[redacted]

OP:E:EO:T:4

JAN 25 1999

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [redacted], under the laws of [redacted]. Your purpose, as stated in your articles of incorporation, is to "organize, own and operate primary schools, secondary schools, and other educational institutions, for the education of youth that then may be taught complete and adequate proficiency in all of the educational arts."

Our records show that you were recognized as exempt under section 501(c)(3) of the Code in a letter dated May 6, 1965. In a letter dated [redacted], your tax-exempt status under section 501(c)(3) was revoked because you refused to adopt a racially nondiscriminatory admissions policy and publish a notice of such policy in the community you serve, as required in response to a court order issued in Green v. Connolly, 330 F. Supp. 1150 (D. D.C. 1971), aff'd sub nom., Coit v. Green, 404 U.S. 997 (1971).

On [redacted], you filed a new Form 1023 application for recognition of exemption under section 501(c)(3) of the Code. In your current exemption application, you stated that you filed Forms 1120, U.S. Corporation Income Tax Return, [redacted]. On [redacted] Schedule B of your exemption application, in response to question 9a, you stated that your public school district is [redacted],

[redacted]

which is located in [redacted]. In response to question 9b, you stated that you were formed or substantially expanded at the time of public school desegregation in the previously mentioned public school district or county. See Cowan v. Bolivar County Board of Education, Civ. Action No. 6531 (N.D. Miss. 1965).

As part of your exemption application you provided information concerning the racial composition of your student body, faculty and staff for the [redacted] school year. You stated that out of a total enrollment of [redacted] students, [redacted]. There is no evidence that you enrolled any black students prior to the [redacted] school year. You further indicated that your faculty and administrative staff [redacted], with [redacted] employed in those positions. No evidence has been presented to show that you ever employed a [redacted].

Your student handbook for [redacted] school year includes a nondiscriminatory policy statement. There is no evidence that your handbook contained such a statement prior to the [redacted] school year. Moreover, you have stated that your original charter did not include a nondiscriminatory statement, and that such a statement was not added to your bylaws until [redacted]. Information in your application indicates that you first published your nondiscriminatory policy in a newspaper during the [redacted]. There is no evidence of publication prior to [redacted] school year.

Since your exemption was revoked, you have not implemented any program specifically directed to the recruitment of black students, teachers or administrators. Your sole black student was not enrolled as a result of outreach efforts on your part. You have stated that the student's mother "contacted the school to get information about our school, made a visit to the school to visit with the Headmaster and later enrolled the child in our school." Moreover, you have not instituted any scholarship, loan or tuition assistance programs that would assist in attracting potential black students. Finally, your outreach efforts have been limited to inviting black athletes, who give Christian testimony about their lives, and inmates from the state penitentiary to address student assembly programs on the consequences of using drugs and alcohol. You have also stated

[redacted]

that several of your board members serve in various civic and community organizations that include black members.

On [redacted], [redacted] of this office held a telephone conference with one of your board members, [redacted], during which we discussed affirmative steps you could take to demonstrate that the school is operating in a bona fide racially nondiscriminatory manner. In particular, we indicated that you might consider instituting a plan of action that would establish an active recruitment program for black students; attempt to recruit black teachers; establish meaningful communication with black community leaders and organizations; establish a financial assistance program which would assist black students with tuition payments; and, include at least one black person on a scholarship selection committee.

During the conference, [redacted] indicated that he would be receptive to instituting a plan of action, however he would need the approval of the board of directors. He requested that he be given time to form a committee to consider implementation of a plan of action. We provided [redacted] with written examples of provisions adopted by other schools in similar circumstances.

[redacted], in a letter [redacted], explained the response of your board of directors to our recommendations. Your board has indicated that it is opposed to any kind of financial assistance or scholarship program because funds would not be available to all students and families in need of financial help. The board further stated that it does not feel it is in the best interest of the school at this time to implement any type of scholarship fund. The board's response did not address any of the other recommendations made in our telephone conference or written communications.

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.

