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No. 81-1

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals
for the Fourth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed July 2, 1981
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DOCKET ENTRIES

Proceedings in United States District Court, Eastern District of North Carolina, No. 75-0020-CIV-8

- May 13, 1975—Complaint and Summons filed
- June 6, 1975—Defendant's Interrogatories and Request for Production filed
- July 14, 1975—Plaintiff's Answer to Interrogatories and Request for Production filed
- July 24, 1975—Answer filed
- October 30, 1975—Defendant's Second Interrogatories and Request for Production filed
- October 30, 1975—Amended Answer and Counterclaim filed
- November 14, 1975—Reply to Counterclaim filed
- December 15, 1975—Plaintiff's Answer to Interrogatories and Request for Production filed
- January 28, 1976—Plaintiff's Answer to Interrogatories and Request for Production filed
- February 9, 1976—Depositions of Rod Helder and Dr. E. E. Ulrich filed (taken at Goldsboro, North Carolina on January 19, 1976)
- October 26, 1976—Defendant's Motion for Partial Summary Judgment filed
- January 17, 1977—Plaintiff's Motion for Partial Summary Judgment filed
- May 12, 1977—Hearing on Cross-Motions for Summary Judgment
- September 14, 1977—Order on Cross-Motions for Summary Judgment filed

January 27, 1978—Stipulation filed

May 7, 1980—Judgment filed

July 2, 1980—Notice of Appeal filed

**Proceedings in United States Court of Appeals
for the Fourth Circuit, No. 80-1473**

July 16, 1980—Case docketed

December 30, 1980—Cause argued before Butzner, Circuit
Judge, Field, Senior Circuit Judge, and Murnaghan,
Circuit Judge, and submitted

February 24, 1981—Opinion and Judgment filed

March 10, 1981—Petition for Rehearing filed

April 7, 1981—Order Denying Petition for Rehearing filed

April 16, 1981—Order Granting Motion for Stay of Man-
date filed

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 75-0020-CIV-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

COMPLAINT

(Filed May 13, 1975)

The plaintiff, complaining of defendant, alleges and says:

First Claim for Relief

1.

This is a civil action wherein plaintiff seeks recovery of Federal Insurance Contributions Act taxes and Federal Unemployment Tax Act taxes, interest and penalties, which were illegally, erroneously and wrongfully assessed against and collected from plaintiff under color of the Internal Revenue Laws of the United States. Jurisdiction is conferred upon the Court by 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422.

2.

Plaintiff, Goldsboro Christian Schools, Inc. (hereinafter sometimes referred to as the "School"), is a corporation organized under the North Carolina Non-Profit Corporation Act, having its principal place of business in Goldsboro, Wayne County, North Carolina. Plaintiff is affiliated with and operated as a facility of The Second Baptist Church of Goldsboro.

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3.

Defendant is the United States of America.

4.

This action is brought against defendant, the United States of America, for recovery of \$1,972.10 of Federal Insurance Contributions Act taxes and interest imposed by Section 3101 and 3111 of the Internal Revenue Code (26 U.S.C. § 3101 and § 3111) and \$748.10 of Federal Unemployment Tax Act taxes, interest and penalties imposed by Section 3301 of the Internal Revenue Code (26 U.S.C. § 3301) which were erroneously and illegally assessed against plaintiff for the taxable periods from January 1, 1969, to December 31, 1972, and collected from plaintiff by the District Director of Internal Revenue, Internal Revenue Service, United States of America, for the District of North Carolina, on December 11, 1974.

5.

Under the provisions of Section 3121(b)(8)(B) of the Internal Revenue Code, the Federal Insurance Contributions Act taxes imposed by Section 3101 and 3111 of the Internal Revenue Code are not applicable to wages paid to an employee for "service performed in the employ of a religious, charitable, educational, or other organization described in Section 501(c)(3) which is exempt from income tax under Section 501(a) . . ." unless the employer files a certificate under Section 3121(k)(1)(A) of the Internal Revenue Code, certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Similarly, under the provisions of Section 3306(c)(8) of the Internal Revenue Code, the Federal Unemployment Tax Act imposed by Section 3301 of the Internal Revenue Code is not applicable to wages paid to an employee for "service performed in the employ of a religious, charitable,

educational, or other organization described in Section 501(c)(3) which is exempt from income tax under Section 501(a)”. Section 501(a) and (c)(3), in pertinent part, provide as follows:

Sec. 501. Exemption From Tax on Corporations, Certain Trusts, Etc.

(a) *Exemption From Taxation.*—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle. . .

* * *

(c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):

* * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

6.

Plaintiff was organized in 1963 as a corporation under the North Carolina Non-Profit Corporation Act, exclusively for the purpose of operating a private, fundamentalistic religious school. Paragraph 3(a) of the Articles of Incorporation reflects its deeply religious nature and purpose:

3. The purposes for which the corporation is organized are:

(a) The general nature and object of the corporation shall be to conduct an institution or institutions of learning for the general education of *Youth* in the essentials of culture and its arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy scriptures; combatting all atheistic, agnostic, pagan and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both the Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

7.

At all times herein relevant, the School has maintained a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body for kindergarden and grades one through twelve. For the 1973-74 school year, the School had a regularly enrolled student body of approximately 750 students. The School draws students from thirteen surrounding counties and operates a fleet of thirty buses which drive an average of 2,200 miles per day transporting students to and from school. The book value of the assets of the School as of June 30, 1974, was \$687,018.26.

“Nonpublic” schools in North Carolina, of which plaintiff is one, are required by Section 115-255 of the North Carolina General Statutes to “. . . meet the State minimum

standards as prescribed in the course of study, and the children therein [are required to] be taught the branches of education which are taught to the children of corresponding age and grade in the public schools and such instruction, except courses in foreign languages, [is required to] be given in the English language." In accordance with this statutory requirement, the North Carolina Department of Public Instruction requires that each "nonpublic" school file an annual report with the Department setting forth information about the curriculum, the faculty, the physical facilities of the school, etc., so that the Department can determine whether the school meets the above standards.

Plaintiff has filed the required Kindergarden Annual Report, Elementary School Annual Report, and the Secondary School Annual Report for each of the years in which the Internal Revenue Service has assessed plaintiff for the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. The North Carolina Department of Public Instruction notified the School by letter in each of these years that it was in compliance with the requirements of G.S. 115-255 and therefore was an "approved nonpublic school".

8.

All School activities, including classroom instruction, are begun with prayer; all students are required to attend chapel three times a week, and all students are required to take courses in Bible. In addition, the parents of all students are required to sign the following statement in which they agree to cooperate with the religious teachings of the School:

I agree to cooperate with the School in encouraging my children to follow its Christian teaching, in wholeheartedly entering in all of its programs and work, including the maintaining of discipline and the School's dress and appearance code.

Each teacher of the Goldsboro Christian School is also required to affirm certain religious beliefs. The employment contract which each teacher is required to sign provides, in pertinent part, as follows:

In accepting a position as teacher in Goldsboro Christian Schools for the school year, I unqualifiedly affirm without any mental reservation what so ever my own personal faith in the Lord Jesus Christ as my Saviour and further affirm my personal belief in the doctrinal position of Goldsboro Christian Schools as stated in the following paragraph of this contract.

I believe in the inspiration of the Bible (both the Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

I understand that Goldsboro Christian Schools is owned by Second Baptist Church and that I am actually an employee of Second Baptist Church. I understand and accept the requirements outlined under item # 10 on the 1974-75 Salary Scale Sheet concerning church membership at Second Baptist Church.

If at any time I can no longer adhere to the statement of faith, I will resign from the school immediately. It is my understanding that the school will not terminate this contract with me during the year unless I fail to adhere to the doctrinal position of the school or consistently in my personal life or in my church relations deviate from standards of conduct generally acceptable

to Bible believing people or if in my classroom, I fail to maintain good professional and Christian standards as a Christian school teacher. For my part, I will not terminate this contract unless an emergency beyond my control or an act of God requires a change in my plans. If either condition occurs, I will give as much notice as possible.

Paragraph # 10 of the Goldsboro Christian Schools Salary Scale Sheet for 1974-75 provides as follows:

Baptists moving to Goldsboro to work with Goldsboro Christian Schools will be expected to be members in regular attendance at Second Baptist Church. Employees who are members of churches of another denomination will be expected to be active in a fundamental church of their denomination. If there is no satisfactory church of the employee's own denomination in the area, the employee will be expected to be a regular attendant at Second Baptist Church.

Because of the School's religious beliefs as expressed in its Charter, it has continuously refused to accept funds or grants of any kind from any government, federal, state or local. The School believes that the acceptance of such funds would cause the surrender of its religious principles and infringe upon its right to operate the School in harmony with such principles.

9.

Since the School's inception, its admissions policy has been controlled by its religious belief that God set up racial barriers and that the mixing of the races is contrary to the teachings of the Bible. Based on these religious beliefs, the School does not retain an open admissions policy to blacks or anybody else who would be unwilling to cooperate with the School in its Christian teaching and philosophy. The Statement of Policy adopted by the Board of Trustees of the School provides as follows:

It is the belief of the trustees and administration of Goldsboro Christian Schools that God is the Creator of all men. In the plan and purpose and wisdom of God, He separated mankind into various nations and races bearing distinct physical and emotional characteristics. It is our belief that the plan and purpose of God in the separation of the nations and races should be preserved in the fear of the Lord.

In Goldsboro Christian Schools we would seek to discourage any kind of social intermingling by our students that could eventually lead to intermarriage of the races and a corresponding breakdown of distinctives established by almighty God. It is our conviction that since such a breakdown is contrary to God's plan, a co-mingling of races leading in this direction can only eventually breed racial disrespect rather than God-fearing racial respect . . . It is for these reasons that Goldsboro Christian Schools does not retain an open admissions policy to blacks or to anybody else who would be unwilling to cooperate with the school in its Christian teaching and philosophy.

* * *

In addition to the problems involved in an open admissions policy, a careful reading of the certificate of compliance with the Civil Rights Act reveals that the school's signature on such a certificate ultimately surrenders the operation of the school to the department of Health, Education and Welfare. No truly Christian board of trustees could rightly authorize such an action to be taken by the school administration. No truly Christian administration could rightly continue to endeavor to lead an institution for God when its policies must ultimately be dictated by a secular bureaucracy in Washington. It is the purpose of Goldsboro Christian Schools to operate only as long as we can be governed alone by the light of the Word of God as God gives us the ability to see that light.

10.

The School is affiliated with and operated as a facility of The Second Baptist Church of Goldsboro. A substantial portion of the funds for the organization of the School came from the members of The Second Baptist Church. The kindergarden and elementary school use the physical facilities of The Second Baptist Church and the land on which the secondary school is located was sold to the School by The Second Baptist Church. The pastor of The Second Baptist Church, Dr. E. E. Ulrich, is the person primarily responsible for the organization of the School. At all times herein relevant, Dr. Ulrich was President of the School and Chairman of its Board of Trustees. Dr. Ulrich is also currently serving as President of the North Carolina Christian Educator's Association.

11.

Under paragraph 4 of the Articles of Incorporation, as amended in 1970, no part of the net earnings of the School inures to the benefit of any private shareholder or individual, and in the event of dissolution, the assets of the School will be distributed for exempt purposes. Paragraph 4 of the Articles of Incorporation provides as follows:

"4. The corporation shall be a charitable corporation to the extent that no profit will inure to the benefit of any individual and that in case of dissolution, the assets of said corporation shall become the property of the following charitable institutions, share and share alike, to-wit: The Gospel Fellowship Association, Inc. of Greenville, S. C., a non-denominational gospel organization, having a federal tax exempt status, and the Second Baptist Church of Goldsboro, North Carolina, also having a federal tax exempt status".

By reason of the facts hereinabove alleged, plaintiff was organized and operated at all times herein relevant exclusively for religious, charitable or educational purposes. No part of plaintiff's net earnings have or will inure to the benefit of any private shareholder or individual, and no substantial part of its activities involve carrying on propaganda or otherwise attempting to influence legislation. Plaintiff has not and does not participate in or intervene in (including publishing or distributing of statements) any political campaign on behalf of any candidate for public office. Therefore, plaintiff meets all the requirements of an organization described in Section 501(c)(3) of the Internal Revenue Code and the regulations thereunder, and is exempt from income tax under Section 501(a) of the Internal Revenue Code. Plaintiff has not filed a certificate under Section 3121(k)(1)(A) of the Internal Revenue Code certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Therefore, the Federal Insurance Contributions Act imposed by Section 3101 and 3111 of the Internal Revenue Code (26 U.S.C. § 3101 and § 3111) and the Federal Unemployment Tax Act taxes imposed by Section 3301 of the Internal Revenue Code (26 U.S.C. § 3301) are not applicable to the wages paid by plaintiff to its employees during the period from January 1, 1969, to December 31, 1972, by the express provisions of Section 3121(b)(8)(B) of the Internal Revenue Code and Section 3306(c)(8) of the Internal Revenue Code.

Nevertheless, the defendant has published certain news releases and Revenue Rulings construing Section 501(c)(3) and stating that private schools, including religious schools such as plaintiff, which do not adopt racially non-discriminatory admissions policies are not an exempt organization

described in Section 501(c)(3) of the Internal Revenue Code and are not exempt from tax under Section 501(a).

In disregard of plaintiff's status as a religious and educational organization, the Internal Revenue Service has erroneously and illegally made the determination that plaintiff is not an organization described in Section 501(c)(3) of the Internal Revenue Code and is not exempt from tax under Section 501(a) because of its admissions policy; and on October 7, 1974, the Internal Revenue Service erroneously and illegally assessed deficiencies against plaintiff for the taxes imposed by the Federal Insurance Contributions Act, Section 3101 and 3111 of the Internal Revenue Code (26 U.S.C. § 3101 and § 3111), on the taxable wages paid by plaintiff to its employees during the sixteen calendar quarters from January 1, 1969, to December 31, 1972. The total amount of the assessment, including interest, was \$101,075.69, computed as follows:

Calendar Quarter	Employee Tax Imposed by Section 3101	Employer Tax Imposed by Section 3111	Interest	Total
1/1/69-3/31/69	\$1,287.45	\$1,287.45	\$ 820.40	\$ 3,395.30
4/1/69-6/30/69	972.45	972.45	590.50	2,535.39
7/1/69-9/30/69	870.63	870.63	515.39	2,256.64
10/1/69-12/31/69	2,006.92	2,006.92	1,127.83	5,141.66
1/1/70-3/31/70	2,104.65	2,104.65	1,127.20	5,336.49
4/1/70-6/30/70	1,701.14	1,701.14	853.92	4,256.19
7/1/70-9/30/70	1,559.12	1,559.12	735.86	3,854.10
10/1/70-12/31/70	3,212.85	3,212.85	1,419.99	7,845.68
1/1/71-3/31/71	3,700.08	3,700.08	1,525.55	8,925.70
4/1/71-6/30/71	2,965.55	2,965.55	1,132.77	7,063.87
7/1/71-9/30/71	2,292.69	2,292.69	609.66	5,195.04
10/1/71-12/31/71	4,319.03	4,319.03	1,161.42	9,799.47
1/1-72-3/31/72	4,464.02	4,464.02	1,304.84	10,232.87
4/1/72-6/30/72	3,681.45	3,681.45	964.44	8,327.34
7/1/72-9/30/72	2,939.92	2,939.92	681.98	6,561.82
10/1/72-12/31/72	4,693.47	4,693.47	961.20	10,348.13
Total Assessment				<u>\$101,075.69</u>

On October 7, 1974, the Internal Revenue Service also erroneously and illegally assessed deficiencies against plaintiff for the taxes imposed by the Federal Unemployment Tax Act, Section 3301 of the Internal Revenue Code (26 U.S.C. § 3301), on the taxable wages paid by plaintiff to its employees during 1969, 1970, 1971, and 1972. The total amount of assessment, including interest and penalties, was \$33,488.14, computed as follows:

Year	Tax Imposed by Section 3301	Interest	Penalty	Total
1969	\$3,000.34	\$ 843.05	\$ 750.09	\$ 4,593.48
1970	4,988.66	1,102.43	1,247.17	7,338.26
1971	7,069.89	1,138.16	1,767.47	9,975.52
1972	8,572.17	865.67	865.67	11,580.88
Total Assessment				\$33,488.14

14.

