



U.S. Department of Justice
Civil Rights Division
Disability Rights Section - NYA
950 Pennsylvania Avenue, NW
Washington, DC 20530

December 17, 2009

Stephen Brodsky, Esq.
University Counsel
Pace University
One Pace Plaza
New York, NY 10038

Re: Letter of Resolution, D.J. No. 202-51-312
Pace University

Dear Mr. Brodsky:

As you know, this matter began with a complaint 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 Pace 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) (Section 504), 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, Pace University is participating in a pilot test of the Kindle DX under contract with Amazon.com, Inc. Pace began its pilot test in the fall 2009 semester. The object of Pace's pilot is to test the utility of the Kindle DX in a classroom setting. The University informed the United States that it has not required any of its students to use the Kindle DX in classes where the device is being tested and also that no students with visual impairments registered for any of the courses participating in the pilot.

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 complainants alleged that Kindle DX is inaccessible to an entire class of individuals with disabilities — individuals with visual impairments. 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).

Pace University denies that its pilot test violates its obligations under title III of the ADA and Section 504. Nonetheless, the Department of Justice remains concerned with the University's use, if any, of the Kindle DX, or any other electronic book reader after the conclusion of the pilot program, if such electronic book reader is not fully accessible to individuals with visual

impairments, or if the University otherwise uses electronic book readers in a manner that would violate title III of the ADA or Section 504, as defined in paragraph 2, below. The Department of Justice and Pace University have decided that it is in their interest to resolve this matter amicably. In consideration of the agreement by Pace University to undertake the actions set forth below, the United States will close its investigation of this matter.

Pace University agrees to the following actions:

1. The University will not recommend, provide, or require a Kindle DX or any other electronic book reader for use by students in its classes, curricula, or other programs in a manner that would violate the University's obligation to provide access to blind and other visually impaired students under Title III of the ADA or Section 504.
2. Complying with its obligations under Title III of the ADA or Section 504 means in this context that Pace University will ensure that blind students are able to access and acquire the same information, engage in the same interactions, and enjoy the same advantages and services as sighted students with substantially equivalent ease of use.
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. Pace University will commit to a policy reflecting the terms of this agreement to writing within 30 days of the date of the last signature below.
5. Pace 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 no later than the conclusion of the spring 2010 semester.

This agreement does not constitute a finding by the United States that Pace is in full compliance with the ADA, nor an admission by Pace 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 Pace University. As indicated in paragraph 5, above, this agreement also has no effect on Pace University's current pilot program testing the Kindle DX. The parties acknowledge and agree that the provisions of this letter agreement are not enforceable in or before any forum.

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 Pace 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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