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STATEMENT OF THE HONORABLE WILLIAM V. ROTH, JR., A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Roth. Mr. Secretary, I would like to congratulate this Administration for taking the position it has with tuition tax credits. It is a matter that has been of interest to me since 1975 when I got into conference a proposal to have a tuition tax credit for college.

My principal reason for being supportive of this approach is, I think it's about time that we recognize the bias that has resulted in recent years where it has become extraordinarily difficult for the blue-collar worker and others to send their children to parochial or private schools. The cost of taxation plus the cost of sending your child to a school of your choice has been beyond the reach of many working Americans.

I think if we had had the same kind of support from past administrations as we have from President Reagan and his Administration, this concept would already be enacted.

I might say I would hope, as we proceed with this proposal, that we can improve upon it. I would like to have the legislation cover college as well as elementary and secondary, but I do congratulate the Administration for the leadership it is showing in this area.

The Chairman. I am advised that some of my Democratic colleagues will be here a little later, so I won't hold up the Secretary.

I am pleased to welcome Secretary Regan and Secretary Bell. I think Senator Hollings will be here later to make a statement. And I welcome other interested members and witnesses to testify on S. 2673, the Tuition Tax Credit Bill. It is a very important piece of legislation, important to the Administration, important to parents of all children in schools, public or private, and important to me. And at this point I would ask that my statement be made a part of the record. I have raised a number of questions, including the cost, the question concerning discrimination, that I think we must address very carefully.

This would be the first in a series of hearings on this very important proposal. I particularly commend my colleagues Senator Packwood and Senator Moynihan for their leadership in this area, along with Senator Roth, and we are now prepared to hear the Treasury Secretary, Secretary Regan.

STATEMENT OF THE HONORABLE DONALD T. REGAN, SECRETARY OF THE TREASURY

Secretary Regan. Thank you, Mr. Chairman, members of the Committee.

I am pleased to appear before you this morning in support of S. 2673, which would provide an income tax credit for 50 percent of certain elementary and secondary school tuition expenses. The tax credit is intended to enhance the equality of education opportunity for all Americans at the elementary and secondary schools of their choice.

S. 2673 addresses an extremely important area of public policy. The President has taken considerable personal interest in its development. The Administration believes that the enactment of a tuition tax credit legislation during this session of the Congress is essential to maintain the excellence of the American educational system and to protect the right of American parents to determine how and where their children will be educated.

S. 2673 would establish a tuition tax credit system that would fulfill this Administration's commitment to parental responsibility, educational excellence, and fiscal and administrative restraint. The bill will further the educational diversity that is the hallmark of our educational system. It will make educational freedom of choice a reality to more American families. It will target assistance on those families that need it most. Finally, it will neither interfere with the operation of private schools nor impose costly administrative and regulatory burdens on them.

Equality of educational opportunity clearly requires that a diverse range of schools -- public and private -- be available to all American families, and that all American families have the financial ability to permit meaningful freedom of choice among schools. We believe that parents have a fundamental right and responsibility to direct the education of their children in a way which best serves their individual needs and aspirations. Moreover, we believe that parental involvement in the decision-making process enhances the quality of education provided.

Private schools are essential to fulfilling our national educational needs. They provide a healthy diversity of approach, and are often a significant source of innovation and experimentation. But private schools are expensive, and inflation is making them more so. At the same time, higher taxes caused by bracket creep are making it more difficult for families to afford private education. Tuition tax credits offer a simple means to assist these students by permitting families to spend the money that they have earned for the education that they themselves select. Tax credits are especially appropriate as a method of assisting parents to educate their children at private elementary and secondary schools.

In this area, unlike others we have discussed with this Committee in the past, tax credits will not duplicate existing tax benefits. Tax credits for tuition expenses have the additional advantage of providing the same dollar benefit to all taxpayers. In contrast, a deducation would provide a greater benefit to individuals in higher tax brackets.

S. 2673 would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year.

The amount of the allowable credit is subject to two limits: First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is $100 for 1983, $300 for 1984, and $500 for the years thereafter. This ceiling limits the relative benefits that the credit will provide to parents whose children attend more expensive private schools.

The second limit contained in the proposal directs the benefit of tuition tax credits to less wealthy families by a phase-out of the credit for higher-income families. The maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over $50,000 and is phased out entirely for taxpayers with adjusted gross incomes of $75,000 or over.

S. 2673 contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially-discriminatory policies. A racially discriminatory policy is a policy under which the school refuses, on account of race, to admit applicants as students; to admit students to the rights, privileges, programs, and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic, or other programs.

A tax credit cannot be claimed unless the school is a tax-exempt organization. As you are aware, the Administration strongly opposes granting tax-exempt status to schools that discriminate on the basis of race. Litigation now before the Supreme Court will determine whether continued IRS enforcement of this nondiscrimination policy will require explicit legislation. If legislation is found to be necessary, the Administration has already made it clear that it favors a statutory solution.

This Committee has expressed its concern that aid not be provided to discriminatory schools. I believe this bill contains provisions that will prevent the use of tuition tax credits to pay expenses at racially-discriminatory schools without interfering in the operation of private schools and without subjecting private schools to costly administrative burdens.

Finally, S. 2673 will assist American families to educate their children at the schools of their choice without significant fiscal impact. Our revenue estimates indicate that the cost of the tuition tax credit program is less than $50 million in fiscal 1983, $400 million in 1984, and $900 million in fiscal 1985.

S. 2673 is a bill that provides substantive tax relief to the families of nonpublic school students, thereby broadening and enriching educational opportunity and promoting excellence in our schools. The bill recognizes the value of our private schools and will strengthen the right of parents to decide the education of their children.

The Administration strongly supports S. 2673.

Thank you, Mr. Chairman.

(The prepared statement follows)

The Chairman. Senator Packwood?