Deficiencies for Federal Insurance Contributions Act taxes and Federal Unemployment Tax Act taxes, interest and penalties are assessed separately for each employee for each taxable period. Therefore, the assessment for these taxes for each taxable period is divisible and plaintiff's liability therefor is separate as to each individual employee for each taxable period. On December 11, 1974, plaintiff paid the Federal Insurance Contributions Act taxes (including interest) which had been assessed on the taxable wages paid to Rodney Warren Helder, an employee of plaintiff, during the period from January 1, 1969, to June 30, 1969, and on the taxable wages paid to Bernice Gurley Hinnant, an employee of plaintiff, during the period from July 1, 1969, to December 31, 1972. The amount of the Federal Insurance Contributions Act taxes and interest which were paid to the Internal Revenue Service is as follows:

Calendar Quarter	Employee	Employer Tax Imposed by Section 3101	Employee Tax Imposed by Section 3111	Interest	Total
1/1/69-3/31/69	Helder	\$57.24	\$57.24	\$37.62	\$ 152.10
4/1/69-6/30/69	Helder	41.92	41.92	26.28	110.12
7/1/69-9/30/69	Hinnant	19.24	19.24	11.78	50.26
10/1/69-12/31/69	Hinnant	55.46	55.46	32.28	143.20
1/1/70-3/31/70	Hinnant	41.00	41.00	22.64	104.64
4/1/70-6/30/70	Hinnant	30.56	30.56	15.96	77.08
7/1/70-9/30/70	Hinnant	25.30	25.30	12.44	63.04
10/1/70-12/31/70	Hinnant	51.34	51.34	23.72	126.40
1/1/71-3/31/71	Hinnant	62.56	62.56	27.04	152.16
4/1/71-6/30/71	Hinnant	56.46	56.46	22.70	135.62
7/1/71-9/30/71	Hinnant	43.42	43.42	16.16	103.00
10/1/71-12/31/71	Hinnant	73.57	73.57	25.60	172.74
1/1/72-3/31/72	Hinnant	73.02	73.02	21.34	167.38
4/1/72-6/30/72	Hinnant	60.36	60.36	17.02	137.74
7/1/72-9/30/72	Hinnant	46.57	46.57	11.74	104.88
10/1/72-12/31/72	Hinnant	77.19	77.19	17.36	171.74
				Total	<u>\$1,972.10</u>

On December 11, 1974, plaintiff also paid the Federal Unemployment Tax Act taxes (including interest and penalties) which had been assessed on the taxable wages paid to Rodney Warren Helder during 1969 and on the taxable wages paid to Bernice Gurley Hinnant during 1970, 1971, and 1972. The amount of the Federal Unemployment taxes, interest and penalties which were paid to the Internal Revenue Service is as follows:

Year	Employee	Tax Imposed by Section 3301	Interest	Penalty	Total
1969	Helder	\$130.20	\$33.85	\$32.55	\$196.60
1970	Hinnant	119.92	27.70	29.98	177.60
1971	Hinnant	134.40	22.98	33.60	190.98
1972	Hinnant	134.40	14.92	33.60	182.92
				Total	<u>\$748.10</u>

On December 11, 1974, and within two years after payment of the taxes set forth in paragraph 14 above, plaintiff timely filed 36 Claims for Refund on Form 843 with the District Director of the Internal Revenue Service in Greensboro, North Carolina, seeking a refund of the Federal Insurance Contributions Act taxes (including interest) and the Federal Unemployment Tax Act taxes (including interest and penalties) which were paid to the Internal Revenue Service by plaintiff on December 11, 1974. Plaintiff set forth in each said Claim for Refund as reason for the allowance thereof the same grounds upon which this suit is based. The type of tax, amount, and period covered by each Claim for Refund was as follows:

A. Claim for Refund of FICA Taxes Imposed by Section 3101

Quarter	Employee	Tax	Interest	Total
1/1/69-3/31/69	Helder	\$57.24	\$18.81	\$ 76.05
4/1/69-6/30/69	Helder	41.92	13.14	55.06
7/1/69-9/30/69	Hinnant	19.24	5.89	25.13
10/1/69-12/31/69	Hinnant	55.46	16.14	71.60
1/1/70-3/31/70	Hinnant	41.00	11.32	52.32
4/1/70-6/30/70	Hinnant	30.56	7.98	38.54
7/1/70-9/30/70	Hinnant	25.30	6.22	31.52
10/1/70-12/31/70	Hinnant	51.34	11.86	63.20
1/1/71-3/31/71	Hinnant	62.56	13.52	76.08
4/1/71-6/30/71	Hinnant	56.46	11.35	67.81
7/1/71-9/30/71	Hinnant	43.42	8.08	51.50
10/1/71-12/31/71	Hinnant	73.57	12.80	86.37
1/1/72-3/31/72	Hinnant	73.02	10.67	83.69
4/1/72-6/30/72	Hinnant	60.36	8.51	68.87
7/1/72-9/30/72	Hinnant	46.57	5.87	52.44
10/1/72-12/31/72	Hinnant	77.19	8.68	85.87
Total Section 3101 Tax				<u>\$986.05</u>

B. Claim for Refund of FICA Taxes Imposed by Section 3111

Quarter	Employee	Tax	Interest	Total
1/1/69-3/31/69	Helder	\$57.24	\$18.81	\$ 76.05
4/1/69-6/30/69	Helder	41.92	13.14	55.06
7/1/69-9/30/69	Hinnant	19.24	5.89	25.13
10/1/69-12/31/69	Hinnant	55.46	16.14	71.60
1/1/70-3/31/70	Hinnant	41.00	11.32	52.32
4/1/70-6/30/70	Hinnant	30.56	7.98	38.54
7/1/70-9/30/70	Hinnant	25.30	6.22	31.52
10/1/70-12/31/70	Hinnant	51.34	11.86	63.20
1/1/71-3/31/71	Hinnant	62.56	13.52	76.08
4/1/71-6/30/71	Hinnant	56.46	11.35	67.81
7/1/71-9/30/71	Hinnant	43.43	8.08	51.50
10/1/71-12/31/71	Hinnant	73.57	12.80	86.37
1/1/72-3/31/72	Hinnant	73.02	10.67	83.69
4/1/72-6/30/72	Hinnant	60.36	8.51	68.87
7/1/72-9/30/72	Hinnant	46.57	5.87	52.44
10/1/72-12/31/72	Hinnant	77.19	8.68	85.87
Total Section 3111 Tax				\$986.05

C. Claim for Refund of Federal Unemployment Tax Imposed by Section 3301

Year	Employee	Tax	Interest	Penalty	Total
1969	Helder	\$130.20	\$33.85	\$32.55	\$196.60
1970	Hinnant	119.92	27.70	29.98	177.60
1971	Hinnant	134.40	22.98	33.60	190.98
1972	Hinnant	134.40	14.92	33.60	182.92
Total Section 3301 Tax					\$748.10

The aggregate amount of all Claims for Refund in A, B, and C above was \$2,720.20.

On December 11, 1974, plaintiff also filed 36 claims in Abatement on Form 843 with the District Director of the Internal Revenue Service in Greensboro, North Carolina, requesting abatement of the Federal Insurance Contributions Act taxes and Federal Unemployment Tax Act taxes, interest and penalties which were illegally and erroneously assessed against plaintiff as set forth in paragraph 13 above less the amount of Federal Insurance Contributions Act taxes and Federal Unemployment Tax Act taxes which were paid to the Internal Revenue Service as set forth in paragraph 14 above. The aggregate amount of all such Claims in Abatement was \$132,042.26. Plaintiff set forth in each said Claim in Abatement as reasons for the allowance thereof the same grounds upon which this suit is based.

16.

On December 30, 1974, the Director of the Service Center for the Southeast Region mailed to plaintiff, by Certified Mail, a formal notice of disallowance of each of the above Claims for Refund for Federal Insurance Contributions Act taxes and interest, and for Federal Unemployment Tax Act taxes, interest and penalties. As of the filing of this Complaint, the Claims in Abatement have not been acted on by the Internal Revenue Service.

17.

Section 501(c)(3) of the Internal Revenue Code and the regulations thereunder set forth certain criteria for tax exempt status, none of which involves the admissions policy of exempt organizations carrying out educational and religious activities. The defendant does not have the authority to require that plaintiff maintain a racially open admissions policy in order to qualify as an organization exempt from tax under Section 501(c)(3) and 501(a) of the Internal Revenue Code. Any change in the requirements of an organization described in Section 501(c)(3) of the Internal

Revenue Code must come from Congress, not the Executive Branch. Furthermore, defendant's attempt to require that private religious schools maintain an open admissions policy in order to qualify for tax exempt status under Section 501(c)(3) and 501(a) of the Internal Revenue Code violates plaintiff's rights under the First and Fifth Amendments of the Constitution of the United States.

18.

By reason of the facts hereinabove alleged, the wages paid by plaintiff to its employees during the period from January 1, 1969, to December 31, 1972, were not subject to the Federal Insurance Contributions Act taxes imposed by Section 3101 and 3111 of the Internal Revenue Code and Federal Unemployment Tax Act taxes imposed by Section 3301 of the Internal Revenue Code. Accordingly, plaintiff has overpaid its liability for the aforesaid taxes by the amount of \$2,720.20 for the period from January 1, 1969, to December 31, 1972; and the defendant has erroneously and illegally collected from the plaintiff the sum of \$2,720.20 contrary to the applicable provisions of the Internal Revenue Laws.

19.

By reason of the facts hereinabove alleged, the defendant, the United States of America, is indebted to plaintiff in the principal sum of \$2,720.20 together with interest thereon from December 11, 1974, until paid.

Second Claim for Relief

1.

This is a civil action wherein plaintiff seeks recovery of withholding income taxes and interest which were illegally, erroneously and wrongfully assessed against and collected from plaintiff under color of the Internal Revenue Laws of the United States. Jurisdiction is conferred upon the Court by 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422.

2.

All of the allegations contained in paragraphs 2 and 3 of the First Claim for Relief are restated and incorporated herein by reference.

3.

This action is brought against defendant, the United States of America, for recovery of \$739.73 of withholding income taxes and interest which were erroneously and illegally assessed against plaintiff under Section 3403 of the Internal Revenue Code (26 U.S.C. § 3403) for the 16 calendar quarters from January 1, 1969, to December 31, 1972, and collected from plaintiff by the District Director of Internal Revenue, Internal Revenue Service, United States of America, for the District of North Carolina, on December 11, 1974.

4.

All of the allegations contained in paragraphs 6-10 of the First Claim for Relief are restated and incorporated herein by reference.

5.

Plaintiff owns a number of houses which are located either adjacent to the property on which the School is situated or in the immediate vicinity thereof. Plaintiff believes that in order to successfully operate a Christian day school and to accomplish the objectives of the School set forth in the charter provision quoted above, that the faculty of the School must live on the business premises of the School. Accordingly, each new teacher who moves to Goldsboro is required to live in School housing as a condition of employment. Section 5 of the employment contract used by the School provides as follows:

The policy of Goldsboro Christian Schools is to require teachers moving to Goldsboro, as employees of the school, to live in school provided housing for which

there is no charge. Because we recognize that your housing is school provided and necessary to your work, we are also providing all utilities including one telephone in each residence. In regards to the telephone, we will not pay for long distance calls unless authorized by the school; we will expect the telephone to be listed in the directory; extension phones would be paid by the employee.

Since the School believes that unless a faculty member lives in School housing he will be unable to successfully perform the services required of him, only those teachers who were long-time residents of Goldsboro and who owned a home in Goldsboro at the time of their application for a teaching position are exempt from the requirement of living in School housing. The School makes no adjustment or distinction in its salary schedule for those teachers who live in School housing and for those who do not.

6.

Based on the foregoing facts, the alleged value of lodging furnished to certain employees of the School during the period from January 1, 1969, to December 31, 1972, is excludable from gross income under Section 119 of the Internal Revenue Code (26 U.S.C. § 119) because:

- (a) the lodging is furnished on the business premises of the employer,
- (b) the lodging is furnished for the convenience of the employer, and
- (c) the employee is required to accept such lodging as a condition of his employment.

Accordingly, the Form 941 which was filed by plaintiff with the Internal Revenue Service for each of the 16 calendar quarters from January 1, 1969, to December 31, 1972, did

not include as part of the wages paid to each employee the alleged value of lodging furnished by plaintiff.

7.

The Internal Revenue Service illegally and erroneously determined that the alleged value of lodging furnished by plaintiff to certain employees of the School was not excludable from their gross income under Section 119 of the Internal Revenue Code; and on October 7, 1974, the Internal Revenue Service erroneously and illegally assessed a deficiency against plaintiff under Section 3403 of the Internal Revenue Code for the income taxes required to be withheld under Section 3402 on the alleged value of lodging furnished to certain employees of the School during the 16 calendar quarters from January 1, 1969, to December 31, 1972. The total amount of the assessment, including interest, was \$28,970.05, computed as follows:

Quarter	Section 3403 Tax	Interest	Total
1/1/69-3/31/69	\$ 464.43	\$147.98	\$ 612.41
4/1/69-6/30/69	411.13	124.83	535.96
7/1/69-9/30/69	506.87	150.02	656.89
10/1/69-12/31/69	662.47	186.15	848.62
1/1/70-3/31/70	699.91	179.39	879.30
4/1/70-6/30/70	645.44	162.00	807.44
7/1/70-9/30/70	916.04	216.17	1,132.21
10/1/70-12/31/70	1,054.77	233.09	1,287.86
1/1/70-3/31/71	1,175.08	242.24	1,417.32
4/1/71-6/30/71	1,132.53	216.29	1,348.82
7/1/71-9/30/71	1,916.69	534.62	2,451.31
10/1/71-12/31/71	2,938.42	702.23	3,640.65
1/1/72-3/31/72	2,913.87	425.86	3,339.73
4/1/72-6/30/72	2,730.87	357.71	3,088.58
7/1/72-9/30/72	3,071.26	356.22	3,427.48
10/1/72-12/31/72	3,170.79	324.68	3,495.47
Total Assessment			<u>\$28,970.05</u>

Deficiencies for income taxes required to be withheld by an employer under Section 3402 of the Internal Revenue Code on wages paid to employees are assessed separately for each employee for each taxable period. Therefore, the total assessment against plaintiff for withholding taxes for each taxable period is divisible and plaintiff's liability therefor is separate as to each individual employee for each taxable period.

On December 11, 1974, plaintiff paid the withholding taxes (including interest) assessed under Section 3403 of the Internal Revenue Code on the alleged value of lodging furnished to Rodney Warren Helder, an employee of plaintiff, during the period from January 1, 1969, to June 30, 1969, and on the alleged value of lodging furnished to Bernice Gurley Hinnant, an employee of plaintiff, during the period from July 1, 1969, to December 31, 1972. The amount of withholding taxes and interest which were paid to the Internal Revenue Service is as follows:

Quarter	Employee	Tax Imposed by Section 3403	Interest	Total
1/1/69-3/31/69	Helder	\$31.50	\$10.35	\$ 41.85
4/1/69-6/30/69	Helder	31.50	9.88	41.38
7/1/69-9/30/69	Hinnant	16.18	4.95	21.13
10/1/69-12/31/69	Hinnant	31.07	9.04	40.11
1/1/70-3/31/70	Hinnant	32.85	9.07	41.92
4/1/70-6/30/70	Hinnant	28.85	7.53	36.38
7/1/70-9/30/70	Hinnant	36.40	8.95	45.35
10/1/70-12/31/70	Hinnant	33.90	7.83	41.73
1/1/71-3/31/71	Hinnant	33.89	7.33	41.22
4/1/71-6/30/71	Hinnant	29.54	5.94	35.48
7/1/71-9/30/71	Hinnant	45.04	8.38	53.42
10/1/71-12/31/71	Hinnant	53.54	9.15	62.69
1/1/72-3/31/72	Hinnant	51.65	7.55	59.20
4/1/72-6/30/72	Hinnant	46.75	6.59	53.34
7/1/72-9/30/72	Hinnant	57.70	7.27	64.97
10/1/72-12/31/72	Hinnant	53.90	6.06	59.96
			Total	<u>\$739.73</u>

On December 11, 1974, and within two years after payment of the taxes set forth in paragraph 8 above, plaintiff timely filed 16 Claims for Refund on Form 843 with the District Director of the Internal Revenue Service in Greensboro, North Carolina, seeking a refund of the withholding taxes (including interest) which were paid to the Internal Revenue Service by plaintiff on December 11, 1974. Plaintiff set forth in each said Claim for Refund as reasons for the allowance thereof the same grounds upon which this suit is based. The amount and period covered by each Claim for Refund was as follows:

Quarter	Employee	Tax	Interest	Total
1/1/69-3/31/69	Helder	\$31.50	\$10.35	\$ 41.85
4/1/69-6/30/69	Helder	31.50	9.88	41.38
7/1/69-9/30/69	Hinnant	16.18	4.95	21.13
10/1/69-12/31/69	Hinnant	31.07	9.04	40.11
1/1/70-3/31/70	Hinnant	32.85	9.07	41.92
4/1/70-6/30/70	Hinnant	28.85	7.53	36.38
7/1/70-9/30/70	Hinnant	36.40	8.95	45.35
10/1/70-12/31/70	Hinnant	33.90	7.83	41.73
1/1/71-3/31/71	Hinnant	33.89	7.33	41.22
4/1/71-6/30/71	Hinnant	29.54	5.94	35.48
7/1/71-9/30/71	Hinnant	45.04	8.38	53.42
10/1/71-12/31/71	Hinnant	53.54	9.15	62.69
1/1/72-3/31/72	Hinnant	51.65	7.55	59.20
4/1/72-6/30/72	Hinnant	46.75	6.59	53.34
7/1/72-9/30/72	Hinnant	57.70	7.27	64.97
10/1/72-12/31/72	Hinnant	53.90	3.06	59.96
			Total	<u>\$739.73</u>

On December 11, 1974, plaintiff also filed 16 Claims in Abatement on Form 843 with the District Director of the Internal Revenue Service in Greensboro, North Carolina, requesting abatement of the withholding taxes and interest

as set forth in paragraph 7 above which were illegally and erroneously assessed against plaintiff under Section 3403 of the Internal Revenue Code less the amount of withholding taxes which were paid to the Internal Revenue Service as set forth in paragraph 8 above. The aggregate amount of all such Claims in Abatement was \$28,010.56. Plaintiff set forth in each said Claim in Abatement as reasons for the allowance thereof the same grounds upon which this suit is based.

