BROWN GOLDSTEIN LEVY

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March 15, 2011

VIA EMAIL: Katherine.M.Nicholson2@usdoj.gov

Ms. Kate Nicholson
Acting Deputy Chief
Disability Rights Section - NYAV
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

> Re: *Northwestern University's Adoption of Google Apps for Education and Development of Bboogle in Violation of ADA Title III and Section 504 of the Rehabilitation Act*

Dear Ms. Nicholson:

I represent the National Federation of the Blind ("NFB"), an organization whose membership includes blind undergraduate and graduate students at colleges and universities across the country. It has come to my attention that Northwestern University ("Northwestern") subjects blind students and faculty to ongoing discrimination in providing access to services and information and thereby violates Title III of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act.

Northwestern is a private university subject to Title III of the ADA and it receives federal financial assistance – federal grants and student financial aid and is, therefore, subject to Section 504. Therefore, its adoption of technology for campus-wide use that is not accessible to blind students, faculty and staff violates Title III and Section 504.

Adoption of Inaccessible Technology

On February 28, 2007, Northwestern and Google announced that Northwestern had decided to adopt Google Apps for Education to provide cloud-based email and collaboration tools to its University community.[1] In a case study posted on Google's website, Google discusses how Northwestern utilizes Google Apps for Education:

> The Northwestern-branded student services include Gmail, Google Calendar for visible scheduling campus wide, Google Talk instant messaging, Google Docs, and a "Northwestern for Life" online connection for alumni. The school is also considering

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[1] See "Northwestern Partners with Google for Student Email," *available at* http://www.northwestern.edu/newscenter/stories/2007/02/google.html.

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> implementing a Google-enabled, Northwestern branded start page.

(Taken from "Google Apps Case Study," *available at* http://www.google.com/a/help/intl/en/edu/case_studies/northwestern.html.)

Google Apps for Education ("Google Apps") is a free suite of hosted communication and collaboration applications designed for schools and universities. It is a "hosted" solution in that Google provides all the servers and back-end work, but the services all exist within Northwestern's domain. For example, all email accounts have the Northwestern name (@u.northwestern.edu), not a Google or Gmail domain (@gmail.com).[2]

As described by Google, the Core Google Apps for Education suite includes:

- **Gmail:** Email storage and search tools that help your students find information fast and instant messaging from right inside their accounts.
- **Google Calendar:** Students can organize their schedules and share events and calendars with others.
- **Google Talk:** Students can call or send instant messages to their contacts for free anytime, anywhere in the world.
- **Google Docs:** Share documents, spreadsheets, and presentations. Collaborate in real-time with your team or with your whole school. You can publish final documents to the entire world, too.
- **Google Sites:** Work together to keep related documents, web content and other information in one place, on one site.

(Taken from "What is Google Apps" on the Google Apps Administrator Help page, *available at* https://www.google.com/support/a/bin/answer.py?hl=en&answer=139019.)

Each of these applications contains significant accessibility barriers. To see some of the frustrations a blind computer user encounters on Google Apps, please see the videos   posted online at http://www.nfb.org/nfb/googleaccessibilityvideos.asp. None of the applications is set up to work properly with assistive technology used by the blind.[3] Therefore, blind Northwestern students and faculty are denied the benefits of the technology that Northwestern has adopted.

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[2] See list of applications and explanations, *available at* https://sites.google.com/a/googleapps.com/edu-training-center/Training-Home/module-1/chapter-1

[3] Gmail has a "more accessible" (HTML) view option; however the "accessible" option is vastly inferior and lacks key functions, including spell check, rich formatting, Google Chat, and ability to manage filters and contacts. *See* http://mail.google.com/support/bin/answer.py?hl=en&answer=146375

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The Agreement signed between Northwestern and Google allows Northwestern's faculty and staff to use Google Apps in their classrooms and departments. As Northwestern remarks on its website, "Google's robust educational tools, designed specifically for universities, improve the quality of Northwestern student collaboration services."[4] The problem, of course, is that any student collaboration done through Google Apps will exclude blind students and most other students with print disabilities.

Many Northwestern students and faculty are already using Google Apps. For instance, nearly all Northwestern students are now using a Google-hosted program for email. Many professors are using Google Apps through Blackboard as well to create collaborative learning experiences. *See Bboogle* section below and "Google Case Study" attached, which explains how one Latin American Studies professor used Bboogle to create a Latin American History Encyclopedia.

The School of Education and Social Policy also notes on its website that:

> In addition to the Google-provided e-mail services, your @u.northwestern.edu also includes access to several Google applications. Some of these applications are used to share content or facilitate collaboration during MSLOC courses. But you should become familiar with all of these applications -- they will provide great benefit during your time as an MSLOC graduate student.[5]

The functions offered by these types of applications are becoming central to participation in communication and collaborations that are integral, not only to learning, but to full membership in the university community.

Asking a disability student services office to provide the equivalent experience to participating in creating an online Latin American History Encyclopedia, for example, is unrealistic and would, at best, provide a separate and unequal experience for a blind student.

Bboogle

Northwestern has taken its adoption of Google Apps one step further than many other schools by developing an open-source project called Bboogle (pronounced ba-boogle), an add-in product for the Blackboard Learn System. *See attached sheet for full case study by Northwestern.* Bboogle is software that allows students and faculty to embed Google

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[4] Northwestern University Information Technology Support page, *available at* http://www.it.northwestern.edu/stucollab/.

[5] Northwestern School of Education and Social Policy website on Master of Science in Learning, *available at* http://www.sesp.northwestern.edu/msloc/resources/src/collaboration/#Google

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Documents (including spreadsheets and presentations), Google Calendars and Google Sites in a Blackboard course site. Everyone with access to the course can get to linked Google content without logging in a second time. Students and instructors are automatically added as collaborators to the documents, even if they join after the link is made. Bboogle was developed at Northwestern for Blackboard v. 8, 9 and 9.1.