Senator Packwood. Mr. Secretary, I cannot tell you how pleased I am to have the Administration's support on this. I will be very frank with you, this cannot pass unless the Administration does more than support it. It is going to have to push and lobby it as hard as you lobbied the tax program last year for AWAX.

Pat Moynihan and Bill Roth and I have been up and down this battlefield for five years. In 1978 the House passed a tuition tax credit bill that was primary, secondary, and college. In the Senate we could not win the primary and secondary credits. We fought it, and we fought it, it was filibustered, and we finally went to conference with the House and came back with two conference reports, one with tuition tax credits for primary and secondary and one without, and we could not win it.

I am willing to go this route again, but the Administration has to want it desperately.

With that background, where do you want this bill placed? Do you want it added to the tax bill as it goes through the House -- the big tax bill we are working on? Do you want to wait and have it added someplace else? I will go wherever you want, but it cannot go without your push.

Secretary Regan. First of all, Senator, let me assure you and reassure you that the Administration does support this bill, and we will be lobbying for it. The fact that I am here this morning, the fact that Secretary Bell will follow me here this morning indicates -- we are two Cabinet members up here -- the strong support that the Administration is giving to the bill.

The President himself has spoken out on this. He has communicated with members of the Senate regarding this bill.

Now, as far as where we want it, I would think that we keep the tax bill as passed by the Senate Finance Committee in its current form, but let this come at a subsequent date with whatever legislative proposals that you and the Chairman and the rest of the Committee work out. We will work with you on that.

Senator Packwood. Well, that's fine. All I am saying is, if you don't want it in this tax bill -- we had a tough enough job passing it, take my word for it -- there is no point in our attaching it to something you don't want it attached to. That's my point.

Secretary Regan. I agree.

The Chairman. Senator Roth?

Senator Roth. Mr. Secretary, I think sometimes the public underestimates the seriousness of the President. I have found, when he stakes out a position, he keeps to it pretty tough, and he is a real fighter in getting what he wants accomplished.

I agree with what Senator Packwood said as to the need of the active support if anything is going to happen, particularly this year; but I would also like to observe that I think sometimes there are those who underestimate the seriousness of the President's commitment to this approach.

I would like to ask you two or three questions. I am disappointed that it does not cover college tuition tax credits as well, and I would like to ask what is the position of the Administration on tuition tax credits?

Secretary Regan. Well, in regard to colleges and universities, the President's message when he sent his recommendation for this bill to the Congress said that this was the first step in this process. Very frankly, Senator, I don't think we can afford to go the whole route at this particular time. We do have huge deficits, and the Congress and the Administration are trying their best to control those deficits. However, at some time in the future, as we get the deficits better under control, we would be more than willing to work with you and the rest of the Committee toward seeing whether or not we couldn't get colleges and universities into the same type of program.

Senator Roth. You see, I think some of the same arguments can be made there that are made with respect to elementary and secondary, that the cost of administration, red tape, are much less, and you will be getting a lot more dollars into the hands of those we are trying to help.

Many people -- middle class, the poor -- are finding it just as difficult to send their children to college as they are to parochial and private schools. So I think it is extraordinarily important that we proceed in that direction as well.

Do you care to make any comments with respect to refundables? I think it is important, too, that the poor and the needy have some of the same opportunities.

Secretary Regan. Well, at this particular time, Senator, we are not supporting that particular phase of the entire proposal. What we are saying is that this is a tax credit against the tuition paid. If you pay no taxes, obviously there is no tax credit. We would like to draw the line there, again as a starter, in order to get the idea of tuition tax credits advanced.

I think if we were to try to go the other route, we would find it, again, very expensive and very controversial, and it is controversial enough without adding these other elements to it at this particular time. I would rather do what the bill calls for and then see what our experiences are, and then go on from there.

Senator Roth. Well, I congratulate the Administration for supporting the approach. There are some ways I think the legislation can be strengthened -- I think it is critically important that we make certain this not be used for purposes of discrimination -- but I look forward to working with you, Mr. Secretary.

Secretary Regan. Thank you, Senator.

The Chairman. Senator Moynihan?

STATEMENT OF THE HONORABLE DANIEL PATRICK MOYNIHAN, A UNITED STATES SENATOR FROM THE STATE OF NEW YORK

Senator Moynihan. Thank you, Mr. Chairman.

I would like to thank Secretary Regan for his very forthright, reassuring testimony. I think he will have heard from the four of us who are here that we aren't confident about the prospects of this legislation in this Congress, and we are not altogether assured of the Administration's purposes.

Two weeks ago, earlier on the Friday morning, but on Friday just two weeks ago, my colleague and friend Senator Packwood asked your associate Secretary Chapoton ought we not to put this matter on that tax bill that we were passing. Secretary Chapoton, under your instructions, said, No, he thought we ought to have a hearing.

Now we have had hearings on this subject, and there is not much left to say. You are either for, or you are not. The President says he is for the program but not for the legislation at this point, in effect.

I needn't tell you, sir, that this is a committee, the oldest committee of the Senate. Some of us think it is the most distinguished, and certainly we have the most distinguished Chairman --

(Laughter)

Senator Moynihan. -- but our work product is rather confined. We pass one bill a year.

(Laughter)

Senator Moynihan. A very large bill, particularly when the Republicans are in and tax increases are in the air, they pass the largest tax increases in history. You get it. Let's put it down in the Guinness Book of World Records, you know? Such increases have never been passed before, Fran did it in 17 hours.

(Laughter)

Senator Moynihan. But we pass one bill a year, sir. That bill has gone out of this Committee, and you say you don't want it added on the floor.

Still, an Administration has come forward to support a principle of equity. That is an event in our history. We have been around a long time, and we will be around a long time, and this is an important moment. You are testifying, and the President's statement is a most important statement.

One of the problems that has confounded this subject, however, is the position the Treasury Department took on the tax-exempt status of racially-discriminatory schools. Last January Mr. McNamar put out a statement in which he reversed a policy that the Internal Revenue Service has had since 1970 of denying tax-exempt status to schools that are discriminatory.

