AGENDA ITEM: Compliance Matters – Civil Penalties: Espiritu Community Development Corp.

Issue
During an August 2009 site visit, Espiritu Community Development Corp., which operates Esperanza Montessori Academy, Reyes Maria Ruiz Leadership Academy and NFL YET College Prep Academy, was unable to provide a valid fingerprint clearance card for a contracted special education aide. If the Board determines that this constitutes a subsequent violation of the fingerprinting requirements, then pursuant to A.R.S. §15-185.I the Board must impose a civil penalty of $1,000 on Espiritu.

Communications with School
On August 17, 2009, Board staff conducted a site visit of Esperanza Montessori Academy, Reyes Maria Ruiz Leadership Academy and NFL YET College Prep Academy. During the visit, the schools were unable to provide evidence of a valid fingerprint clearance card in accordance with A.R.S. §15-183.C.4 for a contracted special education aide, who was observed working with students.

- On August 18th, Espiritu provided staff with a copy of a fingerprint clearance card application dated July 19, 2009 for the special education aide.
- On August 19th, Board staff contacted the Arizona Department of Public Safety and was told that the application for a fingerprint clearance card had been denied and that notification was sent to the aide on July 23, 2009. The Department of Public Safety was unable to provide information as to the basis for the denial.
- On August 27th, Board staff sent a letter notifying Espiritu of the status of the special education aide's fingerprint clearance card application and of the Board meeting to consider the imposition of a civil penalty under A.R.S. §15-185.I.
- On September 2nd, Espiritu's attorney provided a response to the Board's August 27, 2009 letter.

Espiritu's First-Time Occurrence
On February 11, 2008, the Board determined that Espiritu Community Development Corp. failed to comply with statutory fingerprinting requirements and that the four occurrences identified during the January 2008 site visit constituted Espiritu's first time for civil penalty purposes under A.R.S. §15-185.I. No civil penalty was imposed at that time since Espiritu provided proof within 48 hours of the written notification that an application for the appropriate fingerprint check had been received by the Department of Public Safety.

In the March 3, 2008 letter sent by certified mail, Espiritu was notified of the Board's February 11th action and informed that if the Board determines that Espiritu subsequently violates statutory fingerprinting requirements, a civil penalty of $1,000 per occurrence shall be automatically imposed.

Board Options
In accordance with the Board's Policy Statement on Civil Penalties for Fingerprinting Violations, the Board determines if a subsequent occurrence exists. Pursuant to A.R.S. §15-185.I, the Board must impose a civil penalty if it determines that there has been a subsequent occurrence. The Board may:

1. Find that Espiritu Community Development Corp. failed to comply with the fingerprinting requirements of A.R.S. §15-183.C when its contracted special education aide provided instruction to students at Espiritu without having a valid fingerprint clearance card and, that under A.R.S. §15-185.I, this failure constitutes Espiritu's subsequent violation of the fingerprinting requirements of A.R.S. §15-184.C or §15-512. Further, the Board imposes a civil penalty of $1,000 against Espiritu Community Development Corp. Finally, the Board directs staff to:

- Apprise Espiritu Community Development Corp. of the Board's findings and decision in this matter; and
- Notify the Charter Operator that if the Board determines that the charter school subsequently violates the fingerprinting requirements of A.R.S. §15-184.C or §15-512 during the next five years, a civil penalty of $1,000 per occurrence shall automatically be imposed.

2. Determine that a subsequent violation of A.R.S. §15-184.C or §15-512 has not occurred.

Staff's Recommendation
Staff's recommendation is Option #1.