

SECTION 1. PURPOSE

.01 This Revenue Procedure sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students.

SEC. 2. BACKGROUND.

.01 A school that does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from Federal income tax. Rev. Rul. 71-447, 1971-2 C.B. 230.

.02 A school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy it has operated in a bona fide manner in accordance therewith.

.03 Internal Revenue Service experience with private schools has shown a need for more specific guidelines to insure a uniform approach to the determination of whether a private school has a racially nondiscriminatory policy as to students.

.04 This Revenue Procedure does not apply to public schools.

SEC. 3. DEFINITIONS.

.01 Rev. Rul. 71-447 states that a racially nondiscriminatory policy as to students means:

the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

.02 The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. A policy of a school that favors racial minority groups with respect to admissions, facilities and programs, and financial assistance will not constitute discrimination on the basis of race when the purpose and effect is to promote the establishment and maintenance of that school's racially nondiscriminatory policy as to students.

.03 A school that selects students on the basis of membership in a religious

denomination or unit thereof will not be deemed to have a discriminatory policy if membership in the denomination or unit is open to all on a racially nondiscriminatory basis.

.04 For purposes of this revenue procedure, the term 'school' has the same meaning it has in section 170(b)(1)(A)(ii) of the Code.

SEC. 4. GUIDELINES.

.01 Organizational requirements. A school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin.

.02 Statement of Policy. Every school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships. A statement substantially similar to the Notice described in subsection (a) of section 4.03, *infra*, will be acceptable for this purpose. Further, every school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses as a means of informing prospective students of its programs. The following references will be acceptable:

The M school admits students of any race, color, and national or ethnic origin.

.03 Publicity. The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school.

1 The school must use one of the following two methods to satisfy this requirement:

(a) The school may publish a notice of its racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community. This publication must be repeated at least once annually during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. Where more than one community is served by a school, the school may publish its notice in those newspapers that are reasonably likely to be read by all racial segments of the communities that it serves. The notice must appear in a section of the newspaper likely to be read by prospective students and their families and it must occupy at least three column inches. It must be captioned in at least 12 point bold face type as a notice of nondiscriminatory policy as to students, and its text must be printed in at least 8 point type. The following notice will be acceptable:

NOTICE OF NONDISCRIMINATORY POLICY AS TO STUDENTS

The M school admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

(b) The school may use the broadcast media to publicize its racially nondiscriminatory policy if this use makes such nondiscriminatory policy known to all segments of the general community the school serves. If this method is chosen, the school must provide documentation that the means by which this policy was communicated to all segments of the general community was reasonably expected to be effective. In this case, appropriate documentation would include copies of the tapes or script used and records showing that there was an adequate number of announcements, that they were made during hours when the announcements were likely to be communicated to all segments of the general community, that they were of sufficient duration to convey the message clearly, and that they were broadcast on radio or television stations likely to be listened to by substantial numbers of members of all racial segments of the general community. Announcements must be made during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period.

Communication of a racially nondiscriminatory policy as to students by a school to leaders of racial groups as the sole means of publicity generally will not be considered effective to make the policy known to all segments of the community.

2 The requirements of subsection 1 of this section will not apply when one of the following paragraphs applies:

(a) If for the preceding three years the enrollment of a parochial or other church-related school consists of students at least 75 percent of whom are members of the sponsoring religious denomination or unit, the school may make known its racially nondiscriminatory policy in whatever newspapers or circulars the religious denomination or unit utilizes in the communities from which the students are drawn. These newspapers and circulars may be those distributed by a particular religious denomination or unit or by an association that represents a number of religious organizations of the same denomination. If, however, the school advertises in newspapers of general circulation in the community or communities from which its students are drawn and paragraphs (b) and (c) of this subsection are not applicable to it, then it must comply with paragraph (a) of subsection 1 of this section.

(b) If a school customarily draws a substantial percentage of its students nationwide or worldwide or from a large geographic section or sections of the

United States and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, supra. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence either by showing that it currently enrolls students of racial minority groups in meaningful numbers or, when minority students are not enrolled in meaningful numbers, that its promotional activities and recruiting efforts in each geographic area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case.

(c) If a school customarily draws its students from local communities and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, supra. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence by showing that it currently enrolls students of racial minority groups in meaningful numbers. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case. One of the facts and circumstances that the Service will consider is whether the school's promotional activities and recruiting efforts in each area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The Service recognizes that the failure by a school drawing its students from local communities to enroll racial minority group students may not necessarily indicate the absence of a racially nondiscriminatory policy as to students when there are relatively few or no such students in these communities. Actual enrollment is, however, a meaningful indication of a racially nondiscriminatory policy in a community in which a public school or schools became subject to a desegregation order of a federal court or otherwise expressly became obligated to implement a desegregation plan under the terms of any written contract or other commitment to which any Federal agency was a party.

The Service encourages schools to satisfy the publicity requirement by the methods described in subsection 1 of this section, regardless of whether a school considers itself within subsection 2, because it believes these methods to be the most effective to make known a school's racially nondiscriminatory policy. In this regard it is each school's responsibility to determine whether paragraph (a), (b), or (c) of subsection 2 applies to it. On audit, a school must be prepared to demonstrate that the failure to publish its racially nondiscriminatory policy in accordance with subsection 1 of this section was justified by the application to it of paragraph (a), (b), or (c) of subsection 2. Further, a school must be prepared to demonstrate that it has publicly disavowed or repudiated any statements purported to have been made on its behalf (after November 6, 1975) that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal official were aware of

such statements .