I have a history here, Mr. Secretary. I wrote the President's statement in 1970 that said the IRS would issue these regulations which followed a year later. I was not the only person who touched pen to paper, but basically it was the draft that I had had.

I was, therefore, all the more surprised to hear the Department of the Treasury a decade later say, "Well, we aren't bound by those propositions. We don't think they could be issued by us unilaterally," and in a particular statement said, "Thus, the IRS is without legislative authority to deny tax-exempt status to otherwise eligible organizations on the grounds that their policies or practices do not conform" -- and here I emphasize "to notions of national public policy," as if the question of nondiscrimination was a "notion" of national policy.

Now, you have firmly stated otherwise, and I know your own personal convictions would be otherwise, but can you give us some satisfaction that not only are you going to press for a legislatively-acceptable position in this regard as you say you will but that you really care about it, that you have some fire in your belly about this?

As you know, the United States Executive Branch is in the curious position that the Supreme Court has appointed a previous competent officer to represent the Government in a trial having to do with the equal rights bloc and

Hispanic children.

This is the first Administration since President Eisenhower who won't take that position itself in court. Not you, sir, but the Department of Justice will not go into the Supreme Court and say, "We do not believe a school should discriminate." And the Court has said, "All right, we'll find a lawyer to say what..." effectively, the Department obviously should say. They found a very distinguished lawyer, Secretary Coleman, who was in the Cabinet of President Ford.

This cloud is going to cover this whole issue until you clear it up. We are going to hear from our distinguished friend from South Carolina, and that is what he will mostly be speaking about. Am I wrong, sir?

(No response)

Senator Moynihan. I am correct.

That didn't have to happen, sir. I wonder if you can help us on this? Because we will never get this legislation passed while it is thought to be a vehicle for discriminatory schools, you know that.

Secretary Regan. Well, let me reassure you, Senator, that this Administration does not believe in discrimination. And if it had any thought that this bill in any way would promote discrimination, we would not be backing it.

We think there are many safeguards, at least three good ones, in the bill that will prevent discrimination; first of all, that the school must be a tax-exempt organization. And to be a tax-exempt organization, it cannot discriminate.

Senator Moynihan. Well, no, sir. I'm afraid --

Secretary Regan. What I am coming to is that we now have a case before the Supreme Court that will also decide this. But in the meantime it is illegal to have a tax-exempt status and practice discrimination. So the school could not do that.

The school will also file with us, annually, a statement to the effect that it is not discriminating, under threat of perjury were they to say otherwise than what is correct.

Finally, all of this material will be made available to the parents of the children; so, if they disagree with the school, they can communicate with us in order to state that the school is discriminating. And we will investigate that. There is a provision there that the Attorney General then has a very complicated procedure to follow. It is right in the bill to that effect.

So I think they have put in some pretty strong safeguards against any discrimination by a school, and then allowing the parents to have a tuition tax credit.

Senator Moynihan. Well, sir, you know I have perfect faith in your predictions in this matter and in your good faith in this matter; but I am afraid you were mugged by the Justice Department when they refused to take the Bob Jones Case and the two Carolina cases and really have embarrassed the whole Executive Branch of the Government to the point where the Supreme Court has had to appoint a lawyer to defend constitutional rights because the Justice Department won't. But that is nothing you could do anything about.

I thank you for your very forthright statement.

The Chairman. Senator Bradley?

Senator Bradley. Thank you, Mr. Chairman.

Mr. Secretary, I would like to follow on to some of the points that Senator Moynihan mentioned.

You said that there were three safeguards on the anti-discrimination nature of the bill. You said the school must file a statement that it is not discriminating, at the risk of perjury. Could you go into that at greater length? Who does it file with, and who would prosecute the perjurous statement? And who is checking to see if statements made are perjurous?

Secretary Regan. The head of the school will file the statement annually with the IRS. Then this will be followed up by a selective -- I don't know as yet; we haven't gotten into all of the administrative procedures. But at that point, it would be my judgment, we would probably have some type of selective at-random check to make sure of the statement.

Senator Bradley. How many people in the IRS will be working on this question to determine whether statements are perjurous or not?

Secretary Regan. At the present moment I cannot answer that. We haven't assigned anyone to it. We haven't gotten into the administration.

Senator Bradley. Do you think it will make a difference if one person works on it versus a hundred people working on it?

Secretary Regan. Definitely.

Senator Bradley. What would be your recommendation?

Secretary Regan. My recommendation would be that we put as many people on it, particularly initially, to make certain as to the quality of the reports we are getting, the type of reports we are getting, things of that nature, so that it can be followed.

As far as the individual returns of these schools and the like, we will be examining each of those very carefully to see what they have to say regarding their practices.

Senator Bradley. Who will be examining them, the Treasury?

Secretary Regan. IRS, under the Treasury.

Senator Bradley. So, if you have a school that has been established for segregationist reasons, the Department of the Treasury and the IRS will depend upon the parents or the participants in that school to inform the IRS that indeed the statement that has been made by all of them together is perjurous. Is that what you are saying?

Secretary Regan. And also, Senator, those either who might not be admitted to the school or those who know of the school and believe that the practices are discriminatory.

Senator Bradley. So anybody off the street can write to the IRS and say, "I think School-X is discriminating"?

Secretary Regan. Yes.

Senator Bradley. Do they have a legal cause at that point?

Secretary Regan. This probably would then be investigated by the IRS. Of course, first of all, you understand that a purely discriminatory school would not have an IRS exemption.

Senator Bradley. Well, we don't know that, do we, based upon what the Administration's position has been prior to this?

Secretary Regan. Well, in the hypothetical case that you set up, you said it was a discriminatory school setup. If, per se, it is discriminatory, it would not have an exemption.

