to contact staff at the numbers provided below.

Sincerely,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

SAMUEL R. BAGENSTOS
Deputy Assistant Attorney General

JOHN L. WODATCH
Chief, Disability Rights Section

ALICE WENDER
Director, Office for Civil Rights

By: _____

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Countersigned:

By: _____
Dean Robert F. Bruner
Darden School of Business
University of Virginia