

1 TERRY GODDARD
2 Attorney General

3 Lisa K. Hudson, 012597
4 Alisa Blandford, 022901
5 Assistant Attorney General
6 1275 W. Washington
7 Phoenix, Arizona 85007-2997
8 Telephone: (602) 542-7673
9 Telephone: (602) 542-7687
10 Fax: (602) 542-7644
11 Lisa.Hudson@azag.gov
12 Alisa.Blandford@azag.gov

13 Attorneys for Defendants

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 The NATIONAL FEDERATION OF
17 THE BLIND, The AMERICAN
18 COUNCIL OF THE BLIND, and
19 DARRELL SHANDROW,

20 Plaintiffs,

21 vs.

22 The ARIZONA BOARD OF REGENTS
23 and ARIZONA STATE UNIVERSITY

24 Defendants.

Case No: CV09-01359 GMS

ANSWER

(Assigned to Honorable G. Murray Snow)

25 For their Answer, Defendants Arizona Board of Regents (ABOR) and Arizona
26 State University (ASU) admit, deny, and allege the following:

27 1. Answering paragraph 1, Defendants admit and allege that they have
28 entered into a limited agreement to pilot the Kindle DX in three sections of one class
over two semesters. Defendants deny the remaining allegations.

2. Defendants admit that allegations in paragraphs 2 and 3, except Defendants
deny that Plaintiff Shandrow has standing. Defendants are moving to dismiss Plaintiff
Shandrow's claims.

1 3. Answering paragraph 4, upon information and belief, Defendants admit
2 that Plaintiff National Federation of the Blind (NFB) is a non-profit corporation.
3 Defendants are without sufficient information to form a belief as to the truth of the
4 remaining allegations and therefore Defendants deny them.

5 4. Answering paragraph 5, upon information and belief, Defendants admit
6 that Plaintiff American Council of the Blind (ACB) is a non-profit corporation.
7 Defendants are without sufficient information to form a belief as to the truth of the
8 remaining allegations and therefore Defendants deny them.

9 5. Answering paragraph 6, Defendants admit that Plaintiff Shandrow is a
10 student at the Walter Cronkite School of Journalism and Mass Communication at ASU.
11 Defendants also admit that Plaintiff Shandrow is blind and is substantially impaired in
12 the major life activity of seeing. Defendants are without sufficient information to form a
13 belief as to the truth of Plaintiffs' allegation that Plaintiff Shandrow is a member of the
14 ACB and therefore Defendants deny the allegation. Defendants further deny that
15 Plaintiff Shandrow has standing to bring these claims.

16 6. Answering paragraph 7, Defendants admit and allege that ABOR was
17 created by the Arizona Constitution and that pursuant to Constitution and Arizona
18 statute, it has control over Arizona's three state universities, including ASU. Defendants
19 admit that ABOR is a public entity pursuant to Title II of the ADA. Defendants deny
20 any remaining allegations.

21 7. Answering paragraph 8, Defendants admit that ASU is a public university
22 with campuses in several locations within Arizona. Defendants deny that ASU is a jural
23 entity and therefore deny any remaining allegations.

24 8. Defendants admit the allegations in paragraph 9.

25 9. Answering paragraph 10, upon information and belief, Defendants admit
26 that plaintiffs have set forth a reasonable description of an "electronic book" (e-book).

27 10. Defendants admit the allegations in paragraph 11.

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1 11. Answering paragraph 12, Defendants admit that the Kindle is a device that
2 permits users to read e-books. Defendants admit that the Kindle renders e-books into
3 visible text on electronic paper to simulate the experience of reading a print book.

4 12. Answering paragraph 13, Defendants admit that blind students could
5 access the text-to-speech function of the Kindle DX if the Kindle menus were accessible
6 to the blind. Defendants deny the allegation that this would provide blind students
7 “access to the same content as signed students through the same device.” Defendants
8 allege, on information and belief, that not all authors and/or publishers have permitted
9 Amazon to offer the text-to-speech option. In that case, blind students would still
10 require access to the materials on another device. Defendants deny the remaining
11 allegations.

12 13. Defendants admit, on information and belief, that paragraph 14 accurately
13 describes the Kindle DX device.

14 14. Defendants admit, on information and belief, that paragraph 15 accurately
15 describes how e-books are displayed on the Kindle DX device. Defendants admit that
16 the Kindle DX’s screen auto-rotates to permit users to view text in either portrait or
17 landscape mode.

18 15. Answering paragraph 16, on information and belief, Defendants admit that
19 the Kindle DX has an internal wireless modem. Defendants admit that a Kindle user can
20 purchase an e-book by downloading it directly onto the Kindle device. Defendants
21 allege, upon information and belief, that books can be accessed and downloaded to the
22 Kindle device through other methods. Defendants deny the remaining allegations.

