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AGENDA ITEM: Flagstaff Arts and Leadership Academy, Inc.- Non-compliance with the Individuals with Disabilities Education Act and Arizona law pertaining to the education of children with disabilities

Issue

On June 15, 2013, an Arizona Administrative Law Judge (ALJ) issued a decision finding that Flagstaff Arts and Leadership Academy, Inc. (FALA) substantively violated the Individuals with Disabilities Education Act ("IDEA") when it failed to provide a free appropriate public education (FAPE) to its student. The ALJ ordered that FALA pay the past and future tuition expenses of the student's current private residential placement. To date, FALA has failed to make any payments ordered. FALA states that it cannot afford to make the ordered payments.

Background:

On October 4, 2013, Board staff took a call from a parent of a student who had been enrolled at FALA. The parent stated she had prevailed at a due process hearing in a judgment issued on June 15, 2013, whereby an administrative law judge determined that FALA had failed to provide FAPE for her student and that a subsequent stay put order, issued by a district judge, requiring that FALA pay the cost of the student's private placement pending the outcome of an appeal was issued. FALA had yet to comply. Staff informed the parent of the complaint process and the requirement that the complaint be submitted in writing.

On October 8, 2013, at the request of the FALA, Board staff met with representatives of FALA to discuss the facts of the case and the potential impact to the charter if FALA were to file for bankruptcy.

On October 10, 2013, the parent filed a written complaint against FALA for its failure to provide a FAPE to a student enrolled at FALA and subsequent failure to comply with an administrative law judge's decision ordering FALA to reimburse complainant for past and current tuition for current placement of student.

On November 1, 2013, FALA provided a response to the complaint.

Case Background:

On June 15, 2013, Administrative Law Judge Eric Bryant issued a decision in case No. 13C-DP-005-ADE finding that FALA failed to provide FAPE to a student and ordering, among other things, that FALA reimburse the parent for tuition paid to a private residential school where the parent enrolled the student and that FALA pay the student's tuition going forward, for 18-24 months from the admission date and until the FALA IEP team determines that another placement is appropriate.

FALA appealed the ALJ's decision to the U.S. District Court in Arizona and on July 3, 2013, FALA filed a Motion For A Partial Preliminary Injunction requesting, among other things, that the Court enjoin the enforcement of the decision's requirements that FALA pay past and future tuition for the student's current private residential placement.

On September 24, 2013, US District Court Judge H. Russel Holland denied FALA's Motion and granted the parent's cross-motion for a stay put order requiring that FALA pay the cost of the student's private placement pending the outcome of the appeal.

On November 1, 2013, US District Judge H. Russel granted a motion for contempt citation, finding FALA in civil contempt for failure to pay the student's tuition through October 31, 2013 in the amount of \$176,722. FALA may purge the contempt citation by paying that sum on or before November 15, 2013, and may avoid further contempt proceedings by paying the student's ongoing tuition in accordance with the stay-put order.

## Board Options

Option 1: The Board may find the charter holder out of compliance with the Individuals with Disabilities Education Act and Arizona law pertaining to the education of children with disabilities and vote to withhold 10% of the charter holder's monthly state aid until the charter holder returns to compliance. Staff recommends the following language: I move to find that Flagstaff Arts and Leadership Academy, Inc. is not in compliance with the Individuals with Disabilities Education Act and Arizona law pertaining to the education of children with disabilities due to its failure to provide a free appropriate public education to its student as reflected in the administrative law judge decision dated June 15, 2013, and approve the withholding of 10% of their monthly state aid apportionment until Flagstaff Arts and Leadership Academy, Inc. complies with the terms of that decision or until a settlement or other agreement is reached by the parties in that matter.

Option 2: The Board may take no action at this time and allow the matter to proceed through the legal process.