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February 9, 2017

Stephan Morse, Chair
State Board of Education
219 North Main Street, Suite 402
Barre, VT 05641

Re: Public Accommodations and Independent Schools

Dear Mr. Morse:

Thank you for your request for a legal opinion on the applicability of Vermont's Public Accommodations Act to independent schools defined in Title 16 that receive public funding. It is our opinion that the Act applies to approved independent schools, as set forth below.

An independent school is "a school other than a public school, which provides a program of elementary or secondary education, or both." 16 V.S.A. § 11(8). To receive public funds, an independent school must be "approved" by the State Board of Education. *See* 16 V.S.A. § 166(a) (authorizing the operation of approved or recognized independent elementary and secondary schools); 16 V.S.A. § 166(b) (establishing requirements for approval of independent schools); 16 V.S.A. 828 (authorizing payment of public tuition funds to "an approved independent school"). Thus, the question is whether Vermont's Public Accommodations Act, 9 V.S.A. chapter 139 applies to approved independent schools.

Vermont's Public Accommodations Act (the Act or VPAA) applies to "places of public accommodation." 9 V.S.A. § 4500(a). The Act defines "place of public accommodation" as "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). To determine whether an approved independent school is covered by the VPAA, we must determine whether it is a "place of public accommodation." As discussed below, several factors support the conclusion that an approved independent school is a place of public accommodation covered by the VPAA.

First, private schools are public accommodations under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (the ADA). The VPAA provides that it is “intended to implement and to be construed so as to be consistent with [the ADA].” 9 V.S.A. § 4500(a); *see also, Dep’t of Corrections v. Human Rights Comm’n*, 2006 VT 134, ¶ 25 (holding that the VPAA should be read to incorporate Title II of the ADA, which applies to all governmental entities, including state prisons). Thus, it is appropriate to look to the federal ADA when construing provisions of Vermont’s Public Accommodations Act. The ADA expressly defines “public accommodation” to include private schools. *See* 42 U.S.C. § 12181(7)(J); *but see* 42 U.S.C. § 12187 (exempting “religious organizations and entities controlled by religious organizations, including places of worship” from coverage under the APA). Approved independent schools that are not controlled by religious organizations are considered public accommodations under the ADA. This weighs heavily in favor of VPAA coverage of these independent schools.

Another factor favoring VPAA coverage of approved independent schools is the Act’s remedial purpose. The Vermont Supreme Court has stated that “[a]s a remedial statute, the [VPAA] must be liberally construed in order to suppress the evil and advance the remedy intended by the Legislature.” *Washington v. Pierce*, 2005 VT 125, ¶ 13 (quoting *Human Rights Comm’n v. Benevolent & Protective Order of Elks*, 2003 VT 104, ¶ 13). In *Washington*, the Court held that a student-student harassment claim was viable under the VPAA, given the Act’s remedial purpose and legislative history, but affirmed dismissal of the claim against a public high school principal because the plaintiff had failed to exhaust administrative remedies. The Court also noted that the VPAA defines “place of public accommodation” to include “any school,” *Washington*, 2005 VT 125, ¶ 20, and stated that, unlike Title IX, which applies requirements only to schools that choose to receive funding, “the VPAA requires all Vermont schools to comply.” *Id.*, ¶ 29. Although the Court has not directly addressed whether an approved independent school constitutes a “public accommodation” under the VPAA, it has taken a broad view of the Act’s applicability. *See also, Bhatt v. Univ. of Vermont*, 2008 VT 76, ¶ 13 (holding that disabled medical student expelled for repeated falsification of academic and professional records had failed to state a claim under the VPAA because expulsion was not related to his disability, and noting that the University of Vermont is a place of public accommodation under the VPAA).

In addition, the Vermont Supreme Court has held that the VPAA, like Title II of the ADA, applies to governmental entities. *Dep’t of Corrections v. Human Rights Comm’n*, 2006 VT 134, ¶ 25 (holding that the Legislature intended the VPAA to apply to all governmental entities, including state prisons). Although independent schools are private, some function as public schools. A school district without a public high school can designate an approved independent school as the public school for that district. 16 V.S.A. § 827. Each of these independent schools is public by designation, and serves a governmental purpose. As such, each of these designated public schools constitutes a “public accommodation” under the VPAA.

Accordingly, it is the opinion of this Office that the VPAA likely applies to approved independent schools as set forth herein.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. E. Griffin', with a stylized flourish at the end.

William E. Griffin
Chief Assistant Attorney General