

## Independent and Religious Schools: Reminder of IRS Requirements on Publicizing Racial Nondiscriminatory Policy

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The IRS issued Revenue Ruling 71-1447 in 1971, which stated that racial discrimination in education is contrary to public policy. Therefore, a school not having a racial nondiscriminatory policy cannot be classified as charitable under 501(c)(3) and other relevant statutes. Accordingly, any independent or religious school that does not have such a policy does not qualify as an organization exempt from income tax.

Subsequently in 1975, the IRS issued the well-known Revenue Procedure 75-50, which stated that a school must show **affirmatively** that it has adopted a racial nondiscriminatory policy that is made known to the general public, **and** that it has operated in a bona fide manner in accordance with the policy.

### Guidelines

Specific guidelines were set forth for determining whether private schools have racial nondiscriminatory policies toward students. The ruling provided **two methods** to satisfy the requirement to make the policy known to all segments of the general community served by the school:

- publish a notice of its racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community, **or**
- use broadcast media to publicize its racially nondiscriminatory policy.

A racial nondiscriminatory policy toward students is a policy which clearly states that the school admits students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at the school, and that the school does not discriminate on the basis of race in the administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other school-administered programs.

### Third Option: School's Home Page

In recognition of the digital age we live in, the IRS issued Revenue Procedure 2019-22 in May 2019, which provided a **third option** for a school to display a notice of its racially nondiscriminatory policy. The school may display a notice of its racially nondiscriminatory policy on its primary publicly-accessible Internet **homepage** at all times during its taxable year.

A publicly-accessible homepage is one that does not require a visitor to input information (such as a username, password, or email address) to access the homepage, and is reasonably expected to be noticed by visitors to the homepage. Factors considered include size, color, graphic presentation in relation to other parts of the homepage, and whether the notice is visible without a person having to do anything other than scrolling down the homepage. A link on the homepage to another page where the notice appears or selecting the notice from a dropdown menu is **not acceptable**.

An example of meeting this requirement is a school that has at the bottom of every landing page within its website:

*The (school name) does not discriminate on the basis of race, color, religion, sex, gender, sexual orientation, national origin, ancestry, age, marital status, disability, or any other characteristic protected by law. This policy applies to, but is not limited to, educational policies, admission, financial aid, hiring and employment practices, use of school facilities, athletics, and other school-administered programs.*

## IRS Reporting

Private schools required to file an annual IRS Form 990 to certify that the applicable requirements have been met do so by means of their reporting of Schedule E and their response to question 3 on this schedule.

Private schools **not** required to file a Form 990 (e.g., religious schools or schools under a group exemption) are required to certify annually that the school has a racially nondiscriminatory policy publicized by means of one of the three methods set forth above. This is accomplished by an annual filing of IRS Form 5578, *Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax*. This is a short form, signed by an authorized officer of the school, with a certification as follows:

*Under penalties of perjury, I hereby certify that I am authorized to take official action on behalf of the above school(s) and that to the best of my knowledge and belief the school(s) has (have) satisfied the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, for the period covered by this certification.*

Some schools that are not 990 filers may not be aware of the requirement to file annually IRS Form 5578 by the 15<sup>th</sup> day of the fifth month following the end of their tax year. Upon discovering this requirement, they will likely inquire about the consequences of failure to file this Form. Although there is no explicit penalty for failure to file, a school that has not been filing should begin filing right away. The Form is also open to public inspection. Failure to certify annual compliance, either by means of IRS Form 990 Schedule E or IRS Form 5578, and failure to comply with the associated publicizing requirements, may be treated as evidence of racial discrimination potentially leading to loss of tax-exempt status.

The annual certification attests not only to meeting the publicity requirement by one of the three methods described in Rev. Proc. 75-50 Section 4.03, but also to meeting the racial nondiscrimination requirements of Sections 4.04 and 4.05 as well. Section 4.04 requires that a tax-exempt school be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner, and Section 4.05 requires that all scholarships and other comparable benefits are offered on a racially nondiscriminatory basis. Therefore, a school should ensure it is maintaining adequate records/substantiation prior to executing this relatively simple form.

## Contact Us

If you have questions regarding this requirement and how it may apply to your institution, please contact a member of your tax-exempt client service team at PKF O'Connor Davies, LLP or any of the following:

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