

IRS Nondiscrimination Requirements

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Your School Must Meet Several IRS Nondiscrimination Requirements to Keep Its Tax Exemption

While schools affirm their nondiscrimination policy on ACSI's annual membership form, the Internal Revenue Service (IRS) has more extensive requirements that your school must meet. *IRS Revenue Procedure 75-50 states that a school which does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from federal income tax.* Your school must show affirmatively that (1) it has adopted a racially nondiscriminatory admissions policy that is made known to the general public, and (2) since the adoption of that policy, the school has operated in a bona fide manner in accordance to the policy.

Briefly Stated, Here Are the IRS Guidelines:

What Constitutes a School Under the IRS Code? A *school* is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term *school* includes "primary, secondary, preparatory, or high schools, and colleges and universities, whether operated as a separate legal entity or as an activity of a church or other organization described in Code section 501(c)(3). The term also includes *preschools* and any other organization that is a school as defined in Code section 170(b)(1)(A)(ii)." [*Emphasis added.*]

Organizational Requirements. Your 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 (RNP) as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin.

Statement of Policy. Your school must include a statement of its RNP as to students in all its brochures and catalogs dealing with student admissions, programs, and scholarships. The following statement is acceptable to the IRS:

The _____ School admits students of any race, color, and national or ethnic origin.

Publicity. Your school must make its RNP known to all segments of the general community served by the school. Rev. Proc. 75-50 provides guidelines and recordkeeping requirements for certifying nondiscrimination. One of the requirements is that the school must annually publicize its nondiscrimination policy. Previously, the two approved methods for doing so were newspapers and broadcast media. The IRS has amended Rev. Proc. 75-50 to add a third option, the school's website. This change is effective May 28, 2019.

According to the amendment, a school can now display a notice of its racial nondiscrimination policy "on its primary publicly accessible Internet homepage at all times during its taxable year (excluding temporary outages due to website maintenance or technical problems) in a manner reasonably expected to be noticed by visitors to the homepage."

What does "a manner reasonably expected to be noticed" mean? The IRS provides this guidance:

Factors to be considered in determining whether a notice is reasonably expected to be noticed by visitors to the homepage include the size, color, and graphic treatment of the notice in relation to other parts of the homepage, whether the notice is unavoidable, whether other parts of the homepage distract attention from the notice, and whether the notice is visible without a visitor having to do anything other than simple scrolling on the homepage.

Note that:

- The homepage must be accessible without requiring the site visitor to enter information (such as a username or password)
- The notice must be on the homepage itself, rather than available through a link, a rotating carousel, or a drop-down menu
- If your school does not have its own website but does have webpages contained within another website, you may display the notice on your primary landing page

Failure to annually certify compliance and failure to comply with the requirements may be treated as evidence of racial discrimination. Religious schools have lost their tax exemption because of racial discrimination.

The publicity requirement may also be satisfied by either publishing a statement in the newspaper serving the general community from which you draw students, or you may use the broadcast media. Either way, you must **prove** that such publicity did occur. Since this is much easier to prove using a newspaper clipping, most schools choose that option. There are some additional optional ways that you may publicize your RNP. However, the IRS encourages schools to use the community newspaper or radio. If you must later go through an audit, using the other optional ways requires you to justify why neither the newspaper nor radio were used.

Here is additional information assuming that you choose the newspaper option. 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 a least 12-point boldface type, and its text must be printed in at least 8-point type. The following sample conforms to the IRS guidelines on point size and wording for newspaper and website publicity:

Notice of Nondiscriminatory Policy as to Students

The _____ 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.

You must publish this notice at least **once annually** during the period of your school's solicitation for students or, in the absence of a solicitation program, during your school's registration period.

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

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 your publicity.

Record-Keeping Requirements. You probably know that your school must annually advertise its nondiscrimination policy, but does your school also do the required record keeping? *Each tax-exempt private school must maintain for a minimum of three (3) years the following records for the use of the IRS 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, catalogs, and advertising dealing with student admissions, programs, and scholarships
4. Copies of all material used by or on behalf of the school to solicit contributions

For the purposes of this record-keeping section, the racial composition of the individuals may be an estimate based on the best information readily available to your school without requiring individuals to submit information that your school does not otherwise require. Or the school may request racial information on its forms. If the latter option is chosen, it is wise to provide a rationale for asking about a person's race, such as the following:

IRS Revenue Procedure 75-50 requires schools to keep records on the racial composition of its student body, faculty, and administrative staff for each academic year. Please provide the school with your racial designation: _____.

For each academic year a record of the method by which the school determines its racial composition must be maintained by the school along with its racial composition figures.

If your school fills out reports covering substantially the same racial composition information for an agency or agencies of federal, state, or local government, and this information is current within one year, and your school maintains copies of these reports from which this racial information is readily obtainable, no new reports need to be generated to meet the record-keeping requirements.

Annual Certification of Racial Nondiscrimination. Under Revenue Procedure 75-50, every organization that claims exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and operates, supervises, or controls a private school or schools must file an annual Certification of Racial Nondiscrimination.

Church-owned schools (Category I or II) file their annual certification on **IRS Form 5578** by the fifteenth day of the fifth month following the end of the organization's calendar or fiscal year. For schools using a July 1–June 30 fiscal year, Form 5578 must be filed with the IRS by November 15.

Independent schools (Category III) operated by a lay board are required to fill out compliance information on Schedule A of **IRS Form 990**, Return of an Organization Exempt from Income Tax. For schools using a July 1–June 30 fiscal year, Form 990 must be filed with the IRS by November 15. Penalties are heavy for **not** filing.

You may obtain Form 5578 or Form 990 by checking the Internet at <www.irs.ustreas.gov>. The back of Form 5578 has a summary of the Revenue Procedure 75-50 regulations. You may also request Revenue Procedure 75-50, which is four pages in length and contains more detail.

Two Government Agencies Require a Racial Breakdown of Staff

The article to the above tells about the racial nondiscrimination requirements imposed by **IRS Revenue Procedure 75-50** which requires schools to keep track of the racial breakdown of its staff and students for three years. For the purposes of this record-keeping, the racial composition of the individuals may be an estimate based on the best information readily available to your school without requiring individuals to submit information that your school does not otherwise require. For each academic year a record of the method by which the school determines its racial composition must be maintained by the school along with its racial composition figures.

The Equal Employment Opportunities Commission also requires that employers provide to the commission the racial breakdown of employees if they employ 100 or more people. These larger employers must submit an **EEO-1 Report** by September 30 of each year. For information regarding this law and to obtain the form, call 757-461-1213. There is also information and forms at website <www.mimdms.com/jrc.html>.

ACSI's recommendation for large schools: If you have 100 or more employees, wait to ask for the racial breakdown of school employees that you need for the **EEO-1 Report** and **IRS Revenue Procedure 75-50** until after they have been hired. A good time to request this is when you ask the new hire for their Social Security number, emergency contact information, and so forth. If you ask applicants about their race before they are hired, they could allege later, if they weren't hired, that the school discriminated against them because of their race. As the main article states, it is a good idea to give the reason why you are asking about a person's race, since many may think that it is illegal to ask such a question.

ACSI's recommendation for smaller schools: If you have less than 100 full-time and part-time employees, don't ask them about their race at all since you are not required to file the **EEO-1 Report**, and you only need to estimate that information for the **IRS Revenue Procedure 75-50**. This will lessen the chances of allegations of racial discrimination.

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