23 16. Answering paragraph 17, on information and belief, Defendants admit that
24 the Kindle DX does more than simply download, store, and retrieve books. Defendants
25 admit that the Kindle DX has a keyboard that can be used to take notes.

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1 17. Answering paragraph 18, Defendants admit that the Kindle DX has
2 functions that permit users to highlight text, look up the definition of words, and search
3 across a given library.

4 18. Answering paragraph 19, upon information and belief, Defendants admit
5 that the current Kindle DX software does not have an audio option for menus.
6 Defendants deny all remaining allegations.

7 19. Answering paragraph 20, upon information and belief, Defendants admit
8 that Amazon is promoting the use of the Kindle DX in the textbook market. Defendants
9 are unable to admit or deny whether publishers representing sixty percent of the textbook
10 market have agreed to make their textbooks available through the Kindle Store and
11 therefore Defendants deny the allegations.

12 20. Answering paragraph 21, Defendants admit and allege that in a May 6,
13 2009 press release, Amazon announced that five (not six) academic institutions would
14 launch trial programs to make Kindle DX devices available to students in the fall of
15 2009. Defendants admit that in the May 6, 2009 press release, Amazon listed the
16 features Plaintiffs allege in addition to others. Defendants admit that the quoted text is in
17 the Amazon press release. Defendants deny the remaining allegations.

18 21. Answering paragraph 22, Defendants admit and allege that ASU is one of
19 the participants in the pilot. Defendants allege, on information and belief, that there are
20 now seven participants. Defendants deny the remaining allegations.

21 22. Answering paragraph 23, Defendants admit that ASU employee Adrian
22 Sannier wrote that “I’m pumped to work with Amazon and to see how the Kindle can
23 help the University accelerate the adoption of electronic textbooks into a variety of
24 courses.” Defendants deny all remaining allegations.

25 23. Answering paragraph 24, Defendants admit and allege that Adrian Sannier
26 wrote the quoted text. Defendants deny the implicit allegation that the Kindle pilot
27 program involves courses other than the Human Event.
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1 24. Defendants deny the allegations in paragraph 25. The Kindle pilot is
2 limited to one course in the Barrett Honors College.

3 25. Answering paragraph 26, Defendants admit that Adrian Sannier wrote the
4 quoted text. Defendants deny that this statement was trumpeted.

5 26. Answering paragraph 27, Defendants admit that Adrian Sannier wrote that,
6 “Electronic texts provide the capabilities that today’s students have come to expect—
7 they’re searchable, flexible, easy to annotate, and less expensive than traditional texts.”

8 27. Defendants deny the allegations in paragraph 28. No blind students are
9 participating in the pilot course.

10 28. Defendants deny the allegations in paragraph 29, as there are no blind
11 participants in the Kindle pilot.

12 29. Defendants deny the allegations in paragraph 30, as there are no blind
13 participants in the Kindle pilot. Defendants admit that publishers can provide books in
14 electronic format and allege that ASU’s Disability Resource Center (DRC) has received
15 very timely responses to requests for electronic files in many cases. Defendants admit
16 and allege that different publishers provide information in different formats, some of
17 which are immediately accessible to the blind student, and others that require additional
18 work by DRC. Defendants deny Plaintiffs’ allegation that DRC destroys student books
19 in order to scan them into an electronic format. Defendants allege that DRC purchases
20 its own copy of the book for this purpose. Although the student must purchase the book
21 for copyright purposes, the student’s hard copy of the book is not destroyed. Defendants
22 further deny that DRC provides students with scanned material that does not provide
23 structural data. Defendants admit that blind students can obtain audio-taped versions of
24 books. Defendants deny the allegation and implicit suggestion that audio books are
25 difficult to use due to the lack of skill of the reader. Defendants allege that DRC is able
26 to find recorded audio books from organizations that seek out qualified readers for their
27 texts. In other words, if it is a medical book with difficult terminology, the organization
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1 will find a professional familiar with that terminology. Defendants further allege that
2 most students prefer an electronic version of the book to audio tapes. Defendants deny
3 the implicit suggestion in paragraph 30 that the Complaint lists all sources of accessible
4 materials for the blind. Defendants further allege that the Complaint exaggerates the
5 difficulty of obtaining materials and that it exaggerates issues of quality of those
6 materials. Defendants deny all other allegations not specifically admitted.

7 30. Answering paragraph 31, Defendants admit that DRC informs students that
8 conversion of materials can be time consuming and can take months to complete.
9 Defendants also admit that students are encouraged to enroll in courses during Priority
10 Enrollment to insure that they will have materials in a timely manner. Defendants deny
11 the implicit allegation that DRC always requires months to convert or obtain accessible
12 materials. Many texts and materials used in the university can be obtained in a matter of
13 days, and some can be obtained for free and immediately via the internet. Defendants
14 deny the remaining allegations.