Senator Bradley. Could you go through that procedure for us? School-X sends in its statement saying it is not discriminating. I don't think there will be many schools who will send in a statement that they are discriminating. So you have how many thousands of schools that send in these statements saying they are not discriminating; what happens then?

Secretary Regan. As far as that is concerned, these forms will be examined at the IRS level, taking a look to see what they have said, whether there is anything in the statements made by the head of the schools that might be a cause for comment by us or cause for investigation by us.

Senator Bradley. But how do you tell, when someone sends in a statement "I am not discriminating," how do you tell whether he is or he isn't? How do you tell whether it is perjurous? That is the question.

Secretary Regan. Yes. The way that the bill is now written, we rely on individuals, either who have not been admitted to the school or those who are in the school who believe who believe that the school is practicing this, to bring this matter to our attention. That is the way it will be done. It will not be IRS examiners walking into each parochial school in the City of Chicago, for example. That would not be the case of the way this would be done.

Senator Bradley. Well, I think that you have sufficiently clouded that water, as Senator Moynihan has pointed out, to raise this question of a very serious nature.

Mr. Chairman, I would like, after another round, another chance.

The Chairman. This is the only chance we have. The Secretary is going to be in an NSC meeting later.

Senator Bradley. All right.

Let me ask you, why do you support the cap at the level that it is in the legislation? What is it, $70,000?

Secretary Regan. $75,000.

Senator Bradley. Why 75?

Secretary Regan. Well, to be very frank with you, Senator, maybe we could call it the "Lawrenceville or the Hund School Syndrome." Parents who can afford to send their children to those schools, who are earning above $75,000, I don't think need a tax credit.

Senator Bradley. Why not 50? Or 40?

Secretary Regan. We started at 50, and it starts phasing down from 50 to 75,000.

Senator Bradley. Why not cut it off at 50?

Secretary Regan. Fifty is about a median-income group that we thought would be --

Senator Bradley. The "median-income group"? What group is median-income at $50,000?

Secretary Regan. Well, perhaps "median" is wrong. If we want to quarrel about words, Senator, let's just take the 50,000 as being plucked right out of the air as being an average or a type of figure that is appropriate in this particular instance. Close to 60 percent of all school children in private schools parents earn less than $25,000. Sixty percent.

Senator Bradley. So the 75 isn't going to help them, is it? So it wouldn't make any difference to those parents if it was cut off at 50.

Secretary Regan. No.

Senator Bradley. So what is the rationale for 75 instead of 50?

Secretary Regan. You have to go somewhere, and it was thought that that was an appropriate figure. What would the Senator suggest?

Senator Bradley. I would suggest a lower figure. Now, let's look at those people who are earning $20,000 or $25,000. Why didn't you have a refundability component in this bill?

Secretary Regan. Because we don't think a tuition tax [redacted] those who are in the needy category. There are other provisions and other ways of doing that.

Senator Bradley. Would you be appreciably moved if it was demonstrated to you that the bulk of the urban users of private schools, parochial schools in particular, have very low incomes and can't utilize this full tax credit without it being refundable? Do you care about that?

Secretary Regan. Well, are they now paying tuition?

Senator Bradley. Certainly.

Secretary Regan. Well, in many schools, I understand, for poor parents the tuition is waived.

Senator Bradley. But does the Treasury and this [redacted] them to take advantage of the full tax credit? Is that correct?

Secretary Regan. Well, we are helping them through food stamps, we are helping them through other social [redacted] of method of delivering funds to the poor and the needy.

Senator Bradley. Well, they are not sufficient unless they are refundable, because you can't take advantage of a tax credit if you don't have the income.

Secretary Regan. Well, if you are not paying taxes, Senator, this is a tuition tax credit. If you are not paying taxes, I submit that --

Senator Bradley. What is the purpose, then, of the tuition tax credit? Let's take the purpose of the tuition tax credit.

Secretary Regan. Taxpayers who are sending their children to private schools, to help these taxpayers somewhat in paying for the tuition.

Senator Bradley. To help "some" taxpayers. Right?

Secretary Regan. Yes. We are not helping all taxpayers.

Senator Bradley. In other words, you have to get to an income level before you are helped by this legislation.

Secretary Regan. That is by definition -- a taxpayer.

Senator Bradley. So you are saying anyone who falls [redacted] by this legislation?

Secretary Regan. That is correct.

Senator Bradley. And you are saying you don't care [redacted] level. Is that correct?

Secretary Regan. Oh, come on, Senator. I am not saying we don't care about these people. Of course we care.

Senator Bradley. Why, then, haven't you made it refundable so that they get some of the benefit from this?

Secretary Regan. For the simple reason they are not paying taxes, and this is a tuition tax credit.

Senator Bradley. To help people above certain incomes.

Secretary Regan. To help people who are paying taxes.

Senator Bradley. I think the point is made, Mr. Secretary.

Secretary Regan. I think I have made my point, Senator. We care very deeply about these.

The Chairman. You have just heard from one of the great flat-rate tax advocates, Senator Bradley.

(Laughter)

Senator Moynihan. Mr. Chairman, could I be allowed just to make one remark?

The Chairman. I would like to make one, myself.

Senator Moynihan. Please do, both of you.

(Laughter)

Senator Moynihan. I have a "refundable" remark.

(Laughter)

The Chairman. I wanted to say, first, that if I was assured that I would have the support of the Senator from New York on the tax bill, we might yet find a way to make this bill germane. Is that something that you might be interested in?

Senator Moynihan. Am I to understand that the germaneness rules are that flexible, depending on what the

Chairman of the Finance Committee thinks is useful?

The Chairman. Not that. I doubt that it could be made germane, but we could certainly make a diligent search if the Senator from New York is serious about wanting this added to tax bill --

Senator Moynihan. Fine.

The Chairman. -- and if that would guarantee his support for that important measure. We will check that after the Secretary leaves, unless you want to give us a parliamentary opinion, Mr. Secretary.