10.

On December 30, 1974, the District Director mailed to plaintiff, by Certified Mail, a formal notice of disallowance of each of plaintiff's 16 Claims for Refund of withholding taxes and interest. As of the filing of this Complaint, the Claims in Abatement have not been acted on by the Internal Revenue Service.

11.

By reason of the facts hereinabove alleged, the alleged value of lodging furnished by plaintiff to Mr. Helder and Mrs. Hinnant during the 16 calendar quarters from January 1, 1969, to December 31, 1972, is excludable from their gross income under Section 119 of the Internal Revenue Code. Accordingly, plaintiff has overpaid its liability for withholding taxes on the alleged value of said lodging under Section 3403 of the Internal Revenue Code in the amount of \$739.73 for the 16 calendar quarters from January 1, 1969, to December 31, 1972; and defendant has erroneously and illegally collected from plaintiff the sum of \$739.73 contrary to the applicable provisions of the Internal Revenue Laws.

12.

By reason of the facts hereinabove alleged, the defendant, the United States of America, is indebted to plaintiff in the principal sum of \$739.73 together with interest thereon from December 11, 1974, until paid.

WHEREFORE, plaintiff demands judgment against defendant in the amount of Three Thousand Four Hundred Fifty-Nine and 93/100 Dollars (\$3,459.93) with interest thereon from the date of payment of same as provided by law, and the cost of this action, and such other and further relief as the Court may deem proper.

/s/ CLAUDE C. PIERCE
Claude C. Pierce

/s/ WILLIAM G. McNAIRY
William G. McNairy

/s/ EDWARD C. WINSLOW III
Edward C. Winslow III
Attorneys for Plaintiff

Of Counsel:

BROOKS, PIERCE, McLENDON, HUMPHREY
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Greensboro, North Carolina 27402
Telephone: 273-2591

/s/ JOHN E. DUKE
John E. Duke

Of Counsel:

DUKE AND BROWN
213 East Walnut Street
Goldsboro, North Carolina 27530
Telephone: 734-6500

Verification

I, Edward E. Ulrich, being first duly sworn, depose and say that I am Chairman of the Board of Trustees of Goldsboro Christian Schools, Inc., Plaintiff, that I have read the foregoing Complaint and know the contents thereof and the same to be true of my own personal knowledge, except as to those matters therein stated upon information and belief and as to those matters I believe the same to be true.

/s/ EDWARD E. ULRICH
Edward E. Ulrich

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

**DEFENDANT'S INTERROGATORIES AND REQUESTS
FOR PRODUCTION**

(June 3, 1975)

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, the defendant requests that the plaintiff answer the following interrogatories and produce the requested documents. The plaintiff may satisfy the requests for production by serving copies of the requested documents upon counsel for the defendant at the same time as filing answers to the interrogatories. In lieu thereof, the defendant requests that the plaintiff produce the documents at the office of the United States Attorney, 310 New Bern Avenue, Raleigh, North Carolina, on July 14, 1975, at 9:30 a.m., or at such other time and place as may be agreed upon between counsel for the plaintiff and counsel for the defendant.

All interrogatories and requests for production refer to the entire period of the plaintiff's existence since its incorporation in 1963. All references to the "School" are to the Goldsboro Christian Schools, Inc. (or its legal predecessor or successor corporations).

1. Provide the School's corporate charter, the By-Laws, and all amendments to each.

2. State the name and current address of the ten persons most active or instrumental in the establishment of the School.

3. State whether establishment of the School was in any way related to actions, proposed actions, or expected actions by any governmental body. If so, state the nature of the actions, proposed actions, or expected actions, and

how the establishment of the School was expected by the founders to affect those actions.

4. Provide the names and current addresses of all persons serving on the Board of Trustees of the School, and state the dates that each person served on the Board.

5. Provide all minutes, memoranda, and other written or printed material reflecting meetings and actions of the Board of Trustees of the School.

6. Does the School have any governing body other than the Board of Trustees? If so, state the nature of the body and provide the names and current addresses of each member of the body. Also provide all minutes, memoranda, and other written or printed material reflecting actions of the body.

7. Provide all reports and other written submissions made by the School to the North Carolina Department of Public Instruction.

8. Provide all literature, prospectuses, brochures, correspondence, and other written or printed material reflecting student admission requirements and limitations.

9. Provide copies of all statements or agreements that parents and/or pupils are required to enter as a condition for admission to the School.

10. If there are any unwritten agreements or understandings between the School and parents and/or students, state the nature of each such agreement or understanding.

11. With respect to the plaintiff's allegations as to "racial barriers" (e.g., complaint, paragraph 9), provide the following:

- a. the plaintiff's definition of race, and a list of each distinguishable group meeting the plaintiff's definition as a separate race;
- b. a detailed statement of the "racial barriers" that exist between racial groupings identified in answer-

ing a, above, addressing specifically (1) the levels or generic categories of commerce (in its broad sense) wherein dealings may not be had between the races, and (2) the levels or generic categories of commerce (in its broad sense) wherein dealings may be had between the races;

c. a detailed statement of the religious doctrinal basis for the "racial barriers" listed in answering b, above, providing, where appropriate, citations to authority for the doctrine or conclusions made therefrom.

12. Which of the racial categories listed in answering interrogatory 11a have been accepted as students at the School?

13. Provide the "Statement of Policy of the Board of Trustees" referred to in paragraph 9 of the complaint, state the date it was promulgated or authorized by the Board of Trustees, and state the nature of any governmental action that prompted the Board of Trustees to issue the statement.

14. May students of different nationalities (but within the same racial grouping) be admitted to the School? If the answer is in the affirmative, state each nationality that has been represented by students at the School.

15. State the name and current address of the person presently responsible for student admissions.

16. State whether the plaintiff is affiliated with any church or organization of churches. If so, state the name and address of the church or organization of churches.

THOMAS P. McNAMARA
United States Attorney

By:
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

**PLAINTIFF'S ANSWER TO INTERROGATORIES
AND REQUEST FOR PRODUCTION**

(Filed July 14, 1975)

Plaintiff, Goldsboro Christian Schools, Inc. (hereinafter sometimes referred to as the "School"), hereby answers the interrogatories of the defendant, United States of America, as follows:

1. Documents requested in item 1 of defendant's Interrogatories and Request for Production will be made available for inspection by counsel for defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard in Greensboro, North Carolina, on July 21, 1975.

2. The names and current addresses of the ten persons most active or instrumental in the establishment of the School are as follows:

Dr. Ed Elrich, 1902 East Walnut Street, Goldsboro,
N.C.

Mr. M. A. Brodeaux, 106 New Hope Road, Goldsboro,
N.C.

Mr. Arnold Chestnut, Route 1, Princeton, N.C.

Mr. Marvin Rollins—deceased

Rev. Frank Davenport, 418 Dove Place, Goldsboro, N.C.

Mr. Ralph Barnes, 3016 E. Ash Street, Goldsboro, N.C.

Mr. Robert Fleming, Patetown Road, Goldsboro, N.C.

Mr. Roy S. Robinson, 102 Forrest Drive, Goldsboro,
N.C.

Rev. Gary Hoffman, Route 1, Box 101, Salisbury, N.C.
28144

Mr. Carl George, Route 2, Haggerstown Road, Mittle
Town, Maryland.

3. The School was not established in response to any specific actions, proposed actions or expected actions by any governmental body. It was established in response to what the organizers of the School perceived to be the deteriorating moral climate in government-operated schools and because the organizers felt that God would not have Christian parents expose their children to the evolutionary, humanistic, anti-Christian philosophy propounded in government schools.

Several of the organizers of the School had always felt that public schools were not appropriate places for the education of Christian children; others had recently come to that conclusion.

At the time the School was founded, its organizers were also concerned about such issues as profanity used by teachers in the public schools and the problems encountered by Christian students who could not participate in the social activities sponsored by the public schools, e.g., dancing. The organizers of the School were concerned by decisions of the Supreme Court of the United States that banned prayer and Bible-reading from public schoolrooms and mandated racial integration. It cannot be said, however, that the School was founded in anticipation of the integration of the local public schools, an event which occurred some years later.

4. The names and current addresses, to the extent available, of all persons serving on the Board of Trustees of the School and the dates that each person served on the Board are as follows:

<i>Name</i>	<i>Date of Service On Board</i>	<i>Address</i>	<i>Church Affiliation</i>
Frank Davenport	4/63-11/66	418 Dove Place, City	Faith F.W.B.
Ralph Barnes	4/63-11/66	3016 E. Ash, City	Faith F.W.B.
Robert Fleming	4/63-6/64	Patetown Rd., City	Faith F.W.B.
Bobby Floars	4/63-67	Salem Church Road, City	Faith F.W.B.
Jackie Floars	4/63-67	1906 E. Beech, City	Faith F.W.B.
Marcellus Harrison	4/63-64	Not Available	Faith F.W.B.
Carl Nanny	4/63-64	Not Available	Faith F.W.B.
Archie Rose	4/63-11/67	Not Available	Faith F.W.B.
Donald Walker	4/63-11/67	Not Available	Faith F.W.B.
Ed Ullrich	4/63-present	1902 E. Walnut St., City	2nd Baptist
M. A. Bordeaux	4/63-present	106 New Hope Road, City	2nd Baptist
Arnold Chestnut	4/63-present	Route 1, Princeton	2nd Baptist
Wesley Farmer	4/63-69	Salem Church Road, City	2nd Baptist
Herman Pate	4/63-64	Not Available	2nd Baptist
Linwood Player	4/63-67	107 Brentwood Dr., City	2nd Baptist
Marvin Rollins	4/63-71 (deceased)	415 Murray, City	2nd Baptist
Jack Smith	4/63-64	Not Available	2nd Baptist
Nathan Willis	4/63-64	Not Available	Not Available
Gary Hoffman	4/63-69	Not Available	Grace Baptist

<i>Name</i>	<i>Date of Service On Board</i>	<i>Address</i>	<i>Church Affiliation</i>
Ray Best	4/63-64	Not Available	2nd Baptist
Velton Bunch	4/63-64	Not Available	2nd Baptist
Carl George	4/63-64	Not Available	2nd Baptist
William Hare	4/63-present	103 Forest Dr., City	2nd Baptist
James Pascoe	4/63-64	Not Available	2nd Baptist
Roy Robinson	4/63-present	102 Forest Dr., City	Grace Baptist
Bryant Rogers	4/63-64	Not Available	2nd Baptist
William Tolar	4/63-64	Not Available	2nd Baptist
Robert Woodard	12/63-64	Not Available	2nd Baptist
Stan Rivenbark	10/64-69	Not Available	2nd Baptist
Malcolm Yates	3/65-72	614 Edgerton, City	2nd Baptist
Evertt Lambert	4/64-65	104 New Hope Rd., City	New Hope Methodist
Blainey Hill	6/65-67	Not Available	Not Available
Jay Smith	6/65-66	Route 1	2nd Baptist
Kenneth Coor	6/65-present	Not Available	P. F. W. B.
LaRue Davis	6/66-67	1708 Laurel, City	Madison Ave. Baptist
Joe DuBois	6/66-67	Hwy. 581, City	Faith F.W.B.
Owen Gainey	6/66-11/66	Airboro	Oak Heights P.F.W.B.
Harold Gurley	6/66-70	LaGrange	Trinity F.W.B.
William Gurley	6/66-70	P. O. Box 472, City	Faith F.W.B.
		1104 Acaica, City	Faith F.W.B.

Conrad Hall	6/66-67	Not Available	Tabernacle P.H.
Rand Holland	6/66-67	Route 2, Fremont	Union Grove F.W.
Joe Longnecker	6/66-8/66	Not Available	2nd Baptist
Carroll Lynch	6/66-present	Rt. 5, Box 434B, City	2nd Baptist
Bill Polter	6/66-67	1801 E. Beech, City	2nd Baptist
Earl Price	6/66-67	Princeton	Princeton Miss. Baptist
Solly Sauls	6/66-67	Route 4	P.F.W.B.
Tom Suggs	6/66-68	Not Available	2nd Baptist
Roger Turnage	6/66-71	Grantham Road	P.F.W.B.
John Vincent	6/66-present	802 S. Madison	2nd Baptist
Ralph Walker	6/66-67	1420 W. Grantham	P.F.W.B.
Allen Seroggs	6/66-present	600 Guilford St., City	2nd Baptist
Bill Bradley	10/66-69	1715 E. Royal Ave.	Grace Baptist
Ronnie Peele	10/66-11/67	Not Available	Victory F.W.
J. C. Davis	10/66-67	Not Available	Tabernacle P.H.
C. D. Bennett	11/66-present	1207 Crisp St., City	2nd Baptist
Walter Pierce	11/66-68	Not Available	Not Available
Russell Spence	3/67-69	Not Available	Not Available
James Hurst	3/67-68	Not Available	2nd Baptist
Sam Wells	6/67-4/75	307 Hollybrook Rd., City	2nd Baptist
Robert Malpass	6/67-present	Rt. 7, Box 207B, City	1st Baptist
Norwood Mills	6/67-11/67	Not Available	Not Available
H. A. West	6/67-71	Route 9, Box 91, City	Tabernacle P.H.

<i>Name</i>	<i>Date of Service On Board</i>	<i>Address</i>	<i>Church Affiliation</i>
Gordon Forehand	6/67-72	Box 1241, City	1st Christian
Rudolph Chestnut	6/67-present	805 Emily Street	2nd Baptist
B. E. Dean	6/68-70	Not Available	Not Available
W. J. Corrieri	6/68-present (deceased)	1801 E. Beech St., City	2nd Baptist
Sam McNeill	6/68-72	2506 Lisa Lane	2nd Baptist
E. J. Melvin	6/68-72	Rt. 1, Box 371, Dudley	2nd Baptist
J. B. Faulk	6/68-present	Rt. 2, Box 545, Mt. Olive	Bear Marsh Baptist
Billy R. Hinson	6/68-present	Rt. 3, Box 293, City	Trinity Baptist
Don Hill	6/68-70	Rt. 5	1st Baptist
G. C. Gorman	6/68-present	704 Chaffin Rd., City	G.K. Presbyterian
Dave Baker	6/68-69	Not Available	Not Available
Arcie Hines	6/68-present	Rt. 7, Box 441, City	Salem Methodist
William Pruett	6/69-74	506 Chaswell Place, City	Madison Ave. Baptist
Andy Andrews	6/69-72	500 N. Audubon Ave., City	St. Luke Methodist
Denver Mitchell	6/69-74	303 Patetown Rd., City	Stony Creek F.W.B.
James Heath	6/69-present	Rt. 2, Box 317, Snow Hill	2nd Baptist
Arnold Tingen	6/69-present	Rt. 3, Snow Hill	Not Available
Milton West	6/69-72	411 Quail Dr.	2nd Baptist
Jack Porter	6/70-71	603 Banks Ave., City	Madison Ave. Baptist

John W. Smith	6/70-72	Rt. 2, Box 295, LaGrange	Free Gospel Tabernacle
Corbett L. Quinn	6/70-71	Box 128, Magnolia	Not Available
Bob Thomas	6/71-4/72	1213 N. Jefferson St.	2nd Baptist
Willie Hardy	6/71-present		2nd Baptist
Gordon Combs	6/71-72	2005 Rose St., City	1st Baptist
Zeb Musgrave	6/71-present	602 S. Madison Ave.	Madison Ave. Baptist
M. B. Gentry	6/71-present	Rt. 2, Box 487H, City	2nd Baptist
Gerald Aycock	6/71-present	Rt. 2, Box 190, Fremont	Grace Baptist
R. A. Sasser	6/72-74	Rt. 2, Fremont	Not Available
Delmar Johnson	6/72-present		
Donald Price	6/72-present	Rt. 1, Box 228, Dudley	Grace Baptist
Bobby Collier	6/72-present	Box 266, Pikeville	Temple Baptist
Aubrey Jackson	6/72-present	Rt. 5, Box 72	Central Baptist
Ruben Reason	11/74-present	Rt. 5, Box 385, Wilson	Not Available
John Campbell	11/74-present	Box 730, Wilson	Not Available
Robert Fleming	11/74-present	Rt. 2, Fremont	Union Grove F.W.B.