15 31. Defendants admit that paragraph 32 quotes the DRC but deny the implicit
16 allegation that DRC encourages students to learn how to obtain accessible texts on their
17 own due to workload issues in DRC. In fact, DRC encourages students to learn how to
18 obtain accessible materials on their own because they will require this skill when they
19 leave school and enter the workforce. Offices such as the DRC will not always be
20 available to them. Defendants deny the remaining allegations.

21 32. Defendants deny the allegations in paragraph 33. Defendants admit that
22 students are informed that they can discuss the possibility of a reduced reading load, but
23 deny that the suggestion is made due to the timeliness and quality of DRC-provided
24 materials.

25 33. Answering paragraph 34, Defendants admit that a Reading Rights
26 Coalition representative wrote to ASU President Michael Crow on or about May 7, 2009.
27 The letter speaks for itself, but generally threatened litigation if ASU did not terminate
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1 the pilot project. The letter offered no middle ground or invitation to work with the
2 University on other accommodations. Defendants deny the remaining allegations.

3 34. Answering paragraph 35, Defendants admit that a Reading Rights
4 Coalition representative contacted the office of the General Counsel more than once
5 about the pilot program. Defendants deny the suggestion that Plaintiffs'
6 communications invited any real discussion of possible resolutions. Plaintiffs made it
7 clear that they were only interested in stopping ASU's participation in the Kindle pilot.

8 35. Answering paragraph 36, Defendants admit that they did not agree to stop
9 participation in the pilot but deny Plaintiffs' implicit allegation that ASU is not
10 concerned about accessibility.

11 36. Defendants deny the allegations in paragraphs 37, 38, and 39.

12 37. Answering paragraph 40, upon information and belief, Defendants admit
13 that this assertion appears to be an accurate summary of information included on NFB's
14 web site. Defendants are without sufficient information to form a belief as to the truth of
15 the allegations and therefore Defendants deny them.

16 38. Answering paragraph 41, upon information and belief, Defendants admit
17 that NFB has made this assertion on its web site. Defendants are without sufficient
18 information to form a belief as to the truth of the allegations and therefore Defendants
19 deny them.

20 39. Answering paragraph 42, upon information and belief, Defendants admit
21 that this assertion appears to be an accurate summary of information included on NFB's
22 web site. Defendants are without sufficient information to form a belief as to the truth of
23 the allegations and therefore Defendants deny them.

24 40. Answering paragraph 43, Defendants are without sufficient information to
25 form a belief as to the truth of the allegations and therefore Defendants deny them.

26 41. Answering paragraph 44, upon information and belief, Defendants admit
27 that this assertion appears to be an accurate summary of information included on ACB's
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1 web site. Defendants are without sufficient information to form a belief as to the truth of
2 the allegations and therefore Defendants deny them.

3 42. Answering paragraph 45, Defendants are without sufficient information to
4 form a belief as to the truth of the allegations and therefore Defendants deny them.

5 43. Answering paragraph 46, upon information and belief, Defendants admit
6 that this assertion appears to be an accurate summary of information included on ACB's
7 web site. Defendants are without sufficient information to form a belief as to the truth of
8 the allegations and therefore Defendants deny them.

9 44. Defendants deny the allegations in paragraphs 47, 48, 49, and 50.

10 45. Answering paragraph 51, 52, 53, 54, and 55, Defendants deny that they
11 have engaged in any discrimination. Defendants admit that NFB has devoted some
12 resources to trying to stop ASU's participation in the pilot, but deny that such action was
13 reasonable or necessary to further the interests of its members. Defendants have not
14 discriminated against any blind students. Defendants deny the remaining allegations.

15 46. Answering paragraph 56, Defendants deny that they have engaged in any
16 discrimination. Defendants are without sufficient information to form a belief as to the
17 truth of Plaintiffs' assertion of their membership and therefore Defendants deny the
18 allegation.

19 47. Answering paragraph 57, Defendants deny that they have engaged in any
20 discrimination. Defendants deny that any blind or visually impaired individuals have
21 been prevented from enrolling or participating in the Human Event, the only course at
22 ASU that will participate in the Kindle DX pilot. Defendants deny all remaining
23 allegations.

24 48. Defendants deny the allegations in paragraphs 58 and 59.

25 49. Answering paragraph 60, Defendants deny that they have engaged in any
26 discrimination. Defendants deny that the Kindle DX pilot has caused dignitary harm to
27 Plaintiff Shandrow. Defendants deny that the Kindle DX pilot has excluded any blind or
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1 otherwise disabled individuals. Defendants deny that their actions have stigmatized
2 Plaintiff Shandrow. Defendants affirmatively allege that Plaintiff Shandrow lacks
3 standing to bring this lawsuit because he is not a student in the Barrett Honors College.
4 Defendants deny all remaining allegations.

