

Insights

IRS Updates Racial Nondiscrimination Publication Requirement for 501(c)(3) Private Schools

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On May 7, 2019, the IRS announced the release of Revenue Procedure 2019-22 (“RP 2019-22”), which modifies existing rules that require 501(c)(3) private schools to publish their racial nondiscrimination policy in a newspaper or using broadcast media. This requirement has been in place since 1975. However, effective May 28, 2019, these schools can satisfy this publication requirement by posting their racial nondiscrimination policy on their internet homepage as an alternative.

Background: Revenue Procedure 75-50

In the early 1970's, the IRS began requiring all private schools seeking recognition of exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code (the “Code”) to operate on a racially nondiscriminatory basis. This policy was formalized in 1975 with the issuance of Revenue Procedure 75-50, (“RP 75-50”), which sets forth guidelines and record keeping requirements for determining whether a private school has adopted a racially nondiscriminatory policy and whether the organization operates in accordance with that policy.

RP 75-50 references Revenue Ruling 71-447, which defines a racially nondiscriminatory policy as to students to mean:

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.

To comply with the requirements of RP 75-50, 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. In addition, schools must include the statement in all brochures and catalogues dealing with student admissions, programs, and scholarships essentially stating that the school “admits students of any race, color, and national or ethnic origin.” Finally, schools must make the policy known to all segments of the

general community served by the school. RP 75-50 originally provided two means of accomplishing this: a) the school could publish notice of its policy, at least once annually, in a newspaper of general circulation serving all racial segments of the community, or b) the school could use broadcast media to publicize its policy.

Update to Publication Requirement: Revenue Procedure 2019-22

On May 7, 2019, the IRS announced, via the IRS Guidewire, that RP 2019-22 will be released in Internal Revenue Bulletin: 2019-22, dated May 28, 2019. The stated purpose of the revenue procedure is to modify RP 75-50 to reflect technological advances since its publication in the 1970s by providing a third method for a private school to satisfy the publication requirement by allowing schools to use their internet website to publicize their racial nondiscrimination policies. The policy must be displayed on the school's primary publicly accessible internet homepage at all times during the school's taxable year (excluding temporary outages for maintenance). The IRS makes clear that a publicly accessible homepage is not one that requires a visitor to input information (such as an email address or username) and a link on the homepage to another page where the notice appears or one that appears by a dropdown menu or hover/mouseover is not acceptable. RP 75-50 is effective May 28, 2019.

RP 2019-22 deals only with the racial non-discrimination restrictions applicable to tax-exempt private schools under federal tax law. Schools should also be aware of additional restrictions in existing federal civil rights laws, such as Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964 (Title VI) (race, color, national origin), Title IX of the Education Amendments of 1972 (Title IX) (sex), the Age Discrimination Act of 1975 (Age Act) (age), and Section 504 of the Rehabilitation Act of 1973 (Section 504) (disability).

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