



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JUL 31 2003

[REDACTED]

Contact Person:

[REDACTED]

ID Number:

[REDACTED]

Telephone:

[REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED] as a nonprofit corporation under the laws of the state of [REDACTED]. Your purposes, as stated in your articles of incorporation, are to promote and foster education at all levels and to operate or manage and direct the operation of schools. Your activities consist of owning, operating, and maintaining a school for grades K-4 through 12. In response to Questions 9a and b of Schedule B of your Application for Recognition of Exemption, you stated that you are located in the school district of the [REDACTED], [REDACTED], and you were formed or substantially expanded at the time of public school desegregation of this school district.

In response to Question 4 of Schedule B of your exemption application, you indicated that a statement of your racially nondiscriminatory policy as to students is included in your bylaws, charter, or other governing instrument or resolution of your governing body. However, no such statement is contained in any of the governing documents you submitted with your exemption application. A statement of your nondiscriminatory policy appears in your student handbook for the [REDACTED], [REDACTED], and [REDACTED] school years; such a statement also appears in your membership and student application/registration. You stated that you have made your racially nondiscriminatory policies known to the community through personal contacts by the Headmaster and board members, and in published advertisements. You have enclosed a copy of your notice of Open House/K4 Registration published in [REDACTED] on [REDACTED]. At the bottom of this notice is a statement of your nondiscriminatory policy in small print, the only instance of such print in the advertisement. In a letter dated [REDACTED] you stated that future notices will comply with the Service's requirements and include the nondiscriminatory policy in 12-point bold face type. However, no such revised notices have been submitted at this time.

TE:EO:AA:TY TE:EO:AA:G

[REDACTED]

[REDACTED]

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██████████

You stated that during the ██████████ school year, you enrolled ██████ students, and during the ██████████ school year you enrolled ██████ students, none of whom were African-Americans. You stated that you enrolled one black student from ██████████ until ██████████, when the student's family relocated. All ██████ members of your faculty and administrative staff employed during the last two years are Caucasian, and your one African-American employee worked in facility maintenance from ██████████ through ██████████ until he resigned by choice. With regard to financial assistance, you provide scholarships based on both academic and athletic ability coupled with financial need. During the ██████████ school year, a total of \$████████ was awarded to ██████ students.

In your ██████████ letter you stated that the Board is considering a mail-out to African-American ministers in the community. However, no further information has been submitted with regard to this possibility. You also stated that "... ██████████ does not have a formal outreach program to reach anyone."

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Revenue Ruling 71-447, 1971-2 C.B. 230, provides that a private school which does not have a racially nondiscriminatory policy as to students does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. It defines a racially nondiscriminatory policy as meaning "that 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."

Revenue Procedure 75-50, 1975-2 C.B. 587, 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 Code or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively that it has adopted a racially nondiscriminatory policy regarding students that this policy is made known to the general public and that ever since adoption of the policy the school has operated in accordance with it. Section 4.01 requires a school to 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. Section 4.03 provides that the school must make its racially nondiscriminatory policy known to all segments of the community served by the school by publishing at least once a year a notice of its racially nondiscriminatory policy in a newspaper of general circulation in the community. Such notice

must be captioned in at least 12-point bold face type as a notice of nondiscriminatory policy. Section 4.032(c) provides, in part, that whether a particular school follows a racially nondiscriminatory policy will be determined on the basis of the facts and circumstances of each case.

In Green v. Connally, 330 F. Supp. 1150 (D. D.C. 1971), aff'd sub nom., Coit v. Green, 404 U.S. 997 (1971), and in the revised injunction orders issued on May 5 and June 2, 1980, the Internal Revenue Service is prohibited from:

according ... and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them, which:

(1) have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extracurricular programs.

(2) The existence of conditions set forth in paragraph (1) herein raises an inference of present discrimination against blacks. Such inference may be overcome by evidence which clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by such school's policies and practices. Such evidence might include, but is not limited to, proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

In Prince Edward School Foundation v. United States, 478 F. Supp. 107 (D. D.C. 1979), aff'd D.C. Cir. June 30, 1980, cert. denied, 450 U.S. 944 (1981), the court held that private schools administering racially discriminatory admissions policies are excluded from tax-exempt status under section 501(c)(3) of the Code. The court further held that the foundation had failed to meet its burden of establishing its entitlement to exemption under section 501(c)(3) because the foundation's record was completely devoid of evidence that it was administering a nondiscriminatory admissions policy. The court also stated that the inference that the plaintiff administered a racially discriminatory policy may be drawn from the circumstances surrounding the school's establishment. Similar inferences as to the existence of a racially discriminatory policy based on facts surrounding a school's establishment and lack of minority enrollment have been drawn by other courts. See e.g. Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974) on remand from the Supreme Court, 413 U.S. 455 (1973) and Brumfield v. Dodd, 425 F. Supp. 528 (E.D. La. 1976).