5. The documents requested in Item 5 of defendant's Interrogatories and Request for Production will be made available for inspection by counsel for defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard on July 21, 1975.

6. Other than the Board of Trustees, there are two governing bodies at the School—the Executive Committee of the Board of Trustees and the School Administration. Both bodies are subordinate to the Board. The nature of both bodies is that implied by their names. Minutes of meetings of the Executive Committee will be made available for inspection by counsel for the defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard on July 21, 1975. The School Administration does not keep written records of its actions.

The names and addresses of those presently serving on each body is as follows:

Executive Committee:

Chairman and President:

Dr. Ed Ulrich, 1902 E. Walnut St., Goldsboro, N.C.

Vice Chairman:

Arcie L. Hines, Route 7, Box 241, Goldsboro, N.C.

Secretary:

J. H. Vincent, 802 South Madison Avenue, Goldsboro, N.C.

Members at Large:

W. P. Hardy, Route 10, Box 192, Lot 9, Goldsboro, N.C.

M. B. Gentry, Route 2, Box 478 H, Goldsboro, N.C.

Kenneth Coor, 1708 Laurel Street, Goldsboro, N.C.

Administration:

President:

Dr. Ed Ulrich, 1902 E. Walnut Street, Goldsboro,
N.C.

Principal:

Rod Helder, 408 Quail Drive, Goldsboro, N.C.

Business Manager:

David Forrest, 1707 E. Beech Street, Goldsboro,
N.C.

Maintenance Supervisor:

Roger Phenicie, 1708 Palm Street, Goldsboro, N.C.

Transportation Supervisor:

Horace Lennon, 1014 E. Walnut Street, Goldsboro,
N.C.

7. The documents requested in Item 7 of defendant's Interrogatories and Request for Production will be made available for inspection by counsel for defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard on July 21, 1975.

8. The documents requested in Item 8 of defendant's Interrogatories and Request for Production will be made available for inspection by counsel for defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard on July 21, 1975.

9. The documents requested in Item 9 of defendant's Interrogatories and Request for Production will be made available for inspection by counsel for defendant at the office of Brooks, Pierce, McLendon, Humphrey & Leonard on July 21, 1975.

10. Before any student is admitted to be enrolled at the School, that student and at least one of his parents must be interviewed by either the principal or the president of the School. Admission may be denied on the basis of the interview.

There are both written and unwritten understandings between the School and parents and/or students regarding the Christian nature of the School and the obligations placed on all parties thereby. It would not be possible to restate all the obligations implied in loyalty to the Bible, but all parties involved in the School understand their responsibility to conduct themselves in a manner that is consistent with the beliefs of fundamentalist Christianity. This is an obligation that runs from the School to parent and student as well in the opposite direction.

11. a. According to the Bible all men are descended from Noah. Race is determined by descendance from one of Noah's three sons—Ham, Shem and Japheth. God has endowed the descendants of each son with unique characteristics and functions. The three major races are further subdivided into descendants of the sons of each of Noah's sons. These divisions are provided in the ninth chapter of the Book of Genesis in the Bible, and in the chapters that follow. Races are subdivided into nationalities. Under the three main races, the following present-day groups might be classified by way of example:

- (1) Hamitic peoples:
*Oriental*s, Egyptians, Indians, *Negro*s
- (2) Shemitic (Semitic) peoples:
Hebrews
- (3) Japhethetic peoples (Japethites):
Caucasian, German, Scandinavian, Greek, Roman,
Russian

11. b. The races are separate because God made them so. It is not necessary to know why He did so, or what His purpose was. God's revelation of His actions at the Tower of Babel (Genesis 11:1-9) reveals that the intermixing of races, culturally and otherwise *destroys the fear of God in the hearts of men* and will bring about the judgment of the entire human race. God's will is that each race should

be concerned with its own cultural and characteristics and should seek to preserve the best of its heritage under God.

The special characteristics of the three major races are demonstrated in the Book of Genesis (Chapter 9 ff.) Noah's two sons, Shem and Japheth, were specially blessed. And a special relation was to exist between God and Shem. The Semetic people were thus intended to be the prime spiritual and religious contributors to humanity. This is demonstrated by the call of Abraham and the building of the Hebrew people. The Japhethites were intended to be leaders with special ability in political organization and leadership and military powers. Ham and his descendants were not specially blessed. This indicates that their prosperity as a race would come as the result of their drawing upon the spiritual leadership of the Semites and the political leadership of the Japhethites.

God has ordained that there shall be separate races having separate functions, and He has commanded that they shall not mix—culturally or biologically. Dealings may not be had between the races that would violate His command and lead to a dilution of the culture or characteristics that are special to each race.

An important "level or category of commerce" in this regard is any occasion of sustained contact or intimacy between children or adolescents of different races. The problem of intermarriage is, of course, acute where the emotionally immature are brought together on a day-to-day basis, whether the occasion is schooling, community, athletic or social functions, or other similar situations.

Apart from the problem of intermarriage and the necessity to protect against it, God's will is that the separate cultures of the races shall be preserved and shall not be mixed. His intention is that a people of one culture and religious heritage shall not absorb the ways of another. This has obvious implications regarding dealings between races for the field of education and for the cultural activi-

ties of persons of all ages in general (apart, of course, from certain religious activities, such as worship). In such areas the races should be kept separate.

As far as most other matters are concerned, dealing between the races that do not hinder the goal of separately preserved races and cultures, are not contrary to the will of God. An example would be commerce (in its narrow sense). Indeed, few dealings between responsible adults of different races would be objectionable apart from those that tend to erode cultural identity.

11. c. The sincere religious belief of the School is that integration of races in the sense indicated in the responses to paragraphs 11 a. and 11 b. is contrary to the will of God. To cross the racial barriers established by God in the manner discussed in the responses to paragraph 11 b. is thus to contravene and to disobey the will of God as revealed to the School.

God's will is made known to man by means of revelation. The primary source of revelation is God's Word as set forth in the Holy Bible. (A representative but not exhaustive list of scriptures that reveal God's will on matters of race includes the following: Genesis 9:24-12:4; Numbers 24:1-18; Deuteronomy 7:1-11 and 17:14-20; Ezra 9 and 10; Nehemiah 13:1-31; Isaiah 2:1-5; Acts 17:24-38 and 15:1-35.) There are other sources of revelation. They are not contradictory to Biblical revelation, rather they supplement it providing the means whereby Christians can know God's will in situation not explicitly covered in scripture. One such source is the observable nature of the universe. Since God created it, His will may be revealed in the nature of His creation. Another such source is direct revelation from God to man which may occur through prayer and meditation, preaching, Bible reading, or a combination of those things. The School knows God's will on matters of race through each of these sources of revelation.

It is most convenient to provide "a detailed statement of the religious doctrinal basis" for a religious belief through Biblical exegesis since in the case of exegesis the source of revelation is available in objective form for all to examine. Such an exegesis is included in this response to Interrogatory 11 c. But the School's beliefs rest also on the supplementary sources of revelation mentioned above. Indeed, in the last analysis religious belief resides in the souls of believers and no revelation—regardless of its source—is complete until it has been received through God's guidance by those who seek it. Therefore, a discussion of passages in the Bible that reveal God's will on matters of race is necessarily incomplete unless one realizes that the doctrine that follows therefrom is truly religious only to the extent that God has revealed correct interpretations to the reader.

As a matter of doctrine then, the Goldsboro Christian School believes that God created separate races, each having separate characteristics and each intended to play a separate role in His creation. The School further believes that any action by man that tends to erode the biological and cultural distinctions created between races is contrary to God's will. That God, having created separate races, wills them to remain separate is demonstrated repeatedly in the Bible. In the book of Genesis alone, for example, twice racial intermarriage or the threat of it caused God to intervene directly in human affairs; and another time it caused untold human misery. The three instances alluded to are, first, the great flood sent by God that destroyed all humanity save Noah and his family. That flood was a response to the arrogance and wickedness that developed in the world when the line of Seth intermarried with the line of Cain. (Genesis 6:1-6) Later, God intervened again in human affairs when the children of Noah's sons, who were and are separate races, undertook together to build the Tower of Babel. (Genesis 11:7-9) Again, it appeared that the product of race-mixing, whether biologically or

culturally, was arrogance and wickedness in the hearts of men. The third instance referred to above is told in Genesis 16. There Abraham, a Semite, took a Hamitic handmaiden and caused her to conceive. She bore a son, Ismael, who was, as a result of the interracial union, a wild man and whose descendants to this day are embroiled in warfare and unrest as is discussed elsewhere in this response to Interrogatory 11 c.

Other passages might serve as well to demonstrate the same things. The clear revelation to the School is that God's will is that there shall be separate races and that they shall keep separate. This separation extends both to cultural and biological lines because each race has a separate function and separately valuable characteristics. Mixing dilutes distinctiveness and impairs performance of separate functions, and moreover encourages wickedness and arrogance in the hearts of men.

A complementary revelation of God's will on the matter of race is in His creation. No people who believe in a divinely created universe can believe that separate races were created by accident. The separation of the races is a part of the order of creation.

Nowhere in the Bible does it say "Thou shalt not educate little children of different races in the same school." But to do so would clearly contravene God's will as it is revealed in the Bible because it would heighten the threat of intermarriage, dilute cultural distinctiveness and foster arrogance. Of course, one need not expect that the Bible will deal explicitly with every human problem. Other sources of revelation demonstrate God's will in myriad human affairs. By means of prayer, meditation and Bible reading, the School knows God's will in the matter of interracial education.

While there may be more than one rational interpretation of a passage from the Bible, God's will is one. And the revelation of His will in applying scriptures to human affairs does not lie in determining the most reasonable

interpretation of a given passage. Rather, God's will in a particular instance is revealed through Bible reading, prayer and meditation; and the answer is identified as received conviction, not rational deduction.

Attached hereto is a message on the general topic suggested by paragraph 11 c. of defendant's Interrogatories. It was delivered by Dr. Ed Ulrich from the pulpit of the Second Baptist Church in Goldsboro, North Carolina. The message was prepared and delivered during the time that Dr. Ulrich was involved in preparing the responses to defendant's Interrogatories. It is attached hereto and made a part of this response to paragraph 11 c.

12. The School has accepted only Japethites. On a few occasions children have been accepted who have one Japethite parent and one Hamitic or Semitic parent. The School believes that if one of a person's parents is a Japethite he may be educated as such.

13. The "Statement of Policy of the Board of Trustees" was adopted on June 26, 1971, as the written statement of the Board's pre-existing policy. The purpose of committing the Board's policy to writing was to respond to indications at that time that the Internal Revenue Service was investigating the Goldsboro Christian School with the intent of denying the School tax benefits because it could not accept students of more than one race. The Board hoped that it might avoid problems with the Internal Revenue Service by demonstrating that the School's admissions policy was dictated by the will of God and, therefore, subject to constitutional protection.

14. Yes. All students at the School have been American citizens and Japethites (Caucasians in each case).

15. Doctor Ed Ulrich
1902 East Walnut Street
Goldsboro, North Carolina

Mr. Rod Helder
1902 East Walnut Street
Goldsboro, North Carolina

16. Yes. Second Baptist Church, Goldsboro, North Carolina.

This the 14th day of July, 1975.

GOLDSBORO CHRISTIAN SCHOOLS, INC.

By /s/ DR. E. E. ULRICH
Dr. E. E. Ulrich

NORTH CAROLINA
GUILFORD COUNTY

Verification

DR. E. E. ULRICH, being duly sworn, deposes and says that he is Chairman of the Board of Trustees and President of Goldsboro Christian Schools, Inc., that he has read and prepared the foregoing Answer to defendant's Interrogatories and Request for Production, and that such answers are true and correct to the best of his knowledge and belief.

/s/ DR. E. E. ULRICH
Dr. E. E. Ulrich

(Jurat omitted in printing)

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

ANSWER

(July 21, 1975)

The defendant, United States of America, for its answer to plaintiff's complaint herein, admit, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1, except denies that any taxes, interest or penalties were illegally, erroneously or wrongfully assessed against or collected from plaintiff and denies that plaintiff is entitled to any recovery.

2. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3.

4. Denies the allegations contained in paragraph 4.

5. Avers that the sections of the Internal Revenue Code cited by the plaintiff speak for themselves and paragraph 5 therefore requires no answer.

6-11. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 6 through 11.

12. Denies the allegations contained in paragraph 12.

13. Denies the allegations contained in paragraph 13, except avers that news releases and Revenue Rulings published by the defendant speak for themselves.

14. Avers that the first two sentences of paragraph 14 are conclusions of law and do not require any response,

and as to the remaining allegations in paragraph 14, is presently without knowledge or information sufficient to form a belief as to the truth of those allegations.

15. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, except specifically denies any allegations contained in the alleged claim for refund not otherwise admitted herein and avers that the Court lacks jurisdiction over any claim for abatement of taxes.

16. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Denies the allegations contained in paragraph 17, except avers that Sections 501(c)(3) and 501(a) of the Internal Revenue Code and the Regulations thereunder speak for themselves.

18. Denies the allegations contained in paragraph 18.

19. Denies the allegations contained in paragraph 19.

Second Claim for Relief

1-2. Responds to paragraphs 1 and 2 as it responded to the allegations contained in paragraphs 1, 2 and 3 of the First Claim for Relief.

3. Denies the allegations contained in paragraph 3.

4. Responds to paragraph 4 as it responded to the allegations contained in paragraphs 6 through 10 of the First Claim for Relief.

5. Is presently without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5.

6. Denies the allegations contained in paragraph 6.

7. Denies the allegations contained in paragraph 7.

8. Avers that the first two sentences of paragraph 8 are conclusions of law and do not require any response, and as to the remaining allegations in paragraph 8, is presently without knowledge or information sufficient to form a belief as to the truth of those allegations.

9. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9, except specifically denies any allegations contained in the alleged claim for refund not otherwise admitted herein and avers that the Court lacks jurisdiction over any claim for abatement of taxes.

10. Is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Denies the allegations contained in paragraph 11.

12. Denies the allegations contained in paragraph 12.

WHEREFORE, the defendant prays for judgment in its favor, for its costs, and for such other and further relief as this Court deems just and proper.

THOMAS P. McNAMARA
United States Attorney

By:
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

**DEFENDANT'S SECOND INTERROGATORIES
AND REQUESTS FOR PRODUCTION**

(Filed October 30, 1975)

Pursuant to Rules 33 and 34, Federal Rules of Civil Procedure, the defendant requests that the plaintiff answer the following interrogatories and produce the requested documents. The plaintiff may satisfy the requests for production by serving copies of the requested documents upon counsel for the defendant at the same time as filing the answers to the interrogatories. In lieu thereof, the defendant requests that the plaintiff produce the documents at the office of the United States Attorney, 310 New Bern Avenue, Raleigh, North Carolina, on November 28, 1975, or at such other convenient time and place as may be mutually agreed upon between counsel for the plaintiff and counsel for the defendant.

All interrogatories and requests for production refer to the entire period of the plaintiff's existence since its incorporation in 1963, unless otherwise specifically stated. All references to the years in issue are to the years 1969 through 1972. All references to the "school" are to the Goldsboro Christian Schools, Inc. (or its legal predecessor or successor corporations).

17. Did the plaintiff's Board of Trustees ever adopt a policy or other requirement that Negroes or any other racial grouping be excluded from admission to the plaintiff? If the answer is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the date or dates the requirement was adopted;

(b) State the names and current addresses of the Trustees participating in the decision, and indicate how each voted;

(c) If any Trustee declined to vote on the requirement, state his name and current address; and

(d) Produce all minutes, correspondence or other written or printed material reflecting the decision.

18. Did the Executive Committee of the plaintiff's Board of Trustees ever adopt a policy or other requirement that Negroes or any other racial grouping be excluded from admission to the plaintiff? If the answer is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the date or dates the requirement was adopted;

(b) State the names and current address of the members of the Executive Committee participating in the decision, and how each voted;

(c) If any member declined to vote on the requirement, state his name and current address;

(d) Produce all minutes, correspondence and other written or printed documents reflecting the decision;

(e) State the date the decision was reported to the Board of Trustees; and

(f) Produce all minutes, correspondence or other written or printed materials reflecting that the decision was reported to the Board of Trustees and the action the Board took, if any.

19. Did the School Administration ever adopt a policy or other requirement that Negroes or any other racial

grouping be excluded from admission to the plaintiff? If this answer is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the date or dates the requirement was adopted;

(b) State the names and current addresses of the members of the School Administration participating in the decision, and how each voted;

(c) Produce all minutes, correspondence, or other written or printed material reflecting the decision;

(d) State the date or dates the decision was reported to the Board of Trustees or its Executive Committee; and

(e) Produce all minutes, correspondence, or other written or printed material reflecting the reporting of the decision to the Board of Trustees or the Executive Committee and their action, if any.

