



Are religious schools “places
of public accommodation”
and therefore not allowed to
discriminate against protected
classes?

The Vermont Public Accommodations Act (9 V.S.A. Chapter 139)

- The Vermont Public Accommodation Act (VPAA) prohibits discrimination on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity (collectively, “protected classes”) in places of public accommodation.
- A place of public accommodation means “any school, restaurant, store, establishment, or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public.” 9 V.S.A. § 4501(1) (emphasis added).
- Therefore, a religious school is prohibited from discriminating on the basis of protected classes if its services are offered to the general public.

The Vermont Public Accommodations Act

- There is no Vermont case law directly on point relating to religious schools.
- Legislative intent for the VPAA states that the VPAA is intended to “implement and be construed so as to be consistent with the Americans with Disabilities Act...with respect to persons with disabilities.” The ADA specifically excludes religious organizations from its application. Therefore, the ADA case law is not particularly relevant to interpreting the VPAA in this context.

The Vermont Public Accommodations Act

- In *Human Rights Com'n v. Benevolent and Protective Order of Elks of U.S.*, 2003 VT 104, the Vermont Supreme Court found that membership in a private club like the Elks could be covered by the VPAA if it is essentially open to the public.
 - The Court noted that this would require a case-by-case, fact-based analysis of the selectivity of the organization.
 - The Court also noted it is not enough for an organization to appear selective on paper. There needs to be an analysis of both the selection criteria and its true limits (or lack thereof) on admission.
- Therefore, the determination of whether a religious school is open to the general public and subject to the VPAA is a fact-specific analysis.