(No response)

Senator Moynihan. Could I make just one remark, Mr. Chairman?

The Chairman. Sure.

Senator Moynihan. Just to state to Secretary Regan on the question of refundability:

The measure before us takes the form of tax legislation, but it is in fact education that we are dealing with. And the first principle of education in America has been universal availability.

We would like, just as the public schools are open to all regardless of income, and it has been the view of those of us who originally proposed this legislation, that the benefits available should be available to all children regardless of income; which is not to say there couldn't be a different view and not to say there aren't budgetary restraints, but I would like to make that distinction. I think you could accept it.

Secretary Regan. Well, along that line, would the Senator then remove the cap and allow anyone to get this tax credit?

Senator Moynihan. Well, the point is that there does come a time when a family clearly does not need it. It is your view that there comes a time that families don't need this. Surely you admit, from the beginning, there are people with very little or no income who obviously do need it. The question is, do you have access?

Secretary Regan. If one is having pure equality one would have to remove the cap.

Senator Moynihan. It is not an exercise in logic, Mr. Secretary, it is an exercise in social policy.

The Chairman. I would point out this is our first hearing on this, and we probably will make some changes. We have been known to make changes in Administration proposals, in any Administration, in this Committee.

I guess we will pass more than one bill this year in this Committee. We have the Caribbean Basin Initiative, Enterprise Zones, and other matters that have yet to be reported out by this Commitee, and we certainly will consider carefully -- I am not even certain what the

Committee's wish might be on this legislation. I haven't made an effort to determine whether it supports the proposal or not, but it is clear that the Administration feels strongly about it; that's why we are having the hearing today.

We appreciate your testimony, Mr. Secretary.

Are there other questions?

Senator Bradley. Mr. Chairman, I think the points have been made that need to be made, and I didn't intend by my comments to question the commitment of the Secretary but only to question the commitment of the Administration as a whole. That is the troublesome aspect of this, and I think that, unfortunately, that will be a determinant aspect of this in many areas.

Secretary Regan. Well, again I can tell the Senator that since I am speaking for the Administration I speak for the Administration on all aspects of this bill including the discrimination portion, and we will be very vigilant to watch that if, and, and when this bill is passed.

The Chairman. And I might say to Senator Bradley that I have a series of questions that I am going to submit to the Secretary and ask for written responses to the record on the question of discrimination, because it is a serious question, one that we must address and will address, and hopefully to everyone's satisfaction.

Senator Bradley. Mr. Chairman, may I also submit questions?

The Chairman. Yes, and anyone else may who has them.

Thank you, Mr. Secretary.

Secretary Regan. Thank you very much, gentlemen.

(The questions follow)

The Chairman. Our next witness is Secretary Bell, followed by Senator Hollings.

Secretary Bell, we are pleased to have you before our Committee. I believe this may be your first appearance before the Senate Finance Committee, and we are particularly pleased that you are here on this issue. We think we have a good committee, and we look forward to hearing your testimony.

tive full calendar months during which an employer has had one or more employees, ending with the last month of the pre-application year.

.03 Plan.—The term "plan" means a pension, profit-sharing, or stock bonus plan.

.04 Year of employment.—The term "year of employment" means a year of service, required by section 411(a)(4) of the Code to be taken into account in computing an employee's nonforfeitable percentage (without regard to subparagraphs (A), (B), and (C) of section 411(a)(4)).

.05 Pre-application year. — The term "pre-application year" means the period of 12 consecutive full calendar months ending with the month preceding the month in which an application for a determination with respect to the qualified status of a plan (and any related trust) under section 401(a), 403(a), or 405(a) of the Code is filed in accordance with § 601.201(o) (Statement of Procedural Rules).

SEC. 6. SCOPE OF REVENUE PROCEDURE.

This Revenue Procedure applies solely for purposes of advance determination letters, and, therefore, does not apply in case of a determination with respect to the qualified status of a plan or trust upon an audit of its operations under section 401(a), 403(a), or 405(a) of the Code. This Revenue Procedure also does not apply in determining whether there has been a pattern of abuse under the plan (such as the intentional dismissal of employees to prevent vesting) or actual misuse in the operation of the plan which affects the qualified status of the plan or trust.

SEC. 7. FILING OF APPLICATIONS.

A favorable advance determination letter will not be issued with respect to a plan unless an exhibit showing compliance with this Revenue Procedure is attached to the application for such advance determination letter.

SEC. 8. MULTIEMPLOYER PLANS.

The District Director may waive the requirements of this Revenue Procedure in the case of a multiemployer plan if he finds that (1) vesting more rapid than that provided by the plan is unlikely to be required to prevent the discrimination prohibited by section 401(a)(4) of the Code, and (2) such requirements are unduly burdensome in the case of such plan.

SEC. 9. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 75-47, page 581, is hereby amplified.

SEC. 10 EFFECTIVE DATE.

This Revenue Procedure applies to determination letters issued after October 31, 1975.

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Section 501; 1.501(c)(3)-1.)

Rev. Proc. 75-50 [1]

SECTION 1. PURPOSE

.01 This Revenue Procedure sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students.

SEC. 2. BACKGROUND.

.01 A school that does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from Federal income tax. Rev. Rul. 71-447, 1971-2 C.B. 230.

.02 A school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy it has operated in a bona fide manner in accordance therewith.

.03 Internal Revenue Service experience with private schools has shown a need for more specific guidelines to insure a uniform approach to the determination of whether a private school has a racially nondiscriminatory policy as to students.

.04 This Revenue Procedure does not apply to public schools.

SEC. 3. DEFINITIONS.

.01 Rev. Rul. 71-447 states that a racially nondiscriminatory policy as to students means:

> 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.

.02 The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. A policy of a school that favors racial minority groups with respect to admissions, facilities and programs, and financial assistance will not constitute discrimination on the basis of race when the purpose and effect is to promote the establishment and maintenance of that school's racially nondiscriminatory policy as to students.

