

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

BENJAMIN DOE, A Minor by His Parents	:	CIVIL ACTION
JOSEPH AND JULIE DOE, and	:	
JOSEPH AND JULIE DOE, Individually	:	NO. 04-4647
and On Their Own Behalf	:	
	:	
	:	
v.	:	
	:	
	:	
ABINGTON FRIENDS SCHOOL et al.	:	

MEMORANDUM AND ORDER

Juan R. Sanchez, J.

May 15, 2007

The Does ask this Court to permit wide-ranging discovery into six areas relevant to the question of whether Abington Friends School is a religious institution, exempt from the ADA. Because a court walks on dangerous ground when it allows inquiry into the content of religious belief,¹ discovery will progress from the least intrusive question of ownership through the question of control, finally considering the religious affiliations and beliefs of individuals.

The Does believe Abington Friends School has failed to accommodate their son's disabilities and brought suit against the school under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 *et seq.* In February 2005, I granted summary judgment in favor of Abington Friends School based on the affidavit of the school's headmaster, Thomas Price, the school is controlled by a religious institution, the Abington Monthly Meeting of the Religious Society of Friends. The Does appealed to the Third Circuit which remanded the case for "some measure of discovery." *Benjamin*

¹*United States v. Seeger*, 380 U.S. 163, 184-85 (1965) (holding draft boards could ask whether religious beliefs are "truly held," but could not question the validity or the truth of a belief in granting or denying conscientious objector status).

Doe, et al. v. Abington Friends School, et al., 480 F.3d 252, 258 (3d Cir. 2007). In ordering the remand, the Third Circuit stated, “[i]t may be that, after whatever discovery the District Court chooses to allow on remand, Abington does qualify for the ADA’s religious exemption.” *Id.* at 259.

The ADA does not apply to “religious organizations or entities controlled by religious organizations.” 42 U.S.C. § 12187. In the accompanying ADA Regulations, “religious entity” is defined as a religious organization or entity controlled by a religious organization, including a place of worship. I set out in full the relevant part of Appendix B to the Regulations, which contains the “the text of the preamble to the final regulation on nondiscrimination on the basis of disability,” because it provides parameters to guide discovery in this case, ownership, control or independence.

The Appendix states:

The ADA’s exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage. Thus, if a church itself operates a day care center, a nursing home, a private school, or a diocesan school system, the operations of the center, home, school, or schools would not be subject to the requirements of the ADA or this part. The religious entity would not lose its exemption merely because the services provided were open to the general public. The test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation’s services.

Religious entities that are controlled by religious organizations are also exempt from the ADA’s requirements. Many religious organizations in the United States use lay boards and other secular or corporate mechanisms to operate schools and an array of social services. The use of a lay board or other mechanism does not itself remove the ADA’s religious exemption. Thus, a parochial school, having religious doctrine in its curriculum and sponsored by a religious order, could be exempt either as a religious organization or as an entity controlled by a religious organization, even if it has a lay board. The test remains a factual one--whether the church or other religious organization controls the operations of the school or of the service or whether the school or service is itself a religious organization.

Although a religious organization or a religious entity that is controlled by a religious organization has no obligations under the rule, a public accommodation that is not itself a religious organization, but that operates a place of public accommodation in leased space on the property of a religious entity, which is not a place of worship, is subject to the rule's requirements if it is not under control of a religious organization. When a church rents meeting space, which is not a place of worship, to a local community group or to a private, independent day care center, the ADA applies to the activities of the local community group and day care center if a lease exists and consideration is paid.

28 C.F.R. Pt. 36, App. B (2007).

The Does identified six discovery areas which they believe are relevant: ownership; control; religious curriculum and activities; religious affiliation of the student body, faculty, staff and School Committee; any requirement members of the school community follow “Quaker”² religious beliefs; and, the degree of control the School Committee exercises. *Doe*, 480 F.3d at 255. The Third Circuit stated the six areas are “relevant to deciding whether Abington is a religious organization or controlled by one.” *Id.* at 258. The Third Circuit did not direct discovery be allowed in all six areas or discovery be allowed in all six areas simultaneously.

To comply with the Third Circuit's remand and to control discovery to avoid unnecessarily³ inquiring into religious belief, I intend to allow discovery to proceed in three stages – ownership, control, or independence – roughly mirroring the three relevant paragraphs of the regulations. At

²“Quaker” is a nickname, often pejorative, applied to the Religious Society of Friends. *Hendrickson v. Shotwell*, 1 N.J. Eq. 577, 1832 WL 2272, *57-59 (N.J. Ch. 1832).

³*Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 887 (1990) (holding “courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim”), *superseded in part by statute*, Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488, (codified at 42 U.S.C. § 2000bb (Nov. 16, 1993)), *as recognized in Alabama & Coushatta v. Trustees*, 20 F.3d 469, 469 (5th Cir. 1994) (holding the Act restored “the compelling interest test for free exercise cases to the status it held before the Supreme Court decided *Smith*.”).

the close of discovery, each of the six areas identified by the Does will have been considered if no earlier step is dispositive. This approach complies with the Third Circuit's opinion which identified as controlling the school's status in relation to a religious organization. *Id.* At the close of each step of discovery, I will hear evidence and argument on the question of whether Abington Friends School has been proven to be a religious entity or not. After the hearing I will either entertain a motion for summary judgment or direct that discovery continue.

The first step will determine whether Abington Friends School is a religious organization through document discovery and deposition of the school's headmaster and spokesperson, Thomas Price. If the first stage of discovery does not answer the question of the applicability of the ADA, then discovery will move to the areas encompassed by the second paragraph of Appendix B, the control of Abington Friends School by the Religious Society of Friends. To avoid delving into individuals' religious beliefs, depositions will be by leave of Court. I will supervise the persons to be deposed and the subject matters inquired into. If the second stage is not dispositive, then this Court will allow discovery into whether Abington Friends School is an independent lessor of space from the Religious Society of Friends, bringing it under the third paragraph of Appendix B and under the ADA.

By breaking discovery into three stages, I intend to allow the Does as much discovery as they need to make their case, but no more. If the Does prove Abington Friends School is independent of the Religious Society of Friends and subject to the ADA, then, and only then, will discovery proceed as to whether Benjamin Doe is disabled within the meaning of the ADA, 42 U.S.C. § 12102(2), and whether the school has failed to accommodate his disability.

Accordingly, I enter the following:

ORDER

And now this 15th day of May, 2007, it is hereby ORDERED discovery limited to documents related to ownership of Defendant School by the Religious Society of Friends and a deposition of affiant headmaster Thomas Price may be conducted within the next 30 days. It is further ORDERED a hearing and argument on the question of ownership will be held Thursday, June 21, 2007 at 1:30 p.m. in Courtroom 5D. After that hearing, the Court will either entertain a motion for summary judgment or order discovery to continue on the question of control of Defendant School by the Religious Society of Friends. Should discovery continue, the persons to be deposed and the subjects to be inquired into will be by leave of Court. If Abington Friends is determined to be subject to the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 *et seq.*, then discovery will proceed as to whether Benjamin Doe is disabled within the meaning of the ADA, 42 U.S.C. § 12102(2), and whether the school has failed to accommodate his disability.

BY THE COURT:

Juan R. Sánchez

J.