

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DENICE BROWN, KAREN COMORATO,  
PATRICIA GREBLOSKI, and  
ANTOINETTE WHALEY,

Plaintiffs,

vs.

FREE LIBRARY OF PHILADELPHIA,

Defendant.

C. A. No.: \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

1. Almost forty years after Congress mandated, through passage of the Rehabilitation Act, that institutions in receipt of federal funds could not discriminate on the basis of disability, defendant Free Library of Philadelphia (“Library”) has initiated and subsequently expanded a NOOK e-reading device lending program for older library patrons knowing that this device is completely inaccessible to its blind patrons. The Library has developed this lending program in an effort to “bridge the digital divide” between young and old patrons, but in doing so has needlessly exacerbated the “digital divide” between disabled and non-disabled library patrons.

2. Because today’s technology can offer blind individuals greater access to books, periodicals, and other materials that were traditionally available only in print, the Library has the statutory responsibility to ensure that it offers fully accessible e-reading technology. In the past, when libraries provided only print books, the libraries and their blind patrons had to rely on separate processes to obtain accessible versions of books. However, because e-books are not inherently visual, audible, or tactile, they provide individuals with an opportunity to access content through whatever methods are accessible to them. For the first time, there exist

commercially available portable e-book readers that allow blind and sighted readers to use the same means of accessing the written word and get at the same content. By choosing to lend inaccessible devices, the Library discriminates against its blind patrons and segregates them needlessly from its programs and activities.

### **JURISDICTION**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

### **PARTIES**

5. Plaintiff Denice Brown is a 54-year-old resident of Philadelphia and a retired elementary school teacher. Ms. Brown is blind and uses audio recordings and text-to-speech programs to read books, newspapers, and magazines. In addition to reading the newspaper daily, Ms. Brown reads a book a month. She is particularly interested in biographies, autobiographies, and books about African-American history. Ms. Brown is a member of the Library. She uses the Library's Walnut Street location, known as the Library for the Blind and Physically Handicapped ("braille and talking book branch"), and also attends technology trainings and poetry readings at the Library's Central Parkway branch. Because of her love of reading and interest in technology, she is interested in borrowing an accessible e-reading device from the Library.

6. Plaintiff Karen Comorato is a 57-year-old resident of Philadelphia. Ms. Comorato is blind. She enjoys romance and historical novels as well as good mysteries. Ms. Comorato uses audiobooks from the Library's braille and talking book branch, but the few print books that are converted to audio by the National Library Service of the Library of Congress for lending become available only after long delays. An accessible e-book reader would be a

substantial purchase for Ms. Comorato; as a result she would be interested in participating in the Library's e-reader lending program if it were accessible.

7. Plaintiff Patricia Grebloski is a 70-year-old resident of Philadelphia. Ms. Grebloski has worked in the insurance and medical transcription industries. Ms. Grebloski is blind. She enjoys reading non-fiction books about history and current events, as well as mysteries. She is a member of the Library, but except for occasional events at the Central Parkway branch, she generally uses the braille and talking book branch. She is frustrated by the length of time (years, if ever) that it takes for her to receive a new release from the specialized branch. Ms. Grebloski is an avid public radio listener and enjoys interviews of popular authors. Although she would like to read their books, they are often not available in braille or audio and, when they are, the books are no longer new and what her friends and others are talking about. She is very interested in the e-reader lending program because she would be able to read new releases at the same time that the sighted world is reading and discussing these books.

8. Plaintiff Antoinette Whaley is a 66-year-old resident of Ardmore, Pennsylvania and a member of the Library. Ms. Whaley is blind. She began her career as a mathematician and computer scientist at the National Security Agency, later serving as a computer instructor for several vocational rehabilitation agencies. She has also taught math and psychology at the high school and college levels. Ms. Whaley enjoys reading novels, particularly historical fiction. She primarily uses the Library's braille and talking book branch. She would be interested in participating in the Library's e-reader lending program, if it were accessible.

9. Defendant Free Library of Philadelphia is a governmental entity operated by the City of Philadelphia. In Fiscal Year 2011, the Library received more than \$45 million in city and state funds, and benefited from more than \$13 million in additional expenditures from the Free Library of Philadelphia Foundation. The Library receives federal financial assistance as that

term is used in 29 U.S.C. § 794, including funding for its e-reader lending program, as described below.

### **FACTUAL ALLEGATIONS**

10. An electronic book (“e-book”) is a digital file consisting of the content of a book formatted to be read on a dedicated device, smartphone, tablet, or personal computer. The e-book itself consists of digital code recorded on an electronically-readable medium and is not inherently visual, audible, or tactile. Rather, an e-book can be read using a device that renders the code visually, audibly, or tactilely.