.03 A school that selects students on the basis of membership in a religious denomination or unit thereof will not be deemed to have a discriminatory policy if membership in the denomination or unit is open to all on a racially nondiscriminatory basis.

.04 For purposes of this revenue procedure, the term "school" has the same meaning it has in section 170(b)(1)(A)(ii) of the Code.

SEC. 4. GUIDELINES.

.01 *Organizational requirements.* 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

[1] Also released as TIR-1417, dated Nov. 6, 1975.

basis of race, color, and national or ethnic origin.

.02 *Statement of Policy.* Every school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships. A statement substantially similar to the Notice described in subsection (a) of section 4.03, *infra,* will be acceptable for this purpose. Further, every school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses as a means of informing prospective students of its programs. The following references will be acceptable:

The M school admits students of any race, color, and national or ethnic origin.

.03 *Publicity.* The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school.

1 The school must use one of the following two methods to satisfy this requirement:

(a) The school may publish a notice of its racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community. This publication must be repeated at least once annually during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. Where more than one community is served by a school, the school may publish its notice in those newspapers that are reasonably likely to be read by all racial segments of the communities that it serves. 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 at least 12 point bold face type as a notice of nondiscriminatory policy as to students, and its text must be printed in at least 8 point type. The following notice will be 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.

(b) The school may use the broadcast media to publicize its racially nondiscriminatory policy if this use makes such nondiscriminatory policy known to all segments of the general community the school serves. If this method is chosen, the school must provide documentation that the means by which this policy was communicated to all segments of the general community was reasonably expected to be effective. In this case, appropriate documentation would include copies of the tapes or script used and records showing that there was an adequate number of announcements, that they were made during hours when the announcements were likely to be communicated to all segments of the general community, that they were of sufficient duration to convey the message clearly, and that they were broadcast on radio or television stations likely to be listened to by substantial numbers of members of all racial segments of the general community. Announcements must be made during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period.

Communication of a racially nondiscriminatory policy as to students by a school to leaders of racial groups as the sole means of publicity generally will not be considered effective to make the policy known to all segments of the community.

2 The requirements of subsection 1 of this section will not apply when one of the following paragraphs applies:

(a) If for the preceding three years the enrollment of a parochial or other church-related school consists of students at least 75 percent of whom are members of the sponsoring religious denomination or unit, the school may make known its racially nondiscriminatory policy in whatever newspapers or circulars the religious denomination or unit utilizes in the communities from which the students are drawn. These newspapers and circulars may be those distributed by a particular religious denomination or unit or by an association that represents a number of religious organizations of the same denomination. If, however, the school advertises in newspapers of general circulation in the community or communities from which its students are drawn and paragraphs (b) and (c) of this subsection are not applicable to it, then it must comply with paragraph (a) of subsection 1 of this section.

(b) If a school customarily draws a substantial percentage of its students nationwide or worldwide or from a large geographic section or sections of the United States and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, *supra*. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence either by showing that it currently enrolls students of racial minority groups in meaningful numbers or, when minority students are not enrolled in meaningful numbers, that its promotional activities and recruiting efforts in each geographic area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case.

(c) If a school customarily draws its students from local communities and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, *supra*. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence by showing that it currently enrolls students of racial minority groups in meaningful numbers. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case. One of the facts and circumstances that the Service will consider is whether the school's promotional activities and recruiting efforts in each area were reasonably designed to inform students of all racial segments in the general communuinties within the area of the availability of the school. The Service recognizes that the failure by a school drawing its students from local communities to enroll racial minority group students may not necessarily indicate the absence of a racially nondiscriminatory policy as to students when there are relatively few or no such students in these communities. Actual enrollment is, however, a meaningful indication of a racially nondiscriminatory policy in a community in which a public school or schools became subject to a desegregation order of a federal court or otherwise expressly became obligated to implement a desegregation plan under the terms of any written contract or other commitment to which any federal agency was a party.

The Service encourages schools to satisfy the publicity requirement by the methods described in subsection 1 of this section, regardless of whether a school considers itself within subsection 2, because it believes these methods to be the most effective to make known a school's racially nondiscriminatory policy. In this regard it is each school's responsibility to determine whether paragraph (a), (b), or (c) of subsection 2 applies to it. On audit, a school must be prepared to demonstrate that the failure to publish its racially nondiscriminatory policy in accordance with subsection 1 of this section was justified by the application to it of paragraph (a), (b), or (c) of subsection 2. Further, a school must be prepared to demonstrate that it has publicly disavowed or repudiated any statements purported to have been made on its behalf (after November 6, 1975) that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal official were aware of such statements.

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

.05 *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 the publicity required by this section in order for that school to be considered racially nondiscriminatory as to students. Consistent with section 3.02, *supra,* scholarships and loans that are made pursuant to financial assistance programs favoring members of one or more racial minority groups that are designed to promote a school's racially nondiscriminatory policy will not adversely affect the school's exempt status. Financial assistance programs favoring members of one or more racial groups that do not significantly derogate from the school's racially nondiscriminatory policy similarly will not adversely affect the school's exempt status.

.06 *Certification.* An individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, on an Internal Revenue form to be issued, that to best of his knowledge and belief the school has satisfied the applicable requirements of sections 4.01 through 4.05 of this Revenue Procedure.

.07 *Faculty and Staff.* The existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. Conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

.08 *Failure to comply.* Failure to comply with the guidelines will ordinarily result in the proposed revocation of the exempt status of a school in accordance with the procedures set forth in Rev. Proc. 72-4, 1972-1 C.B. 706.

SEC. 5. APPLICATIONS FOR TAX EXEMPT STATUS.

.01 *Information required to be submitted.* Every school filing an application for recognition of a tax exempt status must supply the Service with the following information:

1 Racial composition, as of the current academic year and projected so far as may be feasible for the subsequent academic year, of—

(a) Student body, and

(b) Faculty and administrative staff.

