INTERNAL REVENUE SERVICE

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Dear xxxxxxxxxx:

Thank you for your letter dated February 27, 2001, concerning xxxxxxxxxx xxxxxxxxxxxxxxxxxxxx. You ask for a review of the organization's tax-exempt status because you believe it is engaged in discriminatory practices in violation of the Internal Revenue Code (the Code).

The Code includes taxpayer privacy provisions, which were enacted by Congress to protect the privacy of tax returns and tax return information of all taxpayers. Therefore, we cannot disclose what action, if any, the IRS has taken or may take regarding xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. However, we can provide you with information on certain requirements applicable to tax-exempt private schools.

In 1970, the IRS announced that racially discriminatory private schools no longer qualified for exemption under section 501(c)(3) of the Code. The basis for this position was subsequently published in Rev. Rul. 71-447, 1971-2 C.B. 230, which defines a racially nondiscriminatory policy to mean that, "the school admits 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 administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs." In arriving at this position, Rev. Rul. 71-447, *supra*, identified a clearly established public policy against racial discrimination in education as reflected in court cases such as Brown v. Board of Education, 347 U.S. 483 (1954), and legislation such as the Civil Rights Act of 1964.

The position of the IRS that racially discriminatory private schools do not qualify for exemption under section 501(c)(3) of the Code was affirmed by the Supreme Court in Bob Jones University v. United States, 461 U.S. 574 (1983). There, the Court concluded that racial discrimination in education is contrary to public policy, and racially discriminatory schools cannot be viewed as conferring a public benefit within the meaning of section 501(c)(3). The Court also made it clear that the IRS's role is very

limited and that the IRS should act only in those situations when there is no doubt that an organization's activities violate fundamental public policy. The Supreme Court maintained that, unless there is a clearly established fundamental policy against granting exemption, an educational organization would qualify for exempt status under section 501(c)(3).

With regard to private schools whose admissions policies include a preference for xxxxxxxxxxxxxxx, we note that there are Federal and state laws designed to provide beneficial treatment to xxxxxxxxxxxxxxx in a variety of contexts, including education, and there are court decisions that approve of such beneficial treatment. However, there is generally an absence of Federal and state laws or court decisions prohibiting preferences for xxxxxxxxxxxxxxx and concluding that such a preference would be contrary to clearly established public policy. Furthermore, the factors leading to the adoption of the IRS's administrative position in Rev. Rul. 71-447, *supra*, and the Supreme Court's decision in Bob Jones University v. United States, *supra*, are not present in the case of a xxxxxxxxxxxxxx preference. We believe there is public policy in favor of such a preference and an absence of clearly established public policy that would prohibit such a preference. Under these circumstances, the admissions policies of private schools that include a preference for xxxxxxxxxxxxxxx do not rise to the level of racial discrimination and are consistent with current fundamental public policy.

I appreciate your sharing your concerns with us. If you have any questions, please call xxxxxxxxxxxxxxxx, ID xxxxxxxxx, of this office at xxxxxxxxxxxxx.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4