Rev. Rul. 71-447, 1971-2 C.B. 230, holds 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 the school and that the school does not discriminate on the basis of race in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school administered programs."

Rev. Proc. 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 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. Section 4.01 provides that 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. Section 4.03 provides that a school must make its racially nondiscriminatory policy known to all segments of the general community served by the school, and sets forth several acceptable methods of doing so.

In Green v. Connally, supra, 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 extra-curricular 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 continued, 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 concerning the school's nondiscrimination policies, 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 Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974), and in Brumfield v. Dodd, 425 F. Supp. 528 (E.D. La. 1976), the courts analyzed whether private schools were 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.

In Bob Jones University v. U.S., 461 U.S. 574 (1983), the court found that petitioner, a nonprofit private school that prescribed and enforced 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

[redacted]

common law standards of charity and Congressional intent underlying section 501(c)(3).

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 that,

> *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 of the available information clearly indicates that you were formed at the time of desegregation of the public school district in which you are located and operated for more than three decades without enrolling any black students or employing any black teachers or administrators. Furthermore, you operated for a substantial period of time without the adoption or publication of a racially nondiscriminatory policy. In fact, in [redacted] your tax-exempt status was revoked by the Internal Revenue Service because you had not adopted such a policy and refused to adopt and publish such a policy within the area your school serves. The foregoing information leads us to conclude that you are described in Paragraph (1) of the revised 1980 court order in Green, supra. According to Paragraph (2) of Green, the existence of conditions set forth in Paragraph (1) raises an inference of present discrimination against blacks. Such inference may be overcome by evidence that clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by the school's policies and practices.

[redacted]

As set forth in the preceding court decisions, and as required by the Green order, 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 in order to be exempt from federal income tax. 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. That you have enrolled a black student is notable, but is not determinative of whether you are operating in a racially nondiscriminatory manner. In fact, the black student did not enroll as the result of any affirmative outreach on your part, but rather because the student's mother took the initiative to pursue enrollment. Moreover, mere adoption and publication of a policy of nondiscrimination 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. For these reasons, although your organization adopted a nondiscriminatory policy in [redacted], and took certain other minimal actions described above, your school must provide evidence of further objective acts which overcome the inference of discrimination.

While your organization has adopted a nondiscriminatory policy, fulfilled the newspaper publication requirements and included the required statements in your publications, these actions do not constitute the clear and convincing evidence necessary to rebut the inference of discrimination arising in accordance with Paragraph (1) of the revised 1980 court order in Green, supra. Your efforts at outreach directed to the black community have been insufficient. The facts and circumstances do not show that you have made an intensive and comprehensive effort at outreach directed specifically to the black community, which could possibly result in the enrollment of additional black students and employment of black teachers and administrators. Your outreach efforts have been limited to assembly programs featuring black athletes and penitentiary inmates. You have no active recruitment program to encourage black students to apply to your school. You have stated in your letter [redacted], that you will not provide scholarships or other financial assistance programs that might encourage and enable black students to attend your school. You have no active recruitment program to attract black teachers, and have not expressed a willingness to implement such a program. You have also failed to provide proof of

meaningful communication between your school and black groups and black leaders within the community. We further note the your publication of a nondiscriminatory policy is of a relatively recent date. Like the school described in Calhoun Academy v. Commissioner, supra, your interaction with black persons in the community is insufficient to demonstrate that you have ceased to discriminate with respect to enrollment of students and hiring of faculty. 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 Green.

Accordingly, based on all of the information submitted, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170, and you are required to file federal income tax returns.

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

If you do not protest this proposed 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 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 copies will be forwarded to your key District Director. Thereafter, any questions about your

[redacted]

federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service
OP:E:EO:T:4, Room 6236
1111 Constitution Avenue, N.W.
Washington, DC 20224

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

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

cc: Key District: Ohio (Cincinnati)

Code	O:E:EO:T:4	[redacted]				
Surname	[redacted]	[redacted]				
Date	[redacted]	[redacted]				