

# IRS ANNOUNCES NEW WAY PRIVATE SCHOOLS CAN PUBLICIZE THEIR RACIAL NONDISCRIMINATION POLICIES

*By Mike Batts, CPA*

NONPROFIT SPECIAL ALERT™



Batts Morrison  
Wales & Lee  
CPAs for Nonprofits

## IRS Announces New Way Private Schools Can Publicize Their Racial Nondiscrimination Policies

By Mike Batts, CPA

May 8, 2019

The IRS has announced that effective May 28, 2019, a private school exempt from federal income tax and described in Section 501(c)(3) of the Internal Revenue Code may meet the requirement for publicizing its racial nondiscrimination policy by posting an appropriate notice on its website home page.

In order to qualify for and retain tax-exempt status as a 501(c)(3) organization, a nonprofit private school (including a school operated or controlled by a church) must have a racial nondiscrimination policy in place, the policy must be properly publicized, and the school must operate in a racially nondiscriminatory manner. Additionally, the school must maintain certain records supporting its compliance with the policy, including records of the racial composition of its student body, faculty, and staff. Other related documentation requirements also apply, all of which are set forth in IRS Revenue Procedure 75-50 (RP 75-50), originally issued by the IRS in 1975.

One of the specific requirements of RP 75-50 is that the school must publicize the existence of its racial nondiscrimination policy at least once annually. RP 75-50 prescribes the manner in which such publication must be made. Two options available to a school under RP 75-50 are:

1. To run an ad in a newspaper of general circulation in the area served by the school; or
2. To publicize the policy using broadcast media.

RP 75-50 prescribes the specific content and other attributes (e.g., the size of the font for a newspaper ad) for any such notice in order for it to meet the publicity requirement.

Since RP 75-50 was issued in 1975, it did not address the possibility of a school meeting the publicity requirement for its racial nondiscrimination policy by posting a notice about in on the school's website.

The IRS has just announced, in new Revenue Procedure 2019-22 (RP 2019-22), that a private school may meet the publicity requirement of RP 75-50 by posting an appropriate notice on the home page of its website. RP 2019-22 states the following:

***The school may display a notice of its racially nondiscriminatory 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. The following notice, which is identical to the notice that may be used to satisfy the publicity requirement using a newspaper of general circulation that serves all racial segments of the community, is acceptable:***

### **NOTICE OF NONDISCRIMINATORY POLICY AS TO STUDENTS**

***The M 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.***

***A publicly accessible homepage is one that does not require a visitor to input information, such as an email address or a username and password, to access the homepage. 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. A link on the homepage to another page where the notice appears, or a notice that appears in a carousel or only by selecting a dropdown or by hover (mouseover) is not acceptable. If a school does not have its own website, but it has webpages contained in a website, the school must display a notice of its racially nondiscriminatory policy on its primary landing page within the website in a manner that satisfies all other requirements of this subsection...to use this publication method.***

RP 2019-22 states that it is effective May 28, 2019. We believe that it is reasonable for private schools to rely on the new guidance immediately.

## **A Reminder That the Requirements of RP 75-50 are Deep and Wide**

Private school leaders are often unaware of the full depth and breadth of the requirements of RP 75-50. And given the fact that compliance with RP 75-50 is a condition of obtaining and maintaining tax exemption as a 501(c)(3) organization, it is important not to overlook those requirements.

First, it is important to note the scope of RP 75-50. It applies to all tax-exempt private schools (including those operated or controlled by a church), from preschools to colleges.

Second, it is important to note that every exempt private school that is subject to its requirements must certify annually to the IRS that it is in compliance with RP 75-50. For schools that file federal Form 990 annually, that certification is made on the Form 990. For schools exempt from filing Form 990 (e.g., schools operated by or affiliated with a church), they must make the certification by filing Form 5578 annually with the IRS.

And finally, it is important to note that the documentation requirements of RP 75-50 are rather extensive. Private schools are required to include notices of the racial nondiscrimination policy in all of their catalogs, brochures, and advertisements. Additionally, documentation requirements include, but are not limited to:

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.

Visit the following webpage for a full copy of RP 75-50: <https://www.irs.gov/pub/irs-drop/td-9933.pdf>

Visit the following webpage for a full copy of RP 2019-22: <https://www.naics.com/search/>

This publication is for general informational and educational purposes only, and does not constitute legal, accounting, tax, financial, or other professional advice. It is not a substitute for professional advice. For permission to reprint, please contact us.