

March 15, 2011

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

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

Re: *New York University's Adoption of Google Apps for Education 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 New York University ("NYU") 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.

NYU 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 November 1, 2010, NYU and Google announced that NYU had decided to move to Google Apps for Education to provide cloud-based email and collaboration tools to its university community. NYU reported that one of the recommendations of an IT Task Force that it convened was to move to cloud computing. It indicates on its Information Technology Services website that after evaluating two vendor's products, it "signed a contract with Google to move NYU's email and calendaring to Google Apps for Education."<sup>1</sup> An NYU newspaper reported that NYU hopes to have moved all of its email over to Google Apps by July 2012.<sup>2</sup>

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<sup>1</sup> For language see FAQ's here: <http://www.nyu.edu/its/google/>

<sup>2</sup> *NYU email to switch to Gmail system by July 2012*, Washington Square News, November 2, 2010; available at <http://nyunews.com/news/2010/11/01/02gmail/>.

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The Agreement signed between NYU and Google allows NYU's students, faculty and staff to use Google Apps in their classrooms and departments. On its frequently asked questions page regarding Google Apps, NYU gives a preliminary timeline for implementation of Google Apps. It notes that between May and September 2011, NYU will "[r]ollout [Google Apps] to NYU students, faculty, administrators, staff, and post-2001 alumni."<sup>3</sup> Some NYU schools have already begun implementing Google Apps. For instance, the Stern School of Business lists Google Docs and Google Sites as tools to help users (i.e., students and faculty) securely share and collaborate in real time from any web-enabled device, anywhere. The NYU School of Medicine is already using a Google Apps Calendar for creating and coordinating the academic calendar.<sup>4</sup> This calendar is inaccessible to students and faculty with visual impairments who use screen readers.

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 NYU's domain. For example, all email accounts have the NYU name (@nyu.edu), not a Google or Gmail domain (@gmail.com).<sup>5</sup>

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.

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<sup>3</sup> See NYU's FAQs about Google Apps for Education, *available at* <http://www.nyu.edu/its/google/#apps>

<sup>4</sup> See the NYU School of Medicine website, *available at* <http://dei.med.nyu.edu/help/facultycalendaring>.

<sup>5</sup> See list of applications and explanations, *available at* <https://sites.google.com/a/googleapps.com/edu-training-center/Training-Home/module-1/chapter-1>

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(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>. As must be apparent, none of the applications is set up to work properly with assistive technology used by the blind.<sup>6</sup> Therefore, blind NYU faculty and students are denied the benefits of the technology that NYU has adopted.

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.

*The NFB Supports Technology Advances That Are Accessible to All 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.”<sup>7</sup> 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, NYU 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 NYU to exclude blind students and faculty and foment 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

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<sup>6</sup> Gmail has a “more accessible” (HTML) view option, however the “accessible” option is vastly inferior and lacks key functionality, including spell check, rich formatting, Google Chat, and ability to manage filters and contacts.

<http://mail.google.com/support/bin/answer.py?hl=en&answer=146375>

<sup>7</sup> Department of Education, National Education Technology Plan, 2010, at 21; available at <http://www.ed.gov/technology/netp-2010>.

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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 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.

NYU 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, NYU 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.<sup>8</sup> Of the campuses that outsource email, more than half use Google Apps.

In the case of NYU, the exclusion of print-disabled faculty and students appears to have been the result of ignoring its obligations altogether. NYU reached the decision to contract with Google based on its IT Task Force's Final Recommendations, issued March 26, 2009. Nowhere in any of the report's extensive discussion of pros and cons is the University's legal requirement to implement accessible technology discussed at all. Accessibility appears to have played no role whatsoever. By contrast, George Mason University recently addressed this same question and went through a similar process, but with the distinct difference that it assessed the accessibility of each of the choices. As a result, that institution did not adopt Google Apps.

#### *Legal Obligations of NYU*

NYU 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. NYU 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)<sup>9</sup>. Therefore, NYU 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.

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<sup>8</sup> Campus Computing Project information, *available at* <http://www.campuscomputing.net/summary/2010-campus-computing-survey>.

<sup>9</sup> All ADA regulations that are cited are those current through March 14, 2011. A revised set of

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Under Title III of the ADA, students with visual impairments may not be discriminated against in the full and equal enjoyment of all 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). NYU 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 NYU. 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 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.<sup>10</sup>

#### *Remedies Sought*

The NFB is filing this complaint now with the hope that NYU will reconsider its rollout and comply with federal law by demanding that Google Apps be made accessible prior to its adoption.

It is the request of the NFB that the Department of Justice investigate this complaint, require NYU to cease using Google Apps so long as Google Apps are inaccessible, and require NYU if it implements a system, to use accessible software. Furthermore, we request that NYU implement a procurement system that factors accessibility of products into its evaluation.

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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.

<sup>10</sup> The letter is posted on both Departments' websites and is *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>.

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

Very truly yours,



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