

JUNE 28, 2019

## Private School Nondiscrimination Policies: Website Publication Now Meets IRS Requirements

Last month, the IRS released new guidance on how a private school can meet the requirement to publish its nondiscrimination policy. Under longstanding rules set forth in Revenue Procedure 75-50, any private school (exempt under Section 501(c)(3) and described in 170(b)(1)(A)(ii) of the Internal Revenue Code) must show it has (a) adopted a racially nondiscriminatory policy as to students, (b) **made that policy known to the general public**, and (c) operated in accordance with the policy since its adoption.

Just having and following a compliant policy isn't enough. Every private school must make its nondiscrimination policy known to all segments of the general community served by the school. Previously, there were only two ways to meet this publishing requirement: in a newspaper of general circulation or via broadcast media to the general community the school serves.

Now, **Revenue Procedure 2019-22** provides a third, Internet-age appropriate option: **the school's website**. To meet the website publishing requirements, the school must:

- Display a notice of its racially nondiscriminatory policy on its primary, publicly accessible homepage at all times during its tax year (temporary outages from maintenance or technical problems aside). The revenue procedure provides sample language for the notice. Publicly accessible means that no username, password, or other log-in feature is required to access the page.
- The display must be reasonably expected to be noticed by visitors to the homepage. The size, color, and design of the notice in relation to other parts of the homepage factor in to whether it is reasonable to expect visitors to be aware of the notice. Other factors include whether the notice is unavoidable, whether other parts of the webpage distract from the notice, and whether it is visible without doing anything other than scrolling on the home page.
- If the school does not have its own website, but has dedicated pages within a website, it must display a notice of its policy on its primary landing page in the same manner as if it were the school's homepage.

A link on the homepage to another page with the notice is not acceptable. A notice that appears in a carousel or only by selecting a dropdown or by mouse-over is also insufficient. And while there are some exceptions to these publishing requirements, the IRS has stated its preference that schools make these publications. With the newly approved website option, complying with the publication requirement should be easier.

*What is a racially nondiscriminatory policy anyway?*

### RELATED CATEGORIES

- Formation & Tax Exempt Status
- Nonprofit Governance & Ethics
- Public Charities

### AUTHOR



Shirley McLaughlin  
Principal

### ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

### EDITORS



Eric K. Gorovitz  
Principal

A school has a racially nondiscriminatory policy if the school:

- › admits students of any race (meaning students of any race, color, or national or ethnic origin) to all the rights, privileges, programs and activities generally made available to students of the school; and
- › 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.

Private schools are able to favor racial minorities with respect to admissions and other programs if the purpose and effect is to promote the establishment and maintenance of the school's racially nondiscriminatory policy. Schools are also able to select students based on membership in a religious denomination without having a discriminatory policy if the membership of the denomination is open to all people on a racially nondiscriminatory basis.