20. Does the plaintiff require that the students admitted to the school subscribe to its alleged religious belief that the races should not mix culturally or biologically? If the answer to this interrogatory is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the manner in which the students are advised that this is a requirement of their admission;

(b) If the advice is in writing, produce the written documents conveying the advice;

(c) Are the students required to affirmatively indicate their subscription to this belief?

(d) If the answer to subparagraph (c) is in the affirmative, state the manner in which the students affirmatively indicate their subscription to the belief; and

(e) If the students must indicate in writing that they subscribe to the belief, produce copies of the documents wherein they indicate the subscription.

21. Does the plaintiff require the students admitted to the school to subscribe to any specific religious beliefs (such as not dancing, not drinking, not smoking or the like)? If so, please answer the following questions and produce the requested documents:

- (a) State the nature of each such religious belief;
- (b) State the manner in which the students are advised of the requirement;
- (c) If the students are advised in writing, produce the written documents conveying the advice;
- (d) Are the students required to affirmatively indicate their subscription to the belief?
- (e) If the answer to subparagraph (d) is in the affirmative, state the manner in which the students affirmatively indicate their subscription to the belief; and
- (f) If the students must indicate in writing their subscription to the belief, produce the documents wherein they indicate the subscription.

22. Does the plaintiff require the teachers or other employees to subscribe to its alleged religious belief that the races should not mix culturally or biologically? If the answer to this interrogatory is in the affirmative, please answer the following interrogatories and produce the requested documents:

- (a) State the manner in which the teachers or other employees are advised that this is a requirement to their employment;

(b) If the advice is in writing, produce the written documents conveying the advice;

(c) Are the teachers or other employees required to affirmatively indicate their subscription to the belief?

(d) If the answer to subparagraph (c) is in the affirmative, state the manner in which the employees affirmatively indicate their subscription to the belief; and

(e) If the teachers or other employees must indicate in writing that they subscribe to the belief, provide copies of the documents wherein they indicate that they do so subscribe.

23. Does the plaintiff require the employees of the school to subscribe to any specific religious beliefs (such as not dancing, not drinking, not smoking or the like)? If so, please answer the following questions and produce the requested documents:

(a) State the nature of each such religious belief;

(b) State the manner in which the employees are advised of the requirement;

(c) If the employees are advised in writing, produce the documents conveying the advice;

(d) Are the employees required to affirmatively indicate their subscription to the belief?

(e) If the answer to subparagraph (d) is in the affirmative, state the manner in which the employees affirmatively indicate their subscription; and

(f) If the employees must indicate in writing their subscription to the beliefs, provide the documents wherein they indicate the subscription.

24. Produce all books, pamphlets, tracts and other written materials used by the plaintiff and its students for either educational or religious purposes which espouse the separation of the races for educational purposes as a fundamental religious belief.
25. Are the students of the plaintiff instructed that the separation of the races for educational purposes is a fundamental religious belief? If the answer is in the affirmative, state the course or courses in which the instruction is given and the general content of the instruction.
26. Identify the various religious denominations represented in the student body of the classes maintained by the plaintiff, identifying, if possible, the particular convention, synod or other subdivision of the denominations involved and the percentage of students attending from that denomination or subdivision.
27. Do the various denominations or subdivisions thereof identified in answering interrogatory No. 26 subscribe to the plaintiff's alleged belief that the races should not mix culturally or biologically? If any do not, please identify them.
28. Does the Second Baptist Church of Goldsboro permit Negroes or persons of any non-caucasian racial group to attend any of its religious exercises? If the answer is in the affirmative, state the particular religious exercise that they are permitted to attend and state in detail the conditions under which they are permitted to attend.
29. Do the children of any teacher or other employee of the plaintiff attend educational institutions (including public schools or colleges) which do not have a policy of excluding Negroes or any other racial grouping solely on the basis of race? If so, identify each teacher or employee and state the name of the educational institution involved.
30. State the organizational structure for the Second Baptist Church of Goldsboro, as it does or might pertain

to the persons or groups having the authority to determine which, if any, church activities may be participated in by more than one race. (For example, would such decisions be submitted to and passed upon by the membership alone, or would the decisions be shared by the Deacons or other such groups.)

31. Has the Second Baptist Church of Goldsboro ever formally adopted a public position stating its belief that the races should not mix culturally or biologically? If so, state each instance in which that was done, and produce all minutes, correspondence, and other written or printed documents reflecting the public position.

32. Is the Second Baptist Church of Goldsboro affiliated with any national, regional or local convention of churches (such as the Southern Baptist Convention)? If so, identify each such convention, state whether each has adopted any position regarding the mixing of the races, whether culturally, biologically, for purposes of worship, or for purposes of religion, and briefly describe the position adopted.

33. State the basis of the plaintiff's allegation in paragraph 2 of the Complaint that it is operated as a "facility" of the Second Baptist Church of Goldsboro, providing, *inter alia*, the percentage of the plaintiff's total expenditures for the years involved which were funded by contributions from the Second Baptist Church of Goldsboro.

34. State the total contributions received by the plaintiff during the years in issue and the amount thereof supplied by the Second Baptist Church of Goldsboro. (For purposes of this interrogatory, contributions means all gross receipts other than receipts in return for goods or services provided by the plaintiff.)

35. During the years in issue, did the Second Baptist Church provide the plaintiff the free use of any facilities, the free use of any employees or any other type of in-kind assistance? If so, state the nature of such assistance, state

the approximate annual value of each type of assistance provided, and identify all documents and other written or printed materials authorizing the grant of each type of assistance.

36. With respect to the physical facilities used by the plaintiff during the years in question in furtherance of its purposes, answer the following interrogatories and produce the requested items:

(a) Describe each facility, including its approximate net value in the years in issue;

(b) State the name and current address of the legal and equitable owner of each facility; and

(c) If the owner of each facility is other than the plaintiff, state the terms of the plaintiff's use of the facility and produce the lease, minutes, correspondence or other written or printed materials reflecting the terms of the plaintiff's use.

37. Does the Second Baptist Church receive contributions which are designated by the contributors or are otherwise earmarked for the use or benefit, either directly or indirectly, of the plaintiff? If so, state the amounts of such contributions during the years in issue and state the nature of the use or benefit funded by such contributions.

38. Identify and describe the premises upon which the plaintiff's teaching activities were conducted.

* * * * *

THOMAS P. McNAMARA
United States Attorney

By: /s/ CARL L. TILGHMAN
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

AMENDED ANSWER

(Filed October 30, 1975)

The defendant for its answer to plaintiff's complaint, admits, denies, and alleges as follows:

First Claim for Relief

1. Admits the allegations contained in paragraph 1, except denies that any taxes, interest or penalties were illegally, erroneously or wrongfully assessed against or collected from the plaintiff and denies that the plaintiff is entitled to any recovery.

2. Admits the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3.

4. Admits the allegations contained in paragraph 4, except denies that the amounts alleged were erroneously assessed and collected from the plaintiff and further alleges that the stated amounts assessed relate both to the issue involved in the First Claim for Relief and in the Second Claim for Relief.

5. Alleges that the cited sections of the Internal Revenue Code of 1954 (26 U.S.C.) speak for themselves and therefore require no answer.

6. Admits the allegations contained in paragraph 6, except denies any implication that the school's activities are exclusively religious in nature and alleges that the predominant activity of the school is the teaching of secular subjects.

7. Is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 7, but alleges that the cited section of the North Carolina General Statutes speaks for itself.
8. Admits that the school conducts some activities that are designed to encourage religious growth in its students, but is without information or knowledge sufficient to form a belief as to the specific allegations of the form or nature of the activities, the allegations regarding the requirements placed upon the teachers, and the allegations regarding the reasons for the school's alleged refusal to accept federal, state or local grants.
9. Is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 9.
10. Is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 10, except admits that there is some affiliation between the plaintiff and the Second Baptist Church of Goldsboro and denies the allegation that the plaintiff is a "facility" of the Second Baptist Church of Goldsboro.
11. Admits the allegations contained in paragraph 11, except is without information or knowledge sufficient to form a belief as to the statements made in the quoted paragraph of the Articles of Incorporation.
12. Admits the allegations contained in paragraph 12, except alleges that the plaintiff was organized to and does primarily engage in the secular education of its students, denies that the plaintiff is an organization qualifying for tax exempt status under Sections 501(a) and (c)(3) of the Internal Revenue Code of 1954, and alleges that the plaintiff is liable for the cited taxes imposed by the Federal Insurance Contributions Tax Act and the Federal Unemployment Tax Act.
13. Admits that the Internal Revenue Service, a branch of the defendant, has published certain news releases and Revenue Rulings interpreting Section 501(c)(3) of the

Internal Revenue Code of 1954 as excluding private schools, including schools with a religious affiliation, which exclude citizens solely on the basis of race, admits that the Internal Revenue Service assessed the stated taxes against the plaintiff, and denies that the assessments were erroneous or illegal.

14. Admits the allegations contained in paragraph 14, except is without information or knowledge sufficient to form a belief as to the allegations that the payments were sufficient to cover the taxes due with respect to the designated employees.

15. Admits the allegations contained in paragraph 15, but specifically denies that the plaintiff is entitled to any refund of the taxes, interest or penalties paid and further denies that the plaintiff is entitled to any abatement of the assessed, but unpaid, taxes, interest and penalties.

16. Admits the allegations contained in paragraph 16.

17. Denies the allegations contained in paragraph 17.

18. Denies the allegations contained in paragraph 18.

19. Denies the allegations contained in paragraph 19.

Second Claim for Relief

1. Admits the allegations contained in paragraph 1, except denies that any taxes and interest were illegally, erroneously and wrongfully assessed against and collected from the plaintiff and denies that the plaintiff is entitled to any recovery.

2. Admits the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3, except denies that any taxes and interest were erroneously and illegally assessed against and collected from the plaintiff.

4. Incorporates by reference the answers contained in paragraphs 6 through 10 in the First Claim for Relief, as set forth above.

5. Admits that the plaintiff owns residences which are used by some of the teachers it employs, without cost to those teachers, but is without information or knowledge sufficient to form a belief as to the remaining allegations in paragraph 5.

6. Admits that the Forms 941 filed by the plaintiff did not include in the wages to employees the value of lodging furnished to them, but denies the remaining allegations in paragraph 6.

7. Admits the allegations contained in paragraph 7, except denies that any of the taxes and interest were erroneously and illegally assessed.

8. Admits the allegations contained in paragraph 8, except is without information or knowledge sufficient to form a belief as to the allegations of amounts of tax due with respect to the named individuals and alleges that the total for the fourth quarter should be \$59.56.

9. Admits the allegations contained in paragraph 9, except denies that the taxes and interest were illegally and erroneously assessed, and denies that the plaintiff is entitled to a refund of the taxes paid or abatement of the assessed, but unpaid, taxes.

10. Admits the allegations contained in paragraph 10.

11. Denies the allegations contained in paragraph 11.

12. Denies the allegations contained in paragraph 12.

Counterclaim

1. This Counterclaim is authorized and sanctioned by the duly authorized delegate of the Secretary of the Treasury of the United States of America, is directed by the Attorney General of the United States of America, and is brought pursuant to the provisions of Section 7401 of the Internal Revenue Code of 1954, and pursuant to the provisions of Title 28, United States Code.

2. On October 3, 1974, the Commissioner of Internal Revenue duly and timely assessed against the plaintiff the following amounts of Federal Insurance Contribution Act (FICA) taxes and interest, the plaintiff paid the indicated amounts, and the plaintiff presently owes the indicated balances:

Quarter Ending	FICA Assessed	Interest Assessed	Plaintiff's Payments	Balance Due Defendant
3/69	\$ 3,039.33	\$ 968.38	\$ 193.95	\$ 3,813.76
6/69	2,356.02	715.33	151.50	2,919.85
9/69	2,248.12	665.41	71.39	2,842.14
12/69	4,676.30	1,313.98	183.31	5,806.97
3/70	4,909.20	1,306.59	146.56	6,069.23
6/70	4,047.71	1,015.92	113.46	4,950.17
9/70	4,034.28	952.03	108.39	4,877.92
12/70	7,480.46	1,653.08	168.13	8,965.41
3/71	8,575.23	1,767.79	193.38	10,149.64
6/71	7,063.63	1,349.06	171.10	8,241.59
9/71	6,502.07	1,144.28	156.42	7,489.93
12/71	11,576.47	1,863.65	235.43	13,204.69
3/72	11,841.90	1,730.70	226.58	13,346.02
6/72	10,093.77	1,322.15	191.08	11,224.84
9/72	8,951.10	1,038.20	169.85	9,819.45
12/72	12,557.72	1,285.88	231.30	13,612.30
	\$109,953.31	\$20,092.43	\$2,711.83	\$127,333.91

3. On October 7, 1974, the Commissioner of Internal Revenue duly and timely assessed against the plaintiff the following amounts of Federal Unemployment Tax Act (FUTA) taxes, interest and penalties, the plaintiff paid the amounts indicated and the plaintiff presently owes the balance as indicated:

Year	FUTA Assessed	Delinquency Penalty Assessed	Interest Assessed	Plaintiff's Payments	Balance Due Defendant
1969	\$ 3,000.34	\$ 750.09	\$ 843.05	\$196.60	\$ 4,396.88
1970	4,988.66	1,247.17	1,102.43	177.60	7,160.66
1971	7,069.89	1,767.47	1,138.16	190.98	9,784.54
1972	8,572.17	2,143.04	865.67	182.92	11,397.96
	\$23,631.06	\$5,907.77	\$3,949.31	\$748.10	\$32,740.04

4. The plaintiff is presently indebted to the defendant in the amounts alleged in paragraphs 2 and 3, totalling \$160,073.96, plus interest as provided by law.

5. Despite notice and demand for these taxes, the plaintiff has failed to pay over the amounts.

WHEREFORE, the defendant prays that the plaintiff's complaint be dismissed with prejudice, that the Court enter judgment in favor of the defendant against the plaintiff in the amount of \$160,073.96, and that the Court grant the defendant such other and further relief as may be just and proper.

THOMAS P. McNAMARA
United States Attorney

By: /s/ CARL L. TILGHMAN
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

REPLY TO COUNTERCLAIM

(November 12, 1975)

The plaintiff, Goldsboro Christian Schools, Inc., responding to the counterclaim set forth in defendant's amended answer, admits, denies and alleges as follows:

First Defense

The counterclaim fails to state a claim against plaintiff upon which relief can be granted for the reasons set forth in the Complaint.

Second Defense

Responding to the numbered allegations of the counterclaim set forth in defendant's amended answer:

I.

Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1, and therefore denies same.

II.

The allegations of paragraph 2 are denied, except that it is admitted that the Commissioner of Internal Revenue assessed against plaintiff the amounts of Federal Insurance Contribution Act (FICA) taxes and interest set forth in paragraph 13 of the First Claim for Relief in the Complaint and the amounts of withholding taxes and interest set forth in paragraph 7 of the Second Claim for Relief in the Complaint. Plaintiff admits that it paid the amounts indicated.

Plaintiff specifically denies that it presently owes defendant the amounts indicated in paragraph 2 for the reasons set forth in the First Claim for Relief and the Second Claim for Relief in the Complaint.

III.

The allegations of paragraph 3 are denied except that it is admitted that the Commissioner of Internal Revenue assessed the amounts of Federal Unemployment Tax Act (FUTA) taxes, interest and penalties indicated in paragraph 3 and that plaintiff paid the amounts indicated in paragraph 3. Plaintiff specifically denies that it presently owes defendant the amounts indicated in paragraph 3 for the reasons set forth in the First Claim for Relief in the Complaint.

IV.

The allegations of paragraph 4 are denied.

V.

Plaintiff admits that the Commissioner of Internal Revenue has demanded payment of the FICA and FUTA taxes, interest and penalties set forth in paragraph 13 of the First Claim for Relief in the Complaint, and the withholding taxes and interest set forth in paragraph 7 of the Second Claim for Relief in the Complaint. Plaintiff has paid the amount of FICA and FUTA taxes and interest set forth in paragraph 14 of the First Claim for Relief in the Complaint and the amount of withholding taxes, interest and penalties set forth in paragraph 8 of the Second Claim for Relief in the Complaint. On or about December 11, 1974, plaintiff filed Claims in Abatement on Form 843 with the District Director of the Internal Revenue Service in Greensboro, North Carolina, requesting abatement of the FICA, withholding and FUTA taxes, interest and penalties which were assessed against plaintiff less the amount of such taxes, interest and penalties which have been paid.

Plaintiff set forth in each Claim in Abatement as reasons for the allowance thereof the same grounds which were alleged in the First Claim for Relief and Second Claim for Relief in the Complaint. As of the filing of this Reply to defendant's Counterclaim, the Claims in Abatement have not been acted on by the Internal Revenue Service. Plaintiff admits that it has not paid over the amounts of FICA, withholding and FUTA taxes, interest and penalties covered by the aforementioned Claims in Abatement. Except as herein admitted, the allegations of paragraph 5 are denied.