5 ANSWER TO FIRST CLAIM FOR RELIEF

6 50. Paragraph 61 incorporates Plaintiffs' previous allegations. Defendants
7 incorporate their responses to those allegations.

8 51. Defendants admit the allegations in paragraph 62.

9 52. Answering paragraph 63, Defendants deny that the Kindle pilot is a
10 program or activity as that term is used in the Rehabilitation Act.

11 53. Answering paragraph 64, Defendants admit that the currently-available
12 version of the Kindle DX is not accessible to blind individuals without the assistance of a
13 sighted person. Defendants allege that there are a number of other devices on which
14 blind individuals can access e-books without personal assistance. Defendants deny the
15 remaining allegations,

16 54. Answering paragraph 65, Defendants deny that they have violated the
17 Rehabilitation Act. Defendants deny that they have excluded blind individuals from the
18 Human Event courses that will pilot the Kindle or that they have denied any blind
19 individual the benefits of the Human Event course. Defendants deny that they have
20 engaged in any discriminatory actions or conduct. Defendants deny all remaining
21 allegations.

22 55. Answering paragraph 66, Defendants deny that they have engaged in any
23 discrimination. Defendants deny all remaining allegations.

24 56. Answering paragraph 67, Defendants deny that they have engaged in any
25 discriminatory actions or conduct. Defendants deny that they have harmed Plaintiffs
26 NFB, ACB, or Shandrow. Defendants deny all remaining allegations.

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1 ANSWER TO SECOND CLAIM FOR RELIEF

2 57. Paragraph 61 incorporates Plaintiffs’ previous allegations. Defendants
3 incorporate their responses to those allegations.

4 58. Defendants admit to the allegations in paragraphs 69.

5 59. Answering paragraph 70, Defendants deny that the Kindle pilot is a
6 service, program or activity as that term is used in the statute. Defendants also deny
7 Plaintiffs’ allegations that blind students have been excluded from participating in the
8 Human Event course, including those sections that will pilot the Kindle.

9 60. Answering paragraph 71, Defendants admit that the currently-available
10 version of the Kindle DX is not accessible to blind individuals without the assistance of a
11 sighted person. Defendants allege that there are a number of other devices on which
12 blind individuals can access e-books without personal assistance. Defendants deny any
13 remaining allegations.

14 61. Answering paragraph 72, Defendants deny that they have violated Title II
15 of the ADA. Defendants deny that they have excluded blind individuals from the
16 Human Event courses piloting Kindle or have denied any blind individual the benefits of
17 the Human Event course. Defendants deny that they have engaged in any discriminatory
18 actions or conduct. Defendants deny all remaining allegations.

19 62. Answering paragraph 73, Defendants deny that they have engaged in any
20 discriminatory actions or conduct. Defendants deny all remaining allegations.

21 63. Answering paragraph 74, Defendants deny that they have engaged in any
22 discriminatory actions or conduct. Defendants deny that they have harmed Plaintiffs
23 NFB, ACB, or Shandrow. Defendants deny all remaining allegations.

24 64. Defendants deny all remaining allegations not specifically admitted.

25 **AFFIRMATIVE DEFENSES**

26 For their separate and additional defenses, Defendants, without conceding that
27 they bear the burden of proof or persuasion as to any of them, allege as follows:

28 1. Plaintiffs have failed to state a claim upon which relief can be granted.

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- 2. Plaintiff Shandrow is not a qualified individual with a disability.
- 3. Plaintiffs can not prove intentional discrimination by Defendants.
- 4. Defendants acted for legitimate, non-discriminatory reasons.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants request that this matter be dismissed, that they be awarded their costs incurred herein and such other and further relief as the Court deems just and proper, including attorneys' fees under 42 U.S.C. § 1988.

Respectfully submitted this 24th day of July, 2009.

Terry Goddard
Attorney General

s/ Lisa K. Hudson
Lisa K. Hudson
Assistant Attorney General
Attorney for Defendants

I certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following, if CM/ECF registrants, and mailed a copy of same to any non-registrants, this this 24th day of July, 2009 to:

1 Andrew S. Friedman
Guy A. Hansen
2 BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
2901 North Central Avenue, Suite 1000
3 Phoenix, AZ 85012

4 Daniel F. Goldstein
Mehgan Sidhu
5 BROWN, GOLDSTEIN & LEVY, LLP
120 E. Baltimore St., Suite 1700
6 Baltimore, MD 21202

7 Amy Robertson
FOX & ROBERTSON, P.C.
8 104 Broadway, Suite 400
Denver, CO 80203

9 Eve Hill
10 1667 K St. NW, Suite 640
Washington, DC 20006

11 Attorneys for Plaintiffs

12
13
14 s/ Chris Austin
Secretary to Lisa K. Hudson

15
16 511219

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