2 Amount of scholarship and loan funds, if any, awarded to students enrolled and racial composition of students who have received such awards.

3 A listing of incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.

4 A statement whether any of the organizations described in subsection .01-3 of this section have at the time the application is filed an objective of maintaining segregated public or private school education and, if so, a statement whether any of the individuals described in subsection .01-3 of this section are officers or active members of such organizations at the time the application is field.

5 Year of organization.

.02 *Limitations.*

1 For purposes of section 5.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the

school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. However, a statement of the method by which the racial composition was determined must be supplied.

2 The information required to be submitted under section 5.01 should not identify individual students or members of the faculty and administrative staff.

SEC. 6. PUBLIC COMPLAINTS OF RACIAL DISCRIMINATION.

The Service is interested in receiving any information that an exempt private school is not operating under a racially nondiscriminatory policy as to students, including any judicial or administrative determinations to this effect. This information may be sent to the local District Director of Internal Revenue or to the Commissioner of Internal Revenue, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention E:EO.

SEC. 7. RECORDKEEPING REQUIREMENTS.

.01 *Specific records.* Except as provided in section 7.03, each exempt private school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, the following records for the use of the Service 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, catalogues, and advertising dealing with student admissions, programs, and scholarships. Schools advertising nationally or in a large geographic segment or segments of the United States need only maintain a record sufficient to indicate when and in what publications their advertisements were placed.

4 Copies of all materials used by or on behalf of the school to solicit contributions.

.02 *Limitation.*

1 For purposes of section 7.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. For each academic year, however, a record of the method by which racial composition is determined must be maintained. A school may not discontinue maintaining a system of records that reflects racial composition of students, faculty, and administrative staff used on November 6, 1975, unless it substitutes a different system that compiles substantially the same information, without the advance approval of the Internal Revenue Service.

2 The Service does not require that a school release personally identifiable records or personal information contained therein except in accordance with the requirements of the "Family Educational Rights and Privacy Act of 1974," 20 U.S.C. §1232g(1974). Similarly, the Service does not require a school to keep records the maintenance of which is prohibited under state or federal law.

.03 *Exceptions.* The records described in section 7.01 need not be independently maintained for Internal Revenue Service use if

1 Substantially the same information that each of these records would provide has been included in a report or reports filed in accordance with law with an agency or agencies of Federal, state, or local government, and this information is current within one year, and

2 The school maintains copies of these reports from which this information is readily obtainable. Records described in section 7.01 providing information not included in reports filed with an agency or agencies must be maintained by the school for Service use.

.04 *Failure to maintain records.* Failure to maintain or to produce upon the proper request the required records and information will create a presumption that the organization has failed to comply with these guidelines.

SEC. 8. MISSISSIPPI SCHOOLS.

The United States District Court for the District of Columbia has ordered specific guidelines and recordkeeping requirements for Mississippi private schools. *Green v. Connally,* 330 F. Supp. 1150, aff'd. *sub nom. Coit v. Green,* 404 U.S. 997 (1971). To the extent that the requirements of the Court's Order vary from the guidelines and recordkeeping requirements set fourth in this Revenue Procedure, the Court's Order is controlling for Mississippi schools.

SEC. 9. EFFECTIVE DATE.

.01 Section 4.02 is not applicable until February 4, 1976.

.02 To the extent that the publicity requirements set forth in section 4.03, *supra,* differ from those set forth in Rev. Proc. 72-54, 1972-2 C.B. 834, they shall not be effective until a school's first period of solicitation for students or, in the absence of a solicitation program, during the school's first registration period beginning after November 6, 1975.

.03 The recordkeeping requirements set forth in section 7, *supra,* shall not be effective until January 1, 1976.

SEC. 10. EFFECTIVE ON OTHER DOCUMENTS.

Rev. Proc. 72-54 is superseded.

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Sections 401, 403; 1.401-1, 1.403(a)-1.)

Rev. Proc. 75-51[1]

SECTION 1. PURPOSE

.01 This Revenue Procedure provides supplemental and revised procedures of the Internal Revenue Serv-

[1] Also released as TIR-1419, dated November 10, 1975.

In 197~~9~~0, less than 10 percent of the school population attended private schools. In 1980, ~~10 years later,~~ 10.9 percent of the eligible children were attending private school; that is a 10 percent increase in 10 years. There is no evidence, therefore, that the government needs to underwrite private school attendance.

Finally, I believe that this program is damaging to public education. What will occur--because we know who now attends private schools--will be a stimulus to the so-called "skimming" process. That is, those who are fit, those who can speak good English, those who are not minorities, those who are not poor, will further leave the public school system. The public school system will be left with the handicapped, the immigrants, the minorities, and those children who are disciplinary problems. Statistics on private school attendance now show that none or relatively few of these groups are accepted. These groups are in the public school system, not in the private school system.

Is this a program designed to help the poor? When the credit is available to families with incomes up to $50,000 it is obviously not focussed on the poor. Even under this program, 50 percent of the tuition has to be paid by the student or the student's family.

What I believe we are doing is to further the development of two different school systems in the United States: One for the bright, the wealthy, the non-handicapped, and the able; the balance will be in the public school system. I just do not think that is good for education or for the country.

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

(1) Racial Discrimination Prohibited. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution that is found, pursuant to the procedures set forth in this sub-section, to follow a racially discriminatory policy.

"(2) Definition. -- For purposes of this subsection, an educational institution follows a 'racially discriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy shall not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(3) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, and such declaratory judgment is not stayed, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year in which the declaratory judgment under section 7408 was entered against the educational institution, and

"(B) in succeeding calendar years until such time as an order modifying the declaratory judgment and reinstating credits is entered pursuant to subsection (f) of section 7408.