WHEREFORE, plaintiff demands that defendant's Counterclaim be dismissed and that it be awarded judgment as prayed in the Complaint.

/s/ CLAUDE C. PIERCE
Claude C. Pierce

/s/ WILLIAM G. McNAIRY
William G. McNairy

/s/ EDWARD C. WINSLOW III
Edward C. Winslow III
Attorneys for Plaintiff

Of Counsel:

BROOKS, PIERCE, McLENDON, HUMPHREY
& LEONARD
Post Office Drawer U
Greensboro, North Carolina 27402
Telephone: (919) 273-2591

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

**PLAINTIFF'S ANSWER TO INTERROGATORIES
AND REQUEST FOR PRODUCTION**

Plaintiff, Goldsboro Christian Schools, Inc. (hereinafter sometimes referred to as the "School"), hereby answers the interrogatories of the defendant, United States of America, as follows:

17. Yes.

(a) A written policy was officially adopted on July 11, 1971. That writing expressed a pre-existing, un-written policy.

(b) The School's minutes show that nineteen members of the Board of Trustees were present and voting. The names of those present are not reported. No one otherwise remembers who was present at that meeting. All those members present voted to adopt the policy. The names and addresses of the persons then constituting the Board of Trustees were furnished to defendant in plaintiff's response to defendant's interrogatory No. 4. The minutes of July 11, 1971 indicate that the following persons may have been present: Dr. Edward E. Ulrich, Mr. Robert Malpass, Mr. J. Allan Scroggs, Mr. J. H. Vincent, Mr. Arnold Chestnut, Mr. W. C. Hare, Mr. Carroll Lynch, Mr. Gerald Aycok, Mr. Kenneth Coor, Mr. Arnold Tingent and Mr. Roy Robinson.

(c) No Trustee present at the July 11, 1971 meeting declined to vote on the matter.

(d) Copies of relevant documents will be produced.

18. The chairman of the Executive Committee presented a proposed statement to the Executive Committee. The minutes of the Executive Committee's meeting do not reflect that a vote was taken regarding the statement. The Executive Committee subsequently presented the statement to the Board of Trustees which adopted it.

(a) June 26, 1971.

(b) Dr. Ulrich, Mr. Coor, Mr. Scroggs, Mr. Vincent and Mr. Hare were present at the meeting on June 26, 1971. For addresses see answer to interrogatory No. 4. No vote was recorded.

(c) No abstention was recorded.

(d) Copies of relevant documents will be produced.

(e) July 11, 1971.

(f) Copies of relevant documents will be produced.

19. No.

20. The School does not require that its students profess any particular belief or subscribe to any particular belief.

21. No. However, the School does require that its students adhere to certain standards of conduct that are consistent with and follow from the religious beliefs of the School.

22. The issue has never arisen. Perhaps understandably no teacher who does not share the School's beliefs has sought permanent employment at the School after learning the nature of its religious beliefs. The question of religious beliefs is typically discussed at length during employment interviews. In Paragraph 8 of the complaint a part of the employment contract that must be signed by teachers at the School is quoted. The contract requires faculty members to subscribe to the School's religious beliefs as a general matter and to regularly attend churches whose beliefs would encompass the School's beliefs about race. A copy of

the employment contract will be produced upon defendant's request.

23. Yes. Teachers are required to execute an employment contract that contains a general affirmation of faith.

(a) A copy of the relevant employment contract is attached hereto. The contract sets forth the beliefs to which teachers must subscribe.

(b) Employees are advised of the requirement during employment interviews and at the signing of the contract.

(c) The relevant documents will be produced.

(d) Yes.

(e) They are required to sign the employment contract.

(f) The relevant documents will be produced.

24. The relevant documents will be produced.

25. Yes. Instruction to the effect that separation of the races for educational purposes is a fundamental religious belief is given in the School's chapel services and other special services, and Bible classes required of each student each year, and in a Christian ethics course that is required of all seniors at the School. Instruction at chapel and other special services involves short talks in the nature of sermons on religious topics. Bible classes are self-explanatory; they stress learning about different portions of the Bible. The Christian ethics course is intended to teach students what actions and beliefs Bible-believing Christians should take in modern society.

26. Baptist	43.2%
Free Will Baptist	15.0%
Church of God	1.8%

Methodist	15.0%
Church of God of Prophecy	.6%
Assembly of God	.6%
Friends	2.7%
Pentacostal Holiness	20.0%
Christian	2.7%
Catholic	.6%
Pentacostal Free Will Baptist Holiness	6.0%
Church of Christ	.3%
Greek Orthodox	.9%
7th Day Adventist	3.5%
Mormon	2.7%
Presbyterian	1.5%
Advent Christ	.9%
Lutheran	.3%
Buddhist	.3%
Nothing	2.7%

27. Plaintiff is without sufficient information to answer this interrogatory.

28. Yes. Worship services are open to members of all races without conditions. See plaintiff's answer to interrogatory No. 11. Those answers would apply to the Second Baptist Church of Goldsboro as well as the School.

29. Yes. Mrs. Bernice Hinnant, Bob Jones University. Mrs. Geraldine Robinson, Wayne Community College.

30. Typically the Board of Deacons would consider such questions. The Board of Deacons would make a proposal to the entire membership which would act on the questions.

31. No.

32. No.

This the 15th day of December, 1975.

(Filed December 15, 1975)

GOLDSBORO CHRISTIAN SCHOOLS, INC.

By /s/ ROD HELDER
Rod Helder

NORTH CAROLINA
GUILFORD COUNTY

Verification

ROD HELDER, being duly sworn, deposes and says that he is Principal of Goldsboro Christian Schools, Inc., that he has read and prepared the foregoing Answer to defendant's Interrogatories and Request for Production, and that such answers are true and correct to the best of his knowledge and belief.

/s/ ROD HELDER
Rod Helder

(Jurat omitted in printing)

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

**PLAINTIFF'S ANSWER TO INTERROGATORIES
AND REQUEST FOR PRODUCTION**

(January 19, 1976)

Plaintiff, Goldsboro Christian Schools, Inc. (hereinafter sometimes referred to as the "School"), hereby answers the interrogatories of the defendant, United States of America, as follows:

33. The Church was instrumental in organizing the School. The School is conducted on property owned by the Church. The president of the School has traditionally been the pastor of the Church. Members of the Church make up the Board of Directors of the School in large part. As a practical matter the beliefs and intentions of the Church and School are almost always the same.

.004 of the School's expenditures between 1969 and 1972 were funded by contributions from the Church.

34. Total gross receipts of the School between 1969 and 1972 were \$1,945,810.41. Receipts by the School from the Church during that period were \$8,632.81.

35. Yes.

Year	Nature of Assistance	Annual Value
1969	Custodian	\$ 1,442.50
	Pastor	3,125.00
	Secretary	1,287.50
	Utilities	1,270.50
	Telephone	577.30
	Heating	457.69
	Water	193.58
	Building rental value	13,000.00
	Less: School reimbursement	(1,774.75)
	Total	\$19,579.32
1970	Custodian	\$ 1,727.50
	Pastor	3,205.00
	Secretary	1,335.00
	Water	165.45
	Utilities	810.45
	Telephone	1,025.67
	Heating	355.65
	Building rental value	20,000.00
	Less: School reimbursement	(4,356.56)
Total	\$24,268.16	
1971	Custodian	\$ 1,820.00
	Pastor	3,380.00
	Secretary	1,560.00
	Utilities	1,709.04
	Water	187.35
	Telephone	1,339.88
	Heating	882.30
	Building rental value	32,500.00
	Less: School reimbursement	(4,765.77)
Total	\$38,612.80	

Year	Nature of Assistance	Annual Value
1972	Custodian	\$ 2,055.00
	Pastor	3,480.00
	Secretary	1,795.00
	Utilities	2,073.34
	Water	332.03
	Telephone	1,455.35
	Heating	849.50
	Building rental value	32,500.00
	Less: School reimbursement	(3,026.49)
	Total	\$41,513.73

There are no written documents that authorize the grants. Values for pastor, secretary and custodian are based upon estimates that half their time was applied to School matters.

36. 1969

1. (a) Stages (1 & 2) of the Church building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—
—\$270,800
- (b) Second Baptist Church, Goldsboro, North Carolina
- (c) There are no leases or other instruments concerning the use of the above facilities by the School.
2. (a) Description and Value of residences:

Residence	Value
1304 Robin	\$11,200
1305 North Drive	12,000
209 Banks	11,000
405 Banks	13,000

<u>Residence</u>	<u>Value</u>
2110 Rose	16,000
1416 Boyette	18,700
High School Building 1101 East Mulberry	13,250

- (b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina.

1970

1. (a) Stages (1, 2 & 3) of the Church building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$357,800
- (b) Second Baptist Church, Goldsboro, North Carolina
- (c) There are no leases or other instruments concerning the use of the above facility by the School.
2. (a) Description and value of residences:

<u>Residence</u>	<u>Value</u>
1304 Robin Street	\$11,200
1305 North Drive	12,000
209 Banks Avenue	11,000
405 Banks Avenue	13,000
2110 Rose Street	16,500
1708 Beech Street	11,800
1702 Palm Street	13,200
1712 Palm Street	10,400
1708 Palm Street	17,380
1416 Boyette Drive	18,700

- (b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina
- 3. (a) high school building, located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$332,500.
- (b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina

1971

- 1. (a) Stages (1, 2 & 3) of the Church building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$357,800
- (b) Second Baptist Church, Goldsboro, North Carolina
- (c) There are no leases or other instruments concerning the use of the above facilities by the School.
- 2. (a) Description and value of residences:

Residence	Value
1304 Robin Street	\$12,000
1702 Palm	14,500
1708 Palm	17,500
1712 Palm	10,400
1707 East Beech	9,500
1708 East Beech	12,500
1908 East Beech	13,000
2110 Rose Street	17,000
1914 East Walnut	21,000

<u>Residence</u>	<u>Value</u>
312 N. Audubon Avenue	13,000
1605 East Maple	9,500
1305 North Drive	13,000
209 Banks	12,000
405 Banks	14,000
422 Cardinal	13,000
408 Quail Drive	15,500

- (b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina.
3. (a) High School building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$332,500
- (b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina.

1972

1. (a) Stages (1, 2 & 3) of the Church building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$357,800
- (b) Second Baptist Church, Goldsboro, North Carolina.
- (c) There are no leases or other instruments concerning the use of the above facilities by the School.

2. (a) Description and value of residences:

Residence	Value
208 Quail Drive	\$14,500
209 Banks	13,000
210 Banks	13,000
211 Quail	16,000
212 Banks	14,500
218 Banks	14,000
312 Audubon	13,000
405 Banks	15,000
408 Quail	16,500
422 Cardinal	14,500
1014 East Walnut	21,000
1104 East Walnut	18,000
1213 North Jefferson	19,000
1304 Robin	12,000
1305 North Drive	13,000
1406 Catalpa	11,500
1508 Catalpa	11,000
1605 Maple	11,000
1605 Rose Street	22,000
1702 Palm	14,500
1706 Beech	14,000
1707 Beech	10,000
1708 Palm	17,500

Residence	Value
1708 Beech	13,000
1712 Palm	10,400
1900 Palm	14,500
1903 Palm	12,000
1908 East Beech	13,500
2110 Rose	17,500

(b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina

3. (a) High School building located at 1700 East Beech Street, Goldsboro, North Carolina. Value of building and land—\$332,500

(b) Goldsboro Christian Schools, Inc., Goldsboro, North Carolina.

37. Yes.

Date	Amount of Contribution	Use of Contribution
1969	\$2,411.30	General Fund
1970	2,481.48	General Fund
1971	2,768.53	General Fund
1972	971.50	General Fund

38. Stages (1, 2 & 3) of Church building located at 1700 Beech Street. Two assembly areas, 29 teaching classrooms, 1 library, School store, School offices, restrooms, parking area.

High School classroom building since September, 1970, located at 1700 East Beech Street, Goldsboro, North Carolina. 22 teaching classrooms, 2 Science labs, 1 Home Economics lab, 1 library, offices, restrooms, teachers' lounge, storage area.

This the 19th day of January, 1976.

* * * * *

GOLDSBORO CHRISTIAN SCHOOLS, INC.

By /s/ ROD HELDER
Rod Helder

NORTH CAROLINA
GUILFORD COUNTY

Verification

ROD HELDER, being duly sworn, deposes and says that he is Principal of Goldsboro Christian Schools, Inc., that he has read and prepared the foregoing Answer to defendant's Interrogatories and Request for Production, and that such answers are true and correct to the best of his knowledge and belief.

/s/ ROD HELDER
Rod Helder

(Jurat omitted in printing)

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil No. 75-0020-Civ-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff*;

-v-

UNITED STATES OF AMERICA, *Defendant*.

DEPOSITION OF ROD HELDER

APPEARANCES

For the Plaintiff: Brooks, Pierce, McLendon, Humphrey &
Leonard

Attorneys at Law

1400 Wachovia Building

P. O. Drawer U

Greensboro, North Carolina 27402;

Messrs. Claude C. Pierce and Edward C. Winslow, III,
appearing.

For the Defendant: Mr. John A. Townsend, Attorney

United States Department of Justice

Refund Trial Section No. 2

Tax Division

Washington, D. C. 20530.

At Goldsboro, North Carolina.

January 19, 1976.

* * * * *

REDIRECT EXAMINATION BY MR. TOWNSEND:

Q. Now, I—if I can draw your attention back to where we were discussing earlier that it becomes a matter of degree so that you can accept one non-Japheth or maybe

a few non-Japheths, but you couldn't accept many non-Japheths into a school that's geared to teach Japheths primarily,—

A. (Interposing) Yes, sir.

Q. —is that correct?

A. Right.

Q. So then you would have no objections, I take it, to accepting one black into this school, is that correct?

A. I would have objection personally in the fact that you have a racial climate in the country and because of the problem in this area. In that sense I would, yes, sir.

If it hadn't been for that, there would be no problem.

Q. Well, would that violate any fundamental religious doctrine you hold, or was that just a practical problem that you would have with admitting him?

A. It would affect the, as I explained earlier, it is geared to the basic principle that I stated, as I see it.

Where—because in my estimation, and again you're having to rely on my own experience, and this is the way I see it.

There would be problems and it wouldn't work.

Q. Well, aren't there similar types of racial discrimination, and possibilities of ill will between Caucasians and Indians, for example?

A. There is not that climate in our country toward them, no, sir, as there is toward Negroes. So, in fact, the policy, in effect, bears only against the Negro and not against anyone but Negroes because of the climate that exists in this country?

A. There—isn't against anybody in particular. It is just saying that where we in—we get into a problem because of the climate in our country at the particular time and because of the geographical area.

It's not a—a matter of discrimination, and that's where we're having a hard time——

(Laughter.)

Q. (Interposing) No, but what I'm——

A. ——getting through.

Q. ——asking you that as a practical effect as applied, your policy, in effect, goes only toward prohibiting Negroes and any other racial grouping you will permit because there is not this feeling of—of, in this nation and in this region, this feeling of ill will or possible problems developing, is that correct?

A. You might look at it that way,

Q. Well, I'm asking you how you look at it?

A. I don't—I don't look at it that way because of—of the circumstances. Of course, I realize we're being judged from the outside——

(Laughter.)

——but from the inside, I feel sincerely this is the way it is.

Q. So you would have no problem accepting today, if one applied, a full-blooded Chinese?

A. One, I don't believe so. There's not that atmosphere in the country against the Chinese, and no contentions between the Chinese and the whites like there is the blacks and the whites.

Q. Would you have any problems accepting a full-blooded Indian—Egyptian?

A. I don't believe so. Same reasons.

Q. Full-blooded Indian?

A. I don't believe so. Same reasons.

Q. Is there anybody, other than a Negro, that you would have problems in accepting—any racial grouping?

A. We don't have problems accepting—accepting a Negro, except for the climate in the country today. It's not a matter of discrimination.

Q. And the Bible teaches you that when this climate exists in the country, you should not accept Negroes in school, or any racial grouping where this climate exists?

A. Where a climate exists whereby you have a certain race clamoring for certain things within the school's curriculum. Certain—making certain demands of society, every aspect of society, then I think you are on very thin grounds when you, particularly in a southern region where you open your doors to them in a Christian school situation.

Q. Okay, now, to get back to my question there, but if you just accepted one into the school, one person would not cause a problem?

A. I think it would personally.

Q. Just a single person?

A. Yes, sir.

Q. Okay—

A. (Interposing) And I would—excuse me—I'd like to emphasize that I realize the Board may look at it differently from what I would or even a teacher, but I think being principal of the school and having been here for nine years—I'm the oldest member, incidentally, of employees—office employee, that I think that I know better. probably than anybody else the mood of the folks in this area with whom I deal as far as the school, and I think I'm in a better position to make a valid assessment on that probably than most anyone else.