.04 Facilities and Programs. A school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner.

.05 Scholarship and loan programs. As a general rule, all scholarship or other comparable benefits procurable for use at any given school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be known throughout the general community being served by the school and should be referred to in the publicity required by this section in order for that school to be considered racially nondiscriminatory as to students. Consistent with section 3.02, supra, scholarships and loans that are made pursuant to financial assistance programs favoring members of one or more racial minority groups that are designed to promote a school's racially nondiscriminatory policy will not adversely affect the school's exempt status. Financial assistance programs favoring members of one or more racial groups that do not significantly derogate from the school's racially nondiscriminatory policy similarly will not adversely affect the school's exempt status.

.06 Certification. An individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, on an Internal Revenue form to be issued, that to best of his knowledge and belief the school has satisfied the applicable requirements of sections 4.01 through 4.05 of this Revenue Procedure.

.07 Faculty and Staff. The existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. Conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

.08 Failure to comply. Failure to comply with the guidelines will ordinarily result in the proposed revocation of the exempt status of a school in accordance with the procedures set forth in Rev. Proc. 72-4, 1972-1 C.B. 706.

SEC. 5. APPLICATIONS FOR TAX EXEMPT STATUS.

.01 Information required to be submitted. Every school filing an application for recognition of a tax exempt status must supply the Service with the following information: current academic year and projected current academic year and projected so far as may be feasible for the subsequent academic year, of--

(a) Student body, and

(b) Faculty and administrative staff.

2 Amount of scholarship and loan funds, if any, awarded to students

enrolled and racial composition of students who have received such awards.

3 A listing of incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.

4 A statement whether any of the organizations described in subsection .01--3 of this section have at the time the application is filed an objective of maintaining segregated public or private school education and, if so, a statement whether any of the individuals described in subsection .01--3 of this section are officers or active members of such organizations at the time the application is filed.

5 Year of organization.

.02 Limitations.

1 For purposes of section 5.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. However, a statement of the method by which the racial composition was determined must be supplied.

2 The information required to be submitted under section 5.01 should not identify individual students or members of the faculty and administrative staff.

SEC. 6. PUBLIC COMPLAINTS OF RACIAL DISCRIMINATION.

The Service is interested in receiving any information that an exempt private school is not operating under a racially nondiscriminatory policy as to students, including any judicial or administrative determinations to this effect. This information may be sent to the local District Director of Internal Revenue or to the Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention E:EO.

SEC. 7. RECORDKEEPING REQUIREMENTS.

.01 Specific records. Except as provided in section 7.03, each exempt private school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, the following records for the use of the Service on proper request:

1 Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year.

2 Records sufficient to document that scholarship and other financial assistance is awarded on a racially nondiscriminatory basis.

3 Copies of all brochures, catalogues, and advertising dealing with student admissions, programs, and scholarships. Schools advertising nationally or in a large geographic segment or segments of the United States need only maintain a record sufficient to indicate when and in what publications their advertisements were placed.

4 Copies of all materials used by or on behalf of the school to solicit contributions.

.02 Limitation.

1 For purposes of section 7.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. For each academic year, however, a record of the method by which racial composition is determined must be maintained. A school may not discontinue maintaining a system of records that reflects racial composition of students, faculty, and administrative staff used on November 6, 1975, unless it substitutes a different system that compiles substantially the same information, without the advance approval of the Internal Revenue Service.

2 The service does not require that a school release personally identifiable records or personal information contained therein except in accordance with the requirements of the 'Family Educational Rights and Privacy Act of 1974,' 20 U.S.C. Sec. 1232g (1974). Similarly, the Service does not require a school to keep records the maintenance of which is prohibited under state or federal law.

.03 Exceptions. The records described in section 7.01 need not be independently maintained for Internal Revenue Service use if

1 Substantially the same information that each of these records would provide has been included in a report or reports filed in accordance with law with an agency or agencies of Federal, state, or local government, and this information is current within one year, and

2 The school maintains copies of these reports from which this information is readily obtainable. Records described in section 7.01 providing information not included in reports filed with an agency or agencies must be maintained by the school for Service use.

.04 Failure to maintain records. Failure to maintain or to produce upon the proper request the required records and information will create a presumption that the

organization has failed to comply with these guidelines.

SEC. 8. MISSISSIPPI SCHOOLS.

The United States District Court for the District of Columbia has ordered specific guidelines and recordkeeping requirements for Mississippi private schools. *Green v. Connally*, 330 F. Supp. 1150, aff'd. sub nom. *Coit. v. Green*, 404 U.S. 997 (1971). To the extent that the requirements of the Court's Order vary from the guidelines and recordkeeping requirements set fourth in this Revenue Procedure, the Court's Order is controlling for Mississippi schools.

SEC. 9. EFFECTIVE DATE.

.01 Section 4.02 is not applicable until February 4, 1976.

.02 To the extent that the publicity requirements set forth in section 4.03, supra, differ from those set forth in Rev. Proc. 72-54, 1972-2 C.B. 834, they shall not be effective until a school's first period of solicitation for students or, in the absence of a solicitation program, during the school's first registration period beginning after November 6, 1975.

.03 The recordkeeping requirements set forth in section 7, supra, shall not be effective until January 1, 1976.

SEC. 10. EFFECTIVE ON OTHER DOCUMENTS.

Rev. Proc. 72-54 is superseded.