Although Blackboard v 9.1 is nearly fully accessible to blind students, any Google applications that are reached through Blackboard will not be, because they will retain the same accessibility barriers with which they were initially designed. The important strides made in ensuring Blackboard's accessibility are rendered irrelevant when blind students cannot reach the content because it is in Google Apps format, even though they can access and maneuver around Blackboard itself.

The NFB Supports Technology Advances That Are Accessible to <u>All</u> Users

Technology advances in general have enabled blind students to more easily fully participate in the college experience with their sighted peers. When most complex information was only available in print, blind students had to turn to separate and generally inferior and more limited alternatives. The development of information technology has afforded blind students the opportunity for mainstream access to all (or nearly all) the information that is available to sighted students. As the Department of Education noted in its National Education Technology Plan (2010), "the advantage of digital resources . . . is that they can be easily made accessible through assistive technologies."[6] After all, digital information is not inherently visual, audible or tactile, but zeros and ones that may be rendered in a variety of formats accessible through any of those senses. Unfortunately, Northwestern has contracted with a company to use products that do not work with assistive technology and are almost totally inaccessible to and unusable by students and faculty who are blind or who have print disabilities.

The fact that Google Apps are free creates an enticement to schools like Northwestern to exclude blind students and faculty and foments blame and resentment toward blind students and faculty who only want equal access. However, the decision about what technology to use should not pit students with print disabilities against those without. Blind students did not make the decision not to incorporate accessibility from the outset of the design development process; Google did. By the same token, sighted students should not have to wait for Google to retrofit the Apps to make them accessible, when they should have been accessible from the start. But when the cost of adopting these applications relegates blind students and faculty to second class status in the college classroom, the cost is too high. Many technology developers have long implemented policies of making their technologies accessible upon release and have still managed to lead the market—Apple, IBM and Microsoft are examples. If Google believes, wrongly, that it can beat its competition by promoting technological segregation, it must

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[6] Department of Education, National Education Technology Plan, 2010, at 21; available at
http://www.ed.gov/technology/netp-2010.

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understand the incompatibility of this approach with the legal and moral responsibilities of educational institutions. In the meantime, the practical answer is that there are accessible alternatives to Google Apps, and universities who want cutting-edge technology must choose the accessible options.

Northwestern had several choices when it decided to execute a contract to allow a third party to provide its email and other applications. It chose to contract with a company that offers an inaccessible product. Unfortunately, Northwestern appears to be the norm these days. According to the 2010 Campus Computing Project, close to 60% of campuses now outsource student email and 15% outsource faculty email.[7] Of the campuses that outsource email, more than half use Google Apps.

Legal Obligations of Northwestern

Northwestern is complicit in the proliferation of inaccessible technology programs because it has failed to require Google to provide it with applications that are accessible for all of its students. Northwestern is liable under federal law for its decision to adopt and use inaccessible software programs.

Blind and print disabled 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 (2009)[8]. Therefore, Northwestern may not provide them unequal or separate access to the benefits of its programs, services and activities. 28 C.F.R. § 36.201(a); 34 CFR § 104.4.

Under Title III of the ADA, students with visual impairments may not be discriminated against in the full and equal enjoyment of all of the goods and services of private colleges and universities; they must receive an equal opportunity to participate in and benefit from these goods and services; and they must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others. 28 C.F.R. § 36.201(a); 28 C.F.R. § 36.202(a); and 28 C.F.R. § 36.202(c). Northwestern has similar obligations under Title I of the ADA to its print-disabled faculty.

The Departments of Justice and Education set forth these legal obligations in a letter of June 2010 that was sent to every college and university president in the United States, including the President of Northwestern. In that letter, the heads of the Civil Rights Division and the Office of Civil Rights underlined the critical nature of the matters raised here:

> Technology is the hallmark of the future, and technological competency is essential to preparing all students for future success. Emerging technologies are

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[7] Campus Computing Project information, *available at* http://www.campuscomputing.net/summary/2010-campus-computing-survey.

[8] All ADA regulations that are cited are those current through March 14, 2011. A revised set of regulations will go into effect on March 15, 2011. There will be no major differences in the new set of regulations for the cited sections.

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an educational resource that enhances learning for everyone, and perhaps especially for students with disabilities. Technological innovations have opened a virtual world of commerce, information, and education to many individuals with disabilities for whom access to the physical world remains challenging. Ensuring equal access to emerging technology in university and college classrooms is a means to the goal of full integration and equal educational opportunity for this nation's students with disabilities.[9]

Remedies Sought

The NFB is filing this complaint with the hope that Northwestern will take prompt action to halt further adoption of Google Apps and either demand that Google update its Apps for Education so that they are accessible, or switch to a different system that ensures accessibility for all students.

It is the request of the NFB that the Department of Justice investigate this complaint, require Northwestern to cease using Google Apps so long as Google Apps are inaccessible, and require Northwestern to implement a system that uses accessible software. Furthermore, we request that Northwestern implement a procurement system that factors accessibility of products into its evaluation. Its current procurement system makes no mention of accessibility in its evaluation of products.[10]

Please feel free to contact us with any questions or concerns.

Very truly yours,

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Attachment

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[9] The letter is posted on both Departments' websites and is *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html.

[10] See Northwestern University Procurement Policies, *available at* http://www.northwestern.edu/uservices/purchasing/docs/PurchasingPoliciesProcedures.pdf.

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cc: Tom Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division
       Sam Bagenstos, Principal Deputy Assistant Attorney General,
                       U.S. Department of Justice, Civil Rights Division
       Thomas G. Cline, General Counsel, Northwestern University