In Norwood v. Harrison and in Brumfield v. Dodd, the courts analyzed whether private schools were racially discriminatory. The courts held that a prima facie case of racial

discrimination arises from proof (a) that the school's existence began close upon the heels of the massive desegregation of public schools within its locale, and (b) that no blacks are or have been in attendance as students and none is or has ever been employed as a teacher or administrator at the private school. The actual enrollment of one African-American student was deemed not determinative in the case of West End Academy, which was addressed by the court in Brumfield v. Dodd, supra. The enrollment of one African-American student is not enough to rebut the inference of discrimination.

In Bob Jones University v. United States, 461 U.S. 574 (1983), the Supreme Court found that petitioner, a nonprofit private school that prescribes and enforces racially discriminatory admissions standards on the basis of religious doctrine, did not qualify as a tax-exempt organization under section 501(c)(3) of the Code. The court held that racially discriminatory private schools violate a fundamental public policy and cannot be viewed as conferring a public benefit within the meaning of common law standards of charity and congressional intent underlying section 501(c)(3). It should be noted that when the Supreme Court announced its decision, Bob Jones University had for a number of years beginning in the 1970's permitted African-American students to enroll, albeit with various and shifting racial restrictions.

In Calhoun Academy v. Commissioner, 94 T.C. 284 (1990), the Tax Court held that a private school failed to show that it operated in good faith in accordance with a nondiscriminatory policy toward black students. The school was formed at the time of desegregation of public schools, and never enrolled a black student or employed a black teacher. The school and its students participated in some educational and vocational programs and other school-sponsored activities that directly involved blacks. The court noted:

In today's world, interaction with persons of another race in interscholastic and community activities is unavoidable by all but the most reclusive or isolated groups. Petitioner's burden is not met by showing that it interacts with outsiders. The relevant criteria deal with restrictions on those who may become insiders, i.e. students at the school.

The court concluded that the school did not qualify for exemption under section 501(c)(3) of the Code.

All facts and circumstances must be considered in determining whether a private school has shown that it has overcome an inference of racial discrimination. Relevant factors include the following: actual enrollment of African-American students; active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students; adoption of a policy of racial nondiscrimination; effective communication of such policy to members of the African-American community, including publication of the policy; meaningful contact with members of the African-American community; and, public disavowal or repudiation of previous statements that are inconsistent with a policy of nondiscrimination.

The information submitted indicates that you were formed at the time of desegregation of the public school district in which you are located, and operated for a lengthy period of time without enrolling any African-American students. Furthermore, you operated for a substantial period of time without the adoption or publication of a racially nondiscriminatory policy. The

foregoing information raises an inference of present discrimination against blacks as set forth in the above cited court decisions. In order to be exempt from federal income tax, a private school subject to an inference of discrimination must provide clear and convincing evidence that it now operates in a good faith racially nondiscriminatory manner. Furthermore, such a school must provide persuasive evidence that the absence of black enrollment is not attributable to the continuation of the school's past policies. Mere adoption of a nondiscriminatory policy and publication of such a policy is insufficient for such a school to demonstrate that it is operating in a bona fide nondiscriminatory manner in accordance with Rev. Proc. 75-50, supra.

As noted above, a statement of nondiscrimination appears on the back cover of your student handbook, and on your membership and student application/registration. There is, however, no indication that your racially nondiscriminatory policy was ever formally adopted by your Board of Directors or incorporated in your governing documents, as required by section 4.01 of Rev. Proc. 75-50. Your published notice of nondiscrimination failed to satisfy section 4.03 of the Rev. Proc. because it was captioned in small type, rather than the requisite twelve-point type. The information submitted to date contains no evidence of actions such as active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students; effective communication of a nondiscriminatory policy to members of the African-American community; or meaningful contact with members of the African-American community.

You indicated that you have to date enrolled one African-American student for the [redacted] and [redacted] school years. While the enrollment of African-American students is generally the most convincing evidence of the existence of a nondiscriminatory policy as to students, it is not determinative, as all the facts and circumstances concerning a school's operations must be considered. We note that there is no evidence that the enrollment of this student was the result of active and vigorous recruitment, nor is there evidence that this student was a recipient of financial assistance.

All of the pertinent facts and circumstances lead us to conclude that you have failed to demonstrate that you have taken sufficient steps to overcome the inference of discrimination set forth in the above mentioned court cases. Thus, you have failed to establish that you operate in a bona fide racially nondiscriminatory manner.

Accordingly, you are not operated exclusively for exempt purposes under section 501(c)(3) of the Code, and thus you do not qualify for recognition of exemption as an organization described in section 501(c)(3). You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices

Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax-Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE [REDACTED]
[REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]
[REDACTED]

Manager, Exempt Organizations
Technical Group 4