

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

Date: APR 14 2000

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

[REDACTED]

NO F...  
Release copy of [REDACTED]

Date [REDACTED]

Surname [REDACTED]

Employer Identification Number: [REDACTED] 000

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.

You were incorporated as a nonprofit organization on [REDACTED]. You previously filed for recognition of tax-exempt status on [REDACTED] and were denied exemption because of insufficient evidence that you had adopted and communicated a racially nondiscriminatory policy to the community. You stated you were formed at the time of public school desegregation in your Parish.

You operate a private school for kindergarten through 12<sup>th</sup> grades. You stated on [REDACTED] you were approved by the [REDACTED] Bureau of Elementary and Secondary Education as in compliance with the Brumfield v. Dodd Court Order.

All ads in the local newspaper include your nondiscrimination policy. You also advertise on the local radio station for students. For the [REDACTED] school year, out of a total [REDACTED] students enrolled there were [REDACTED] American Indian student and [REDACTED] Asian student. For the [REDACTED] school year there were [REDACTED] white students enrolled, [REDACTED] Asian, and [REDACTED] American Indian. There were [REDACTED] white faculty members and [REDACTED] American Indian faculty member. You have never had a black student.

You do not have a minority scholarship program or a minority recruitment program designed to recruit black students.

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

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 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."

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 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 4.032(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 and both that section and other provisions of the Rev. Proc. enumerate some of the relevant facts and information to be considered in making the determination.

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. 1978).

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.

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).

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.

[REDACTED]

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

Consistent with the information contained in your exemption application, 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 black students or employing any black teachers or administrators. The foregoing information leads us to conclude that you are similar to the schools described in the cases, cited above, and an inference of present discrimination against blacks is raised. 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.

As set forth in the preceding court decisions, 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. 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 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 the circumstances surrounding your formation and operation. You have no outreach directed to the black community. 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 black students and current employment of black teachers and administrators. Of particular importance, you have no active recruitment program to encourage black students to apply to your school. As noted previously, you do 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 indicated 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. You have never enrolled a black student. We further note that 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.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170.

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

[REDACTED]

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  
Attn: T:EO:RA:T:4, Rm. 6236  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

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

Sincerely,

~~Signature~~

Gerald V. Sack  
Manager, Exempt Organizations  
Technical Group 4

T:EO:RA:T:4	T:EO:RA:T:2		
Initiator	Reviewer		
[REDACTED]	[REDACTED]		