Q. Just to tie it all down, you are—you do fulfill the functions of a director of admissions, is that correct?

A. Yes, sir.

Q. You are charged with carrying out the policies of the Board in admitting students, is that correct?

A. Yes, sir.

Q. And you feel like you have carried out the policies?

A. Yes, sir.

Q. And what you have told me today are basically——

A. (Interposing) Yes, sir.

Q. ——the policies of the school?

A. Board members have told me that if they were in my shoes that when the Indian came in, that they would have done the same thing. They've told me that.

Q. What was the occasion——special circumstances that the Indian being admitted, can you tell me that?

A. They just came by and wanted to know if they could enroll her, and as far as I was concerned, there was no problem.

Q. Were the parents full-blooded Indians?

A. Yes, sir, both of them.

Q. What were they doing in Goldsboro, do you recall?

A. With the military here.

Q. Are they Christians?

A. No, sir.

Q. Do you recall why they wanted their child to attend this particular school?

A. They were——heard about our school, and they evidently heard of the conditions in the public schools in this area, and they wanted the child to get a good education. Evidently,—I think they were influenced probably by some other folks who had probably put in a good word for us, although I don't know that for sure, but that's my own supposition, and so they came here and made an application.

Q. But if a child or parents from Nigeria, for example, who was in the military under the same circumstances came by, you would not accept that child?

A. If it was a Negro, that's right.

Q. What religion is this Indian?

A. I don't know. I don't usually check into the religious background. As I mentioned earlier, in doing the interview, I deal only with whether or not the child is going to cooperate—whether the parent is going to work with us on this thing. I don't ask them, although our application blank does call for that, I don't usually ask them, and quite often they fill out the application blank after they meet me.

So, to me, it's not that essential—

Q. (Interposing) Don't they have to subscribe to some Christian creed in order to come to school?

A. No, sir.

Q. They do not?

A. No.

Q. Don't you have a creed for the school?

A. We do, yes, sir.

Q. Is it a Christian creed?

A. Yes, sir.

Q. And they don't have to subscribe to that?

A. No, sir, we—it's a statement of cooperation, and if they come to us with any religion under the sun as long as they cooperate, and they are not going to cause division and strife by being argumentative in the classroom. When it comes to Bible courses, we will take them in.

Q. And you require that child to go to all the Bible courses that every other child attends?

A. Yes, sir, well, that particular one is in kindergarten so it's not a big thing as it will be later on when we get into deeper things in the Bible.

Q. And you have admitted also children of mixed marriages, have you not?

A. Yes, sir.

Q. How many of those?

A. I don't really know offhand how many we have in. We have at least one or two, I would think,

Q. Are you talking about currently?

A. Yes, sir.

Q. And in the past you've also admitted them, have you not?

A. Yes, sir.

Q. Would that be—what—what other nationality or racial groupings did they come from?

A. (No answer.)

Q. One Caucasian—one of the parents was Caucasian and—

A. (Interposing) Yes, sir.

Q. —the other was what?

A. Japanese, I think most of them.

Q. Any others that you can think of?

A. No.

Q. Japanese was the Hamite, were they not?

A. Yes, sir.

[Dep. p. 43, 1.6—p. 52, 1.11]

* * * * *

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil No. 75-0020-Civ-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff*;

-v-

UNITED STATES OF AMERICA, *Defendant*.

DEPOSITION OF DR. E. E. ULRICH

APPEARANCES

For the Plaintiff: Brooks, Pierce, McLendon, Humphrey &
Leonard

Attorneys at Law

1400 Wachovia Building

P. O. Drawer U

Greensboro, North Carolina 27402;

Messrs. Claude C. Pierce and Edward C. Winslow, III,
appearing.

For the Defendant: Mr. John A. Townsend, Attorney

United States Department of Justice

Refund Trial Section No. 2

Tax Division

Washington, D. C. 20530.

At Goldsboro, North Carolina.

January 19, 1976.

* * * * *

DIRECT EXAMINATION BY MR. TOWNSEND:

Q. Okay, were you one of the founders of Goldsboro
Christian—

A. (Interposing) Yes, sir.

Q. —Schools? What position were you initially given
with the school?

A. Chairman of the Board and acting principal, or Chairman of the Board and principal. I guess it wasn't called "acting".

Q. How long were you Chairman of the Board?

A. Until October, 1975.

Q. And how long were you principal?

A. Until Mr. Helder was named full principal and the school was reorganized as far as its administration was concerned.

Q. Are you familiar with the school's policy on racial discrimination?

A. Yes, sir.

Q. Would you state to me what they are?

A. The school's policy basically is, first of all, that, ideally, because we're dealing with immature children and young people that they should be educated separately in order to best instill in them the precepts of the word of God.

We recognized that with some students and some minorities there was no possibility of Christian education ever being available to them if separation were completely maintained, and so we felt as long as they understood the position of the school and would abide by the position of the school that when an application was made that we would attempt to take these as long as we found in the taking of them that there would be no difficulty with the school's position. Beyond that, of course, was the problem of blacks. Our school, as I believe you know, is on record because of the size of population that we would, which we believe would be the ideal for any race, that we would aid, and this has been offered actually to black people, in the establishment of a black Christian school because we believe in Christian education as basic.

We would feel that in taking blacks in this school because of the positions taken by groups in this country, such as the NAACP, CORE, or any of these—positions actually taken by the Federal government that an individual black child is not in the world by himself. That if that were all we were dealing with, that it is possible we could take that child on the same basis of somebody of another race, but with the other pressures that would be involved, militant organizations, what has seemed to be the attitude of the Federal government and so forth, that we find it probable that we could not deal with the black on the same basis, and to avoid the disruption, and the possible hurt to a black child that might be involved, we've said that we could not take them under these present circumstances.

Q. But then you do recognize that the Board's policies on racial discrimination, in effect, apply only to Negroes?

A. No, sir, no, sir.

Q. What other racial group do they apply to?

A. Any—any—any student of any group that would not abide by the practices, the purpose, and the beliefs of the school in their personal lives would not be kept here at all.

Q. But I'm not—I'm talking about being accepted.

A. They would not be, I presume it's still the same way. I've not been in touch with the school since—I mean, as far as working in administration since then, but I would presume it would be the same way. That they would not be accepted unless they were willing to abide by the beliefs and practices of the school.

Q. But individual, for example, you will agree with the policy of accepting this individual in here that we talked about this morning?

A. As long as, of course it wouldn't be a matter of the child as long as the parent would not want us to act contrary in our treatment of that child from what we would believe as far as race and practice are concerned.

Q. If a black came in and were willing to accept that condition, would the school accept the black?

A. If the—if the situation in the country, and I'm not talking about whether a person likes a black or not—that's not it.

If it were not for the militant organizations that could be involved, some of the things that come from the Federal government and so forth, it would probably be attempted.

Q. But, my question is directed to you in finding out that in effect your policy applies only to the blacks because you will accept Indians. We know that. We know the Christian school will accept Indians—

A. (Interposing) Well,—

Q. —because they have accepted one to your knowledge—

A. (Interposing) —I think the question is wrong because the policy is not an anti-black policy as such, and the way your question is worded would seem as if it were an anti-black policy.

Q. No, I didn't mean to give that impression,—

A. (Interposing) Well,—

Q. —but what I'm trying to find out is that so far as you know in practical effect, that is the effect of the policy although it's worded differently here. The effect of it is that it goes toward one racial grouping, isn't that true?

A. The effect of it on the basis of the experiences we've had with—has more probably affected the black than any other, but if there were a moment of non-compliance by any other, it would be clear that it was affecting more than that.

I might state that in the years that I was here to my—to the best of my knowledge and belief, we never had a black to apply.

Q. But you do know that if you had had a black to apply, he would not have been accepted, don't you?

A. Right,——

Q. (Interposing) Okay,——

A. ——but it would have been explained——

Q. (Interposing) ——but you had Japanese to apply, didn't you?

A. No, full Japanese. We had, I think, four—four mixed Japanese.

Q. That would be mixed with Caucasian?

A. Caucasian—the father was Caucasian. The mother was Japanese.

Q. You did accept them, did you not?

A. Yes.

Q. And you would have accepted, if I understood the testimony correctly, you would have accepted a full-blooded Japanese, would you not?

A. Yes.

Q. Would you accept a full-blooded Chinese?

A. Yes, providing, of course, they accepted the policy and believed that as far as——

Q. (Interposing) You would not have rejected them solely because they were Chinese?

A. As long as they were willing to understand and practice in their personal lives the kind of policy that we had, they would not have been rejected.

Q. Okay, and the same thing is true of Indians, isn't it?

A. Right.

Q. Is there any grouping, other than Negroes, that you know of that you would have refused to accept solely because of their race?

A. Well, on the basis of the population of Goldsboro, no. If there had been, for instance, a large Oriental population

in Goldsboro, it's highly possible, and if there had been Oriental militants who could affect whatever was done, as far as the Orientals are concerned, it would have been exactly the same thing it is with blacks.

Q. So then, if I understand correctly it is because of the—because of the—let's see—it becomes a matter of degree, then. It's a matter of how many of these non-Caucasians in a particular grouping that are present and the degree of militancy?

A. If there would be any situation that because of size, activity, militancy, or anything that I might not think of now, but that would pose a serious problem to our taking a student and maintaining in the teaching and the operation of the school, the philosophy, the Bible teaching that we believe, then they would not be taken, who or what.

Q. Could you explain for me the religious basis for this policy you just described?

A. Yes, of course, you've had several references to Noah, to Shem, Ham, and Japheth, and of course, their descendants are listed in the same place. I mean you have a listing of the various descendants from which we would derive our list in—that was given to you.

Now, there's a great deal of belief that prior to that that you had the same thing that brought about the flood from the descendants of Cain and the descendants of Seth, who, of course, were two of the first sons of Adam, and that it was a racial intermingling of the cultures and the religious problems that were involved at that time between the Canaanites and the descendants of Seth that brought about the flood.

Now, if you go into God's dealing with the Hebrew people, you will find that, for instance, in the case of intermarriage—if a Hebrew intermarried with certain other races, descendants, for instance, would not be admitted into the House of the Lord for so many generations.

Q. Was this before or after Noah?

A. After Noah.

Q. Well, there were only two races after Noah, wasn't it—three races?

A. Uh—

Q. A Shem could only marry a Shemite, and two other races?

A. Well, you were—you had your basic distinctions for Japheth and Shem and Ham, but then, Ham had children of which there were several nationalities. You mentioned some of them that came from the descendants of Ham.

Japheth and Shem the same way.

Of course, the primarily—primarily those that are recognized as closest to purest of any today are Hebrew people.

Your Arabs are, of course, many people class them as Semitic, but they're about as much Ham as Semite.

But the children of Israel in their day they—there were other Semites, but they were commanded to marry with their own kind and in fact, if you go back to Abraham, he sent his servant on a long journey to find a bride for his son because he was afraid that Isaac might marry somebody out of his own race.

You'll find prohibitions that I was talking about a while ago where somebody who is—where a Hebrew intermarried with another race and couldn't be admitted to the House of the Lord, I think it was, and it was four generations.

You'll find in much, much later—for instance, Ezra's day after the captivity of the Children of Israel—their going back into the land. They—when Ezra, who was the scribe, the priest, the teacher of the Word of God—when he went back, he found even among the leadership a great deal of racial intermarriage of when the people come to dwell in the land, and he realized what the teaching of the Word of God had been, and what it could do his people,

and they had a great meeting. It's one of the most—to me—one of the most difficult things in all the Bible, but they had this meeting and the men all promised that they would put away their foreign wives and their foreign children.

Now, I'm not saying that racial mixed marriages ought to do the same thing today, but this—this was what was taught, and this is what they did.

Now, in the New Testament, there seemed to be an idea in the early church,—Paul deals with it in Acts—where primarily Caucasians—Japhetites, who are coming into the church—that the earliest church folks who were Jews, of course, first, did not want to accept these people unless they became Jews—unless they adopted the ceremonial customs, practices, and the ways of Jews. And there was quite a church deception about it, and the upshot of it was, with the leadership of the Apostle Paul that the Apostle Peter took it that it was agreed that a Jew should remain as Jew, and the others should remain in their customs and practices, as they had remained. That there was not to be—and this had nothing to do with their salvation—but that they were not to cross these lines or to force the crossing of them.

Now, Paul was speaking to the Greeks on Mars Hill, and speaking to them of God's creation, and their accountability to Him, and he said that God made the races and that He determined the times before appointed and the bounds of their habitation.

In other words, the various conditions—times, dwelling place, and so forth—were determined by God and as was pointed out this morning, Paul said that this was done that they might seek the Lord, that they might feel after Him, that there seemed to be a recognition that—of—the more the races were mixed, the less racial respect and the less fear of God there would be.

And this the Bible was supposed to.

Q. Do you feel that the—that reference to bounds and habitations has anything to do with geographical separation?

A. I think it does that, but I think it does more than that.

Q. But you certainly do not believe that the races—the Bible teaches that the races must be in separate countries, upon separate geographical regions?

A. I would not make it a matter of dogma or doctrine, but I somehow wouldn't be surprised if in the original plan of God that races were to grow up in separate communities that would remain that way.

Q. Now, what is the Biblical authority for the fact that the descendants of—that Orientals, Egyptians, Indians, and Negroes are descendants of Ham, as opposed to descendants of Shem, or Japheth?

A. All right, I'm not going to read you any lengthy passage here.

In Genesis, Chapter Ten, starting with verse two, you have listed the sons of Japheth; Gomar, Magog, Madai, Javan, and Tubal, Meshech, and Tiras.

And then it goes on to give some of the descendants there.

Now, various Bible scholars have traced a number of these things out. I could dig out some reference books, if I had all my library here and show you this.

Where these family groups are identified as to who they are. Now, you go on down further, you have the sons of Ham. Cush, Mizraim, Phut, Canaan, and Canaan—some of these are much more easy to recognize—Canaanites were in the land when the Children of Israel went there and it engulfed them, destroyed them utterly and so forth. There's none of those in existence today.

I think Cush is generally recognized as being the father of the Egyptians and some of the other groups of that area, and so it would be with some of these others as far as where they come from. Now, this——

Q. (Interposing) Genesis traces all that out?

A. It gives three generations at least here, and men who have dealt with these matters have dug this out, I think one book in particular that does some of this—that comes to mind right now—is the book called, *The Two Babylons*, by the name—a man by the name of Heslop, H-e-s-l-o-p.

There are a number of commentaries beginning with some of the writings of the early church fathers—back in the first or second century and on to the present time that deal with the development as to who these are.

For instance, Magog is both generally accepted to be the Russian people, and——

Q. (Interposing) Now, when you say generally accepted, are you saying generally accepted upon—by Bible scholars?

A. By Bible scholars, generally it's accepted that the evidence is there that Magog, or some of his descendants were the people or—who now inhabit the area of Russia.

Q. You aren't just talking about fundamentalist religious scholars, are you?

A. No, I'm talking—well, I'm talking about men who believe the Bible, and who take It literally, and who do not question Its authority or authenticity.

Q. So you are talking about fundamentalist religious scholars?

A. By and large, yes.

Now, some of these men may not call themselves fundamentalists, but they would be in the same camp as far as that's concerned.

Q. Dr. Heslop or Mr. Heslop would be one?

A. Right, yes.

Q. So in your mind there's no question that the Negro, for example, is a Hamite, rather than a Japhethite?

A. Right.

Q. Japhethite?

A. Right.

Q. By the same token, there's no question in your mind that a Greek is a Japhethite?

A. Right, right.

Q. Is an Italian a Japhethite?

A. Yes, yes.

Q. All Caucasians are Japhethites?

A. Right, most of these same men who would deal with this have also taught the principle of racial separation as maintained in the Bible. It should be practiced by God's people.

Q. Okay, are Orientals from Ham, is that correct?

A. Right.

Q. That's generally accepted?

A. Generally accepted, yes.

Q. And the Negroes, also?

A. Right.

Q. American Indians, what are they?

A. You might find a little more question about it, but I think generally they're accepted as Hamitics.

Q. How about Pakistanis?

A. They're related to Indian peoples and most of the natives of that area of the world are generally accepted as having been Hamitic peoples who migrated there.

Q. How about Lebanese?

A. I think the Lebanese are predominantly Semitic.

Q. They're Hebrews?

A. They are related to Hebrews. but they have—I think there's been some intermarriage with Hamitic in a large

grouping, but I may be wrong—I may be wrong. Maybe I'm answering too quickly there, but I think I'm right in that.

I mentioned a while ago the Arabs are at least half Semitic.

Q. I believe in your sermon you said that the Arabs are the sons—descendants of Ishmael, is that correct?

A. Right.

Q. Now was that an interracial marriage?

A. Yes, Ishmael was the son of Abraham, who on the advice of his wife when she had given him no children married an Egyptian who was Hamitic, and God told him that the child of that marriage would not be the son through whom the promises—heirs—or the promises that God gave would come.

