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June 25, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Noel Nightingale
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U.S. Department of Education
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Mr. John Wodatch
Chief
Disability Rights Section - NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
John.L.Wodatch@usdoj.gov

Re: ADA Title III and Section 504 of the Rehabilitation Act:
Reed College/Kindle DX

Dear Ms. Nightingale and Mr. Wodatch:

We represent the National Federation of the Blind (NFB), the American Council of the Blind (ACB), and those members who are current and prospective college students who are blind or have low vision. Reed College has contracted with Amazon.com, Inc. to provide the Kindle DX electronic book reader and web browser to its students in the fall of 2009. See http://www.reed.edu/news_center/press_releases/2008-2009/050609_Kindle.html. Because the Kindle DX is inaccessible to blind students, the Kindle DX program at Reed violates Title III of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504).

Reed will provide the Kindle DX to students in a two-semester pilot program beginning this fall. The Kindle DX will be offered to Reed students in three upper-division courses.

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The NFB is a national nonprofit membership organization of over 50,000 members. The ultimate purpose of the National Federation of the Blind is the complete integration of the blind into society on a basis of equality. The NFB engages in advocacy, education, research, technology, and programs encouraging the independence and self-confidence of people who are blind or have low-vision. The NFB has affiliates in all fifty states plus Washington D.C. and Puerto Rico, and over seven hundred local chapters. A major focus area of the NFB is education for blind youth. NFB education programs include scholarships for blind students, Braille literacy programs, a clearinghouse of information on science subjects and careers, and a collection of literature on education for blind students. See www.nfb.org for more information. Contact information for NFB is below:

Marc Maurer
President
National Federation of the Blind
1800 Johnson Street
Baltimore, MD 21230
Phone: 410-659-9314
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The ACB is a national nonprofit membership organization with 51 state and regional affiliates and 20 national special interest and professional affiliates. ACB's membership numbers in the tens of thousands, the vast majority of whom are blind persons. ACB's mission is to improve the well-being of all blind and visually impaired people by: serving as a representative national organization of blind people; elevating the social, economic and cultural levels of blind people; improving educational and rehabilitation facilities and opportunities; cooperating with the public and private institutions and organizations concerned with blind services; encouraging and assisting all blind persons to develop their abilities and conducting a public education program to promote greater understanding of blindness and the capabilities of blind people. Education is a major focus area of ACB, including scholarships for blind students and advocacy for improved education and rehabilitation programs for blind people. See <http://www.acb.org/profile.html> for more information. Contact information for ACB is below:

Melanie Brunson, Executive Director
Mitch Pomerantz, President
American Council of the Blind
1155 15th St. NW, Suite 1004
Washington, DC 20005
Phone: (202) 467-5081
Fax: (703) 465-5085

The Kindle DX allows students to carry over 3,500 books in a single mechanism. In addition, the Kindle DX offers a free web browser. Students using the Kindle DX will have access to a variety of functions not available in print textbooks, including a search function, an option to

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access the dictionary definition or Wikipedia information for any word the student highlights, and the ability to receive documents created by their professors electronically.

The Kindle DX has a text-to-speech feature that blind and print-disabled students can use to hear the text. However, the Kindle DX's menus are not accessible to blind students. The menus (for selecting a book, activating features, setting device settings, etc.) are on-screen only, with no audio option. Nor are the Kindle and its e-books accessible through external screen readers. Therefore, if a student cannot see the screen, she cannot know which book she has selected, what the device settings are or how to change them, or how to navigate the on-screen menu. Ironically, without the ability to see the appropriate menu, she will not be able to activate the text-to-speech feature. Similarly, without audible screen navigation, the Kindle DX web browser, Kindle Store, and other features will simply not work for blind students. See the Kindle DX QuickStart Guide, which describes some of the onscreen menu features, http://s3.amazonaws.com/kindle/KindleDX_Quick_Start_Guide.pdf. See also the Kindle DX User's Guide, http://s3.amazonaws.com/kindle/KindleDX_Users_Guide.pdf.

This lack of accessibility is not due to any technological challenge. Menus are routinely rendered audibly in a host of handheld devices, including computers, Apple's iPod Nano and iPhone 3GS, ATMs, talking microwaves, calculators and thermometers, and could be implemented for the Kindle DX.

Because of this lack of access, beginning in the fall of 2009, blind students in several classes at Reed will be denied equal access and effective communication in violation of Title III of the ADA and Section 504.

Reed is a private university subject to Title III of the ADA. <http://www.princetonreview.com/ReedCollege.aspx>. In addition, Reed receives federal financial assistance (results of search at <http://wdcrobcop01.ed.gov/CFAPPS/grantaward/start.cfm>) and is, therefore, subject to Section 504. Contact information for Reed is below:

Mr. Colin Diver
President
Reed College
3203 E Woodstock Blvd.
Portland, OR 97202
503/777-7500
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Blind students and prospective students are qualified individuals with disabilities within the meaning of the ADA and Section 504. 28 C.F.R. § 36.104; 34 C.F.R. § 104.3. Therefore, Reed may not provide them unequal or separate access to the benefits of its programs, services and activities. 28 C.F.R. § 36.201-202; 34 C.F.R. § 104.4. Reed must also ensure that its

communications with students with disabilities are as effective as its communications with students without disabilities. 28 C.F.R. § 36.303; 34 C.F.R. § 104.4.