11. In recent years, e-books have become increasingly popular with the proliferation of tablet computers and portable e-book reading devices.

12. The NOOK Simple Touch is an e-book reader developed and sold by Barnes & Noble. While some e-book reading devices with touch-screen interfaces are accessible to blind users through audio or tactile cues, the NOOK’s menus and controls are accessed solely through a touch screen that provides no such feedback. Nor is the device accessible through external applications or devices, such as text-to-speech screen readers or braille displays. Therefore, a user who is unable to see the screen cannot determine which books are loaded on the device, select a book, or access or change any of the device’s settings.

13. The Library has repeatedly been alerted to the federal requirement to acquire only accessible technology and the need to conform its practices to federal law:

- a. In July 2009, the American Library Association (“ALA”), of which the Library is a member, passed a resolution “strongly recommend[ing]” that its members ensure that electronic resources comply with federal accessibility guidelines. *See* Exhibit A.

- b. In November 2009, as part of a mass mailing to public libraries, the National Federation of the Blind (“NFB”) and the Reading Rights Coalition, a cross-disability advocacy group, mailed a letter to Hedra L. Packman, Director of Library Services, Christine D. Caputo, then Assistant Chief of the Office of Public Service Support, and Jennifer Donsky, then a Reference and Research Librarian at the Philadelphia Free Library, about the need and legal requirement to ensure accessibility of e-books at public libraries. A copy of the body of that letter is attached as Exhibit B.
- c. In June 2010, the United States Departments of Justice and Education issued a “Dear Colleague Letter” warning educational institutions not to procure or use inaccessible e-book technology because the use of such technology would violate federal law.
- d. In May 2011, the Department of Education released a “Frequently Asked Questions” document confirming that the prohibition on inaccessible e-books articulated “long-standing law” and emphasizing that accessibility required people with disabilities to “acquire the same information, engage in the same interactions, and enjoy the same services” as sighted persons.
- e. In August 2011, the ALA’s Washington Office posted to its official District Dispatches blog, a letter from the NFB that referenced the “Dear Colleague Letter” and the FAQ and reminded ALA members, *again*, that the law prohibited libraries from buying and lending inaccessible e-reading devices.

14. Despite these repeated advisories, the Library initiated a lending program in November 2011, in which the Central Parkway branch offers several dozen inaccessible NOOK Simple Touch e-reading devices for loan, free of charge, to Library patrons 50 years of age or older. Each circulating NOOK is pre-loaded with 25 books, including *New York Times* bestsellers and classics. If a patron wants to read a different book in the Library's collection of e-book titles, a librarian will load that book on the device prior to checkout.

15. The Library received \$25,000 of federal funding to initiate its NOOK lending program. These federal funds were given to the Library by Pennsylvania's Office of Commonwealth Libraries under a federal grant program established by the Library Services and Technology Act, 20 U.S.C. § 9121, *et seq.*, which is administered by the federal Institute of Museum and Library Services ("IMLS").

16. IMLS regulations require grantees to comply with Section 504 of the Rehabilitation Act. 45 C.F.R. § 1180.44(a). IMLS regulations further explain that any recipient of its funds may not "[d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service" that it offers. 45 C.F.R. § 1170.12(a)(1) (National Endowment for the Humanities regulation implementing Section 504, adopted by the IMLS in 45 C.F.R. § 1180.44(b)). Nor may recipients of IMLS funding "[p]rovide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others." 45 C.F.R. § 1170.12(a)(4).

17. The Library purchased 65 inaccessible NOOK devices when accessible alternatives were available.

18. In December 2011, after learning of the Library's NOOK lending program, the NFB sent another letter to the Library detailing the accessibility problems of NOOK devices and the Library's legal obligations under federal law. The NFB urged the Library to enter into discussions to find an amicable resolution that would serve all of the Library's patrons, but the Library did not respond. *See* Exhibit C.

19. Ignoring its legal obligations, the Library has announced plans to expand its NOOK lending program by making NOOK devices available for loan at four additional branches. NOOK devices are already available at the Philadelphia City Institute and Wynnefield branches, and plans are underway to lend NOOKs from the Bustleton and Schuylkill Falls locations by early May.

20. On March 28, 2012, Plaintiff Denice Brown visited the Library's Central Parkway branch. When she asked to borrow a NOOK device, she was told that there was a special form that must be filled out by patrons seeking to borrow a NOOK, and that the Library did not have anyone who could help her fill out the paper document. From the description, Ms. Brown believed the form was an extensive questionnaire, "like a job application." Ms. Brown asked if she could have her mother fill it out and fax it to the Library. She was told that the form could not be faxed. After further exchange, Ms. Brown learned that the form only required her name, address, phone number, and signature. Eventually, a Library representative agreed to help Ms. Brown complete the form. Ms. Brown was then given a NOOK for a two-week period.