"(4) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) a statement, subject to the penalties for perjury, that

(A) attests that such institution has complied with the requirements of sub-section (e)(1)(iv) during such calendar year;

(B) declares that such institution has not followed a racially discriminatory policy during such calendar year; and

(C) indicates whether a declaratory judgment has been entered against such institution under section 7408 and has not been vacated pursuant to sub-section (f) of section 7408.

On or before January 31 of the calendar year following the calendar year to which the statement relates, the institution shall furnish a copy of the statement to all persons who paid tuition expenses to the institution in the calendar year to which the statement relates. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in this paragraph.

(5) Enforcement Responsibility. -- Under this section, the Attorney General has exclusive authority to investigate and to determine whether an educational institution is following a racially discriminatory policy and to commence a declaratory judgment action under section 7408. Upon request of the Attorney General or upon his own motion, the Secretary shall supply the Attorney General with all information in the possession of the Secretary relevant to such investigation, determination, or action.

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. -- The term 'educational institution' means a school that

"(i) provides a full-time program of elementary or secondary education;

"(ii) is a privately operated, not-for-profit, day or residential school;

"(iii) is exempt from taxation under section 501(a) as an organization described in section

501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply; and

"(iv) to the extent it otherwise publishes by-laws, advertisements, admission application forms and other such publications, includes therein (as the Secretary shall by regulation prescribe) a statement that it does not discriminate against student applicants or students on the basis of race.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses;

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; or

"(D) education above the twelfth-grade level."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) In General. -- Whenever the Attorney General receives a petition in accordance with paragraph (b), the Attorney General is authorized and directed, upon finding good cause to believe that an educational institution is following a racially discriminatory policy, to bring an action against the educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the educational institution has followed a racially discriminatory policy.

"(b) Petition. -- Any person may file a petition under sub-section (a). The petition must allege with specificity that

(1) a named educational institution has, pursuant to a racially discriminatory policy, discriminated against a named student applicant or student within one year preceding the filing of the petition; or

(2) the educational institution made a statement, within one year preceding the filing of the petition, communicating an intent to follow a racially discriminatory policy.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before filing an action, the Attorney General shall give the institution a fair opportunity to comment on allegations made against it and to show that a racially discriminatory policy does not exist or has been abandoned. Prior to and in lieu of filing an action, the Attorney General may, at his discretion, enter into a settlement agreement with the educational institution if he finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy. No petition need be filed for the Attorney General to initiate action to enforce the terms of such settlement agreement.

"(d) Required Showing. -- In an action under this section, no finding that a school is following a racially discriminatory policy shall be made unless the Attorney General establishes

(1) that the institution has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of the action; or

(2) that the institution has, within the two years preceding commencement of the action, made a statement communicating an intent to follow a racially discriminatory policy against student applicants or students; or

(3) that the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

"(e) Reinstatement of Credits. --

(1) If a district court enters a declaratory judgment against an educational institution under this section, the district court shall retain jurisdiction of the case. After

one (1) year has elapsed from the date of judgment, and at any time thereafter, the educational institution may file with the district court a motion to reinstate credits. Such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has changed its previous racially discriminatory policy;

(B) describing with specificity the ways in which the educational institution has taken reasonable steps to communicate its policy of non-discrimination to students, to faculty, and school administrators, and to the public in the area it serves;

(C) averring that the educational institution has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and

(D) averring that the educational institution has complied with the requirements of section 44 H(e)(1)(iv).

(2) When an educational institution has filed a motion complying with paragraph (1), the court shall enter an order modifying the prior judgment against the institution and reinstating credits for tuition payments to the educational institution, unless the Attorney General establishes that

(A) the institution has not in fact stopped following its previous discriminatory policy;

(B) the institution has discriminated against an applicant or student pursuant to a racially discriminatory policy within the preceding year;

(C) the institution has made statements communicating an intent to follow a racially discriminatory policy within the preceding year; or

(D) the institution has not, in fact, complied with the publications requirements of sub-paragraphs (B) and (D) of paragraph (1).

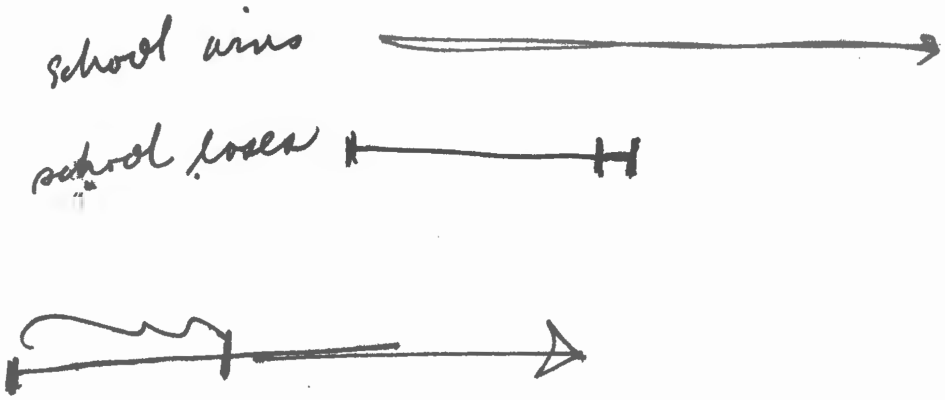
"(f) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court shall award the institution costs and attorney's fees in such action.

"(g) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H."

"(h) Statute of Limitations. -- If, for any reason, a judgment of the district court against an educational institution is stayed and is subsequently affirmed on appeal, credits allowed for tuition payments to such institution for taxable years dating back to the year in which the district court judgment was entered shall be disallowed.

"(1) The period for assessing a deficiency attributable to such disallowance of a credit shall not expire before the expiration of 3 years from the date of the appellate decision affirming the district court judgment. Any such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) If a district court judgment against an educational institution is reversed on appeal, taxpayers for whom credits have been precluded by such judgment shall be entitled to file amended returns for tax years dating back to and including the year in which the district court judgment was entered.



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