Q. And the Bible tells you that the Arabs—the present day Arabs are the product of that marriage?

A. Right, you can trace it down in the Old Testament and bring it right on up to the present time.

Do you employ Mohammedanism? One of the things that Mohammedanism does is it looks to Abraham through Ishmael as their spiritual and physical forebearer, even as Judaism looks to Abraham through Isaac.

[Dep. p. 8, 1.5—p.25, 1.22]

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56, Federal Rules of Civil Procedure, the defendant hereby moves the Court for an order in the nature of a partial summary judgment, for the reason that there is no material fact genuinely in dispute between the parties as to the issue of the plaintiff's entitlement to qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 and the issue of whether the plaintiff's provision of lodging to its teachers is remuneration requiring the withholding of federal income taxes and the payment of F.I.C.A. and F.U.T.A. taxes, for the reasons more fully set forth in the accompanying brief in support of this motion. For purposes of this motion, the defendant incorporates into the record the discovery presently on file with the Court (composed of depositions and answers to interrogatories), the plaintiff's complaint, and the affidavit of John A. Townsend (with attached exhibits) accompanying this motion.

THOMAS P. McNAMARA
United States Attorney

By:
Assistant United States Attorney

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Goldsboro Christian Schools, Inc., Plaintiff, through its undersigned attorneys, pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Court for a partial summary judgment in plaintiff's favor that for the years in issue in this litigation the plaintiff was an "organization described in Section 501(c)(3)" for purposes of qualifying for the exemptions from Federal Insurance Contribution Act taxes contained in Section 3121(b)(8)(B) of the Internal Revenue Code and the Federal Unemployment Tax Act taxes contained in Section 3306(c)(8). Said motion is made on the grounds that as to this issue there is no genuine issue as to any material fact and the plaintiff is entitled to a partial summary judgment as a matter of law.

In support of said motion plaintiff shows unto the Court the verified complaint, depositions, answers to interrogatories and other documents filed with this Court. Defendant has moved this Court for partial summary judgment as to the same issue. Plaintiff's brief in support of this motion and in opposition to defendant's motion was filed simultaneously herewith.

Oral argument on plaintiff's motion is requested at the convenience of the Court.

WHEREFORE, plaintiff prays that the Court enter partial summary judgment in plaintiff's favor and finding and adjudging that, for the years in issue in this litigation, the plaintiff was "an organization described in Section 501(c)(3)" of the Internal Revenue Code for purposes of

qualifying for the exemptions contained in Section 3121(b) (8)(B) and Section 3306(c)(8) of the Internal Revenue Code.

This the day of, 1977.

Claude C. Pierce

William G. McNairy

Edward C. Winslow III

Attorneys for the Plaintiff

Of Counsel:

BROOKS, PIERCE, McLENDON,
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Telephone: (919) 273-2591

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

75-0020-CIV-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff,*

v.

UNITED STATES OF AMERICA, *Defendant.*

Decided September 14, 1977

Before HEMPHILL, *District Judge.*

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Printed in Petition for a Writ of Certiorari at page 5a.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

(Title omitted in printing)

STIPULATION

(Filed January 27, 1978)

For the purposes of this action, it is hereby stipulated by and between the parties as follows:

1. On April 25, 1977, the Acting Assistant Attorney General of the Tax Division of the United States Department of Justice notified counsel for the plaintiff by letter that the Internal Revenue Service had agreed to abate all Federal Unemployment Tax Act (FUTA) assessments for the period January 1, 1969 through December 31, 1970 and all Federal Insurance Contributions Act (FICA) assessments for the period January 1, 1969 through November 30, 1970. The April 25, 1977 letter from the Department of Justice to William G. McNairy is attached to this Stipulation as Exhibit A. The Internal Revenue Service made this decision to abate FICA and FUTA taxes assessed against the plaintiff for 1969 and most of 1970 because the Internal Revenue Service did not announce the change of its position with regard to the tax-exempt status of private schools which maintain a discriminatory admissions policy until July 10, 1970 and did not begin enforcing this change of position until November 30, 1970. A copy of the July 10, 1970 News Release announcing the change of the Internal Revenue Service's position on the tax-exempt status of private schools which maintain a discriminatory admissions policy is attached to this Stipulation as Exhibit B.

2. As a result of the concession by the Internal Revenue Service referred to in paragraph 1 hereof, the plaintiff, Goldsboro Christian Schools, Inc., is entitled to a credit of

\$784.71, which represents the FICA taxes and interest paid by the plaintiff to the Internal Revenue Service, all as set forth in paragraph 14 of the Complaint, for the period January 1, 1969 through November 30, 1970 as follows:

Period	Employee Tax Imposed by Section 3101	Employer Tax Imposed by Section 3111	Interest	Total
1st Quarter 1969	\$57.24	\$57.24	\$37.62	\$152.10
2nd Quarter 1969	41.92	41.92	26.28	110.12
3rd Quarter 1969	19.24	19.24	11.78	50.26
4th Quarter 1969	55.46	55.46	32.28	143.20
1st Quarter 1970	41.00	41.00	22.64	104.64
2nd Quarter 1970	30.56	30.56	15.96	77.08
3rd Quarter 1970	25.30	25.30	12.44	63.04
4th Quarter 1970	34.23	34.23	15.81	84.27*
			Total	\$784.71

* The Internal Revenue Service concession includes October and November only—taxable for December.

3. As a result of the concession by the Internal Revenue Service referred to in paragraph 1 hereof, the Government's Counterclaim for the unpaid FICA taxes and interest assessed by the Internal Revenue Service against the plaintiff, for the period from January 1, 1969 through November 30, 1970, in the amount of \$31,171.69, should be denied. Paragraph 2 of the Government's Counterclaim re-

requested judgment for such unpaid FICA taxes, but in fact also included in the figures listed therein assessed unpaid income tax withholding amounts. Since only the FICA portion of the 1969 through November 30, 1970 assessments are to be abated, and not the income tax withholding amounts for such periods (see paragraph 8, *infra*), the amount of the assessed FICA taxes to be abated is \$31,171.69, broken down as follows:

Period	FICA Tax Assessment	Interest Assessment	Plaintiff's Payments	Balance of Assessments to Be Abated
1st Quarter 1969	\$2,574.90	\$ 820.41	\$152.10	\$ 3,243.21
2nd Quarter 1969	1,944.89	590.50	110.12	2,425.27
3rd Quarter 1969	1,741.25	515.38	50.26	2,206.37
4th Quarter 1969	4,013.83	1,127.83	143.20	4,998.46
1st Quarter 1970	4,209.29	1,120.31	104.64	5,224.96
2nd Quarter 1970	3,402.27	853.92	77.08	4,179.11
3rd Quarter 1970	3,118.24	735.86	63.04	3,791.06
4th Quarter 1970	4,248.63	938.89	84.27	5,103.25*
			Total	\$31,171.69

* The Internal Revenue Service concession includes October and November only—taxable for December.

4. As a result of the concession by the Internal Revenue Service referred to in paragraph 1 hereof, the plaintiff, Goldsboro Christian Schools, Inc., is entitled to a credit in

the amount of \$374.20, which represents the FUTA taxes, interest and penalties paid by the plaintiff to the Internal Revenue Service, all as set forth in paragraph 14 of the Complaint, for the period January 1, 1969 through December 31, 1970 as follows:

Period	Tax Imposed by Section 3301	Interest	Penalty	Total
1969	\$130.20	\$33.85	\$32.55	\$196.60
1970	119.92	27.70	29.98	177.60
			Total	<u>\$374.20</u>

5. As a result of the concession by the Internal Revenue Service referred to in paragraph 1 hereof, the Government's Counterclaim is denied for the FUTA taxes, interest and penalties assessed by the Internal Revenue Service against the plaintiff, all as set forth in paragraph 3 of the Government's Counterclaim, for the period January 1, 1969 through December 31, 1970, in the amount of \$11,557.54 as follows:

Period	FUTA Tax Assessment	Penalty Assessment	Interest	Plaintiff's Payments	Balance of Assessment
1969	\$3,000.34	\$ 750.09	\$ 843.05	\$196.60	\$4,396.88
1970	4,988.66	1,247.17	1,102.43	177.60	7,160.66
				Total	<u>\$11,557.54</u>

* * * * *

8. As a result of plaintiff's failure to make certain income tax withholding remittances for the periods 1969 through 1972, and to pay FICA taxes for December 1970, and all of 1971 and 1972, with respect to gross income paid by plaintiff to its employees (including the fair rental value of furnished housing), unpaid assessments of FICA and

income withholding taxes are correct, due and owing in the total amount of \$96,167.40, broken down as follows:

Period	FICA Tax Assessment	Income Withholding Assessment	Interest Assessment	Plaintiff's Payments	Balance of Assessments Due & Owing
1st Quarter 1969	\$ - 0 -	\$ 464.43	\$ 147.97	\$ 41.85	\$ 570.55
2nd Quarter 1969	- 0 -	411.13	124.83	41.38	494.58
3rd Quarter 1969	- 0 -	506.87	150.03	21.13	635.77
4th Quarter 1969	- 0 -	662.47	186.15	40.11	808.51
1st Quarter 1970	- 0 -	669.91	186.28	41.92	844.27
2nd Quarter 1970	- 0 -	645.44	162.00	36.38	771.06
3rd Quarter 1970	- 0 -	916.04	216.17	45.35	1,086.86
4th Quarter 1970	\$2,177.06	1,054.77	714.19	42.13*) 41.73)	3,862.16
<i>FICA and Income Withholding Combined</i>					
1st Quarter 1971		8,575.23	1,767.79	193.38	10,149.64
2nd Quarter 1971		7,063.63	1,349.06	171.10	8,241.59
3rd Quarter 1971		6,502.07	1,144.28	156.42	7,489.93
4th Quarter 1971		11,576.47	1,863.65	235.43	13,204.69

Period	FICA Tax Assessment	Income Withholding Assessment	Interest Assessment	Plaintiff's Payments	Balance of Assessments Due & Owing
1st Quarter 1972		11,841.90	1,730.70	226.58	13,346.02
2nd Quarter 1972		10,093.77	1,322.15	191.08	11,224.84
3rd Quarter 1972		8,951.10	1,038.20	169.85	9,819.45
4th Quarter 1972		12,557.72	1,285.88	231.30	13,612.30
				Total	96,162.22

9. As a result of plaintiff's failure to pay FUTA taxes in 1971 and 1972 with respect to wages of its employees (including the fair rental value of furnished housing), unpaid FUTA tax assessments are correct, due and owing in the total amount of \$21,182.50 broken down as follows:

Period	FUTA Tax Assessed	Delinquency Penalty Assessed	Interest Assessed	Plaintiff's Payments	Balance of Assessments Due & Owing
1971	\$7,069.89	\$1,767.47	\$1,138.16	\$190.98	\$ 9,784.54
1972	8,572.17	2,143.04	865.67	182.92	11,397.96
				Total	21,182.50

10. As a result of the credits set forth in paragraphs 2 and 4 above, and the additional unpaid assessments set forth in paragraphs 8 and 9 above, judgment should be

entered for the United States for the total amount of \$116,-
190.99, broken down by year as follows:

1969	\$ 1,857.13
1970	6,057.72
1971	48,870.39
1972	59,400.57
	<hr/>
	\$116,185.81

This day of January, 1978.

GEORGE M. ANDERSON
United States Attorney

By:

/s/ LEONARD J. HENZKE, JR.
Leonard J. Henzke, Jr.
Attorney
Tax Division
Department of Justice
Washington, D.C. 20530

/s/ CLAUDE C. PIERCE
Claude C. Pierce
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Goldsboro Christian Schools, Inc.

Of Counsel:

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Exhibit A

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

April 25, 1977

MCB:JFM:LJHenzke:dln
5-54-674William G. McNairy, Esquire
Brooks, Pierce, McLendon, Humphrey
& Leonard
P.O. Box Drawer U
Greensboro, North Carolina 27402Re: Goldsboro Christian Schools v. United States
(Civ. No. 75-0020 — Civ-8; E.D. N.C.)

Dear Mr. McNairy:

This is to confirm the telephone conversation of April 22, 1977, between yourself and Mr. Leonard J. Henzke, Jr. of this office, respecting the above-entitled case. As Mr. Henzke explained, the Internal Revenue Service has agreed to abate all Federal Unemployment Tax Act (FUTA) assessments for the time period ending on or before December 31, 1970. In addition, it has been determined that all Federal Insurance Contributions Act (FICA) assessments will be abated for the time period prior to November 30, 1970. Please note that these abatements cover only the FICA and FUTA taxes which depend on plaintiff's status as a Section of 501(c)(3) exempt organization; they do not cover income tax withholding liabilities respecting the value of lodging furnished to employees.

The precise amount of taxes which is covered by these abatements is being computed, and we will notify you when the computation is complete. Of course, no actual refund will be made until the Government's counterclaim for pe-

riods after December 31, 1970 respecting FUTA, and November 30, 1970 respecting FICA, has been adjudicated.

Please feel free to telephone Mr. Henzke at (202) 739-2933 if you have any questions regarding this matter.

Sincerely yours,

MYRON C. BAUM
Acting Assistant Attorney General
Tax Division

By: /s/ JOHN F. MURRAY
John F. Murray
Chief, Civil Trial Section,
Southern Region

cc: Honorable F. T. Dupree, Jr.
United States District Judge
P.O. Box 27585
Raleigh, North Carolina 27611

Honorable Robert W. Hemphill
United States District Judge
P.O. Box 27585
Raleigh, North Carolina 27611

Carl L. Tilghman, Esquire
United States Attorney
P.O. Box 26897
Raleigh, North Carolina 27611

Exhibit B**INTERNAL REVENUE SERVICE**

WASHINGTON, D.C. 20224

Tel. (202) WO 4-4091

For Release: 4:00 PM, EDT, Fri.
July 10, 1970

IRS Announces Position on Private Schools

Washington, D.C.—The Internal Revenue Service announced today that it has been concluded it can no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor can it treat gifts to such schools as charitable deductions for income tax purposes.

The Internal Revenue Service will proceed without delay to make favorable rulings of exemption immediately available to private schools announcing racially nondiscriminatory admissions policies and to deny the benefit of tax-exempt status and deductibility of contributions to racially discriminatory private schools.

The Service said that favorable rulings given to private schools in the past will remain outstanding where the school is able to show that it has racially nondiscriminatory admissions policies.

All private schools with favorable rulings outstanding will receive a written inquiry from the District Director of Internal Revenue and it is anticipated that in most instances evidence of a nondiscriminatory policy can be supplied by reference to published statements of policy or to the racial constituency of the student body.

Where a school fails to establish that it has a racially nondiscriminatory admissions policy, an outstanding ruling of exemption will be withdrawn. However, a school seeking to clarify or change its policies and practices will be given

a reasonable opportunity to do so in order to retain its ruling of federal tax exemption. In any event, full opportunity to present evidence and be heard will be provided in accordance with usual revenue procedures and the right to appeal to the courts will be available. Similar principles will be followed in acting upon requests made by new schools for rulings.

* * * * *

4:00 PM, EDT

7/10/70

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

Civil Action No. 75-0020-CIV-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff*

v.

UNITED STATES OF AMERICA, *Defendant*

JUDGMENT

(Filed May 7, 1980)

It is hereby ORDERED, ADJUDGED and DECREED that defendant-counterclaimant, the United States of America, shall recover from the plaintiff, Goldsboro Christian Schools, Inc. the sum of \$116,190.99, plus interest and costs as allowed by law.

Plaintiff's motion for attorneys' fees is hereby DENIED.

Signed this 7th day of May, 1980.

/s/ ROBERT M. HEMPHILL
United States District Judge
Presiding by Designation

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

File Number: 75-0020-Civ-8

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

NOTICE OF APPEAL

Notice is hereby given that Goldsboro Christian Schools, Inc., plaintiff above named, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment entered in this action on the 7th day of May, 1980.

July 1, 1980

/s/ WILLIAM G. McNAIRY
William G. McNairy
Attorney for Goldsboro Christian
Schools, Inc.

Of Counsel:

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD
1400 Wachovia Building
Post Office Drawer U
Greensboro, North Carolina 27402
Telephone: (919) 373-8850

(Certificate of service omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1473

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the
Eastern District of North Carolina, at Wilson.

Robert W. Hemphill, Senior District Judge.

Argued December 3, 1980

Decided February 24, 1981

Before BUTZNER, *Circuit Judge*, FIELD, *Senior Circuit
Judge*, and MURNAGHAN, *Circuit Judge*.

OPINION

Printed in Petition for a Writ of Certiorari at page 1a.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1473

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the
Eastern District of North Carolina.

JUDGMENT

Printed in Petition for a Writ of Certiorari at page 53a.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1473

GOLDSBORO CHRISTIAN SCHOOLS, INC., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

ORDER (DENYING PETITION FOR REHEARING)

Printed in Petition for a Writ of Certiorari at page 55a.