21. Ms. Brown's trouble with the device began as soon as she tried to turn it on. The power button is one of two traditional buttons on the device (the other, a "wake up button," activates the screen). Ms. Brown was only able to tell whether the machine was on or off because she could see (with her limited residual vision) a flash of light or something moving on the screen.

22. On April 19, 2012, Plaintiff Patricia Grebloski visited the Philadelphia City Institute Branch to check out a NOOK. The librarian supervising the NOOK lending program at that branch told her that the NOOKs do not have any audio, and questioned why she would want to check out a device that she would not be able to use. Ms. Grebloski explained that she was interested in newer books that were not available through the braille & talking book branch, and if she borrowed a NOOK, someone could tell her what books were available. The librarian reiterated that he did not think the NOOK would provide her any benefit without audio. Frustrated by the librarian's response to her request, Ms. Grebloski left the Library without a NOOK.

### **FIRST CLAIM FOR RELIEF**

(Section 504 of the Rehabilitation Act of 1973)

23. Plaintiffs reallege and incorporate by reference the preceding allegations of this Complaint as if fully set forth herein.

24. Each plaintiff is substantially limited in the major life activity of seeing. Accordingly, they are individuals with a disability as defined under the Rehabilitation Act, 29 U.S.C. § 705(20).

25. The Library receives federal financial assistance as that term is used in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

26. The activities described above, including the lending of inaccessible NOOK e-reading devices to library patrons over the age of 50, are programs and/or activities of the Library, as those terms are used in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

27. NOOK e-book reading devices are inaccessible to blind persons who are qualified to borrow the devices, including plaintiffs Brown, Comorato, Grebloski, and Whaley.



28. The Library has violated the Rehabilitation Act by excluding blind persons from participation in, denying these individuals the benefits of, and/or subjecting each such individual to discrimination under the Library's programs and/or activities through the actions and conduct described above.

29. With respect to the alleged discriminatory conduct, the Library acted intentionally or with reckless or callous indifference to the federally protected rights of others and/or with deliberate indifference to the strong likelihood that its acts would likely result in a violation of federally protected rights.

30. The Library's discriminatory conduct has harmed and will continue to harm Plaintiffs Brown, Comorato, Grebloski, and Whaley. Plaintiffs are thus persons aggrieved by the Library's discriminatory acts.

## **SECOND CLAIM FOR RELIEF**

(Violation of Title II of the ADA)

31. Plaintiffs reallege and incorporate by reference the preceding allegations of this Complaint as if fully set forth herein.

32. Each plaintiff is substantially limited in the major life activity of seeing. Accordingly, they are individuals with a disability as defined under the Americans with Disabilities Act, 42 U.S.C. § 12102(2).

33. The Library is a public entity as that term is used in Title II of the ADA, 42 U.S.C. § 12132.

34. The activities described above, including the lending of inaccessible NOOK e-reading devices to library patrons over the age of 50, are services, programs and/or activities of the Library.

35. NOOK e-book reading devices are inaccessible to blind persons who are qualified to borrow the devices, including plaintiffs Brown, Comorato, Grebloski, and Whaley.

36. The Library has violated Title II of the ADA by excluding blind patrons from participation in, denying these individuals the benefits of, and/or subjecting each such individual to discrimination under the Library's services, programs and/or activities. 42 U.S.C. § 12132.

37. The Library has violated Title II of the ADA by failing to administer its services, programs, and/or activities in the most integrated setting that would meet the needs of disabled and non-disabled patrons alike. 28 C.F.R. § 35.130(d).

38. With respect to the alleged discriminatory conduct, the Library acted intentionally or with reckless or callous indifference to the federally protected rights of others and/or with deliberate indifference to the strong likelihood that its acts would likely result in a violation of federally protected rights.

39. The Library's discriminatory conduct has harmed and will continue to harm Plaintiffs. Plaintiffs are thus persons aggrieved by the Library's discriminatory acts and failures to act.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court declare the Library's conduct to be in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Title II of the ADA, 42 U.S.C. § 12132.
3. That this Court issue an injunction ordering the Library to comply with Section 504 of the Rehabilitation Act and Title II of the ADA by refraining from lending any inaccessible e-book reading device to its patrons;
4. That this Court award Plaintiffs reasonable attorneys' fees and costs; and

5. That this Court order such additional or alternative relief as may be just, proper, and equitable.

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