Separate or different services for individuals with disabilities are only permitted under Title III and Section 504 when they are necessary to achieve equal access. 28 C.F.R. § 36.202(c); 34 C.F.R. § 104.4(b)(1). In the past, when colleges and universities had to rely on print textbooks, they had to rely on separate auxiliary aids and services, such as alternative format textbooks (Braille, taped texts, or electronic formats). This was necessary because print textbooks could not be made accessible any other way. Reed's program of offering the Kindle DX to students can technologically be made fully accessible without the need for alternative formats. As such, Reed should not be permitted to rely on unequal and separate alternative formats as a solution. Much as website technology has advanced to the point where public entities cannot rely on mailing alternative formats to blind individuals instead of making their websites accessible, electronic textbook technology has similarly advanced to the point where it can be made equally accessible to blind people. Therefore, universities that offer electronic textbook programs can no longer rely on separate alternative formats, but must provide an integrated program. See U.S. Department of Justice, "Accessibility of State and Local Government Websites to People with Disabilities," http://www.ada.gov/websites2_scrn.pdf ("An agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. These alternatives, however, are unlikely to provide an equal degree of access in terms of hours of operation and the range of options and programs available.")

Both the ADA and Section 504 recognize that methods for ensuring effective communication must evolve as technology evolves. Thus, for example, because communication technology for deaf people has advanced beyond the TTY, covered entities must make their telephone communications accessible to those new technologies, and may not continue to assume deaf people will use TTYs. See U.S. Department of Justice, "ADA Best Practices Tool Kit for State and Local Governments", Chapter 4: 9-1-1 and Emergency Communication Services, Section D," <http://www.ada.gov/pcatoolkit/chap4toolkit.htm>.

Reed should not be permitted to avoid providing access because of its, and its licensee's, own choices: "[W]hen making purchases and when designing its resources, a public entity is expected to take into account its legal obligation to provide communication to persons with disabilities that is "as effective as" communication provided to nondisabled persons. At a minimum, a public entity has a duty to solve barriers to information access that the public entity's purchasing choices create, particularly with regard to materials that with minimal thought and cost may be acquired in a manner facilitating provision in alternative formats. When a public institution selects software programs and/or hardware equipment that are not adaptable for access by persons with disabilities, the subsequent substantial expense of providing access is not generally regarded as an undue burden when such cost could have been significantly reduced by considering the issue of accessibility at the time of the initial selection." Letter of Findings,

Department of Education Office for Civil Rights Docket No. 09-97-2002.RES, April 7, 1997,
<http://uwctds.washington.edu/policy/09972002.RES.htm>.

In addition, even if Reed were permitted to rely on separate auxiliary aids and services to provide effective communication, equality of access and effective communication cannot be achieved by providing alternative formats, such as Braille textbooks, taped texts, or electronic files, for several reasons:

- **Timeliness:**
 - Kindle DX textbooks are available for download within 60 seconds, 24 hours a day.
 - Alternative format textbooks often take weeks or months to receive and must be ordered specially through Disabled Student Services offices, often far in advance of a class. This forces students with disabilities to commit to course selection far earlier than non-disabled students and locks them into course selections, even though non-disabled students can add or drop courses even after the classes have started.
- **Content:**
 - Kindle DX textbooks include structural data, including chapter headings, page numbers and footnotes that make for easy navigation.
 - Electronic files generated by Disabled Student Services offices are generally “text dumps” without the structural data that ensure proper reading order of pages with columns and sidebars and that enable navigation.
- **Features:**
 - Kindle DX offers features, such as free instant access to dictionary definitions for any word that is highlighted by the reader, and the ability to highlight and annotate text.
 - Electronic files, taped texts, and Braille textbooks do not offer instant free dictionary access or the ability to highlight or annotate text.
- **Cost:**
 - According to Amazon’s promotional materials (see, e.g., Video Demonstration at <http://www.amazon.com/Kindle-DX-Amazons-Wireless-Generation/dp/B0015TCML0>), “Kindle books and periodicals are much less expensive than their print versions.”
 - Blind students are generally required to pay the higher price for a print book as a condition of receiving the content in an electronic file.
- **Web Browser:**
 - Kindle DX includes a free web browser that is not contingent on the availability of Internet access through cable, broadband, or WiFi. Instead, it relies on cell phone networks and is available nearly anywhere.
 - Students with disabilities must obtain separate Internet access, often at substantial expense, and that Internet access requires a physical or wireless Internet

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