
AGENDA ITEM: Compliance Matters – CASY Country Day School

Issue

CASY Country Day School (CASY) is on the January agenda for further Board consideration.

- In July 2008, the Board voted to withhold 10% of CASY's monthly State aid apportionment for failure to comply with federal payroll tax requirements. The Board's motion stated that compliance shall be demonstrated by proof of a payment plan with the Internal Revenue Service (IRS). [Board policy](#) requires staff to bring back to the Board for further consideration any charter holder that has had 10% withheld for six months, which, for CASY, would be the January 2009 meeting.
- In October 2008, the Board voted to add failure to remain current with member and employer contribution obligations to the Arizona State Retirement System (ASRS) to the basis for CASY's 10% withholding. As part of its motion, the Board indicated that this issue would be included in the review of CASY currently scheduled to occur no later than January 2009.
- In addition to repeat noncompliance with federal payroll tax requirements and with ASRS contribution requirements, CASY's fiscal year 2008 audit indicated noncompliance with remitting to the Arizona Department of Revenue (ADOR) payroll taxes withheld and noncompliance with Classroom Site Fund requirements. Further, for the second year in a row, the auditor was unable to express an opinion on CASY's financial statements because sufficient information related to CASY's accounts payable, payroll and related liabilities, cash receipts and revenues was not available and also because CASY has incurred substantial operating losses, does not have sufficient current assets or future resources to pay current liabilities and is not in compliance with federal laws and regulations.

Additional Detail and Current Status

- On December 9th, a letter was faxed to CASY requesting specific information, including copies of any approved payment plans, be provided by December 29th related to the issues identified in the fiscal year 2008 audit and mentioned above in the "Issue" section's third bullet. [CASY's response has been included in the meeting materials.](#)
- The fiscal year 2008 audit estimated CASY's liabilities at approximately \$215,000 to the IRS, \$28,000 to the ASRS and \$24,000 to the ADOR, including estimates for interest and penalties. The audit indicates that subsequent to June 30, 2008 and on July 15, 2008, CASY remitted \$28,642 to ASRS.

In response to the auditor's finding related to the noncompliance in these areas, CASY officials stated, "We concur with the condition. The School is currently in the resolution process with the Internal Revenue Service and the Arizona State Retirement Systems (sic). Additionally, we have made attempts to contact the Arizona Department of Revenue to start the resolution process. We anticipate to have all matters resolved by December 2008."

- In November 2008, the ASRS garnished \$34,665.59 from CASY's November payment for delinquent payments and accrued interest. During a conversation on December 8th with ASRS, staff learned that the November garnishment brought CASY current through its October 15, 2008 payroll. At that time, CASY had not made any payments for subsequent payroll periods.
- In November 2008, the IRS issued a Notice of Federal Tax Lien for the tax period ending June

30, 2008. However, to staff's knowledge, the IRS has not issued a levy against CASY's monthly State aid apportionment since January 2008.

- As of January 6, 2009 staff has not received a copy of an approved payment plan with the IRS. In an email dated January 5, 2009, Ryan Shamblin, an Associate at 20/20 Tax Resolution representing CASY, states, "Please find the attached letter outlining the steps that my firm is now taking for the resolution of CASY's tax liabilities. It is very detailed, but I believe this strategy change will benefit all parties involved." In summary, [the letter](#) describes a process that includes transferring the charter to another entity and rendering the accrued tax liability of CASY as "uncollectible".
- Regarding the Classroom Site Fund, the audit stated that "Detailed records to support the use of Classroom Site Fund monies were not available as of November 15, 2008." Since this was the first time CASY's audit showed noncompliance in this area, per the Board's [Audit & Compliance Questionnaire Follow-up Matrix](#), a corrective action plan was required. During a conversation with CASY's auditor on January 5th, staff was told that this noncompliance did not pertain to the disclaimer of audit opinion, but resulted from CASY not timely providing records to the auditor so that they could be tested. Based on this information, staff will follow up with CASY and ask for revisions to the action plan.
- Regarding the disclaimer of audit opinion, staff has spoken with CASY's auditor. At this time, the circumstances surrounding the disclaimed opinion do not appear to rise to the level of a violation by CASY of its charter contract. However, staff continues to review this matter and will bring it back before the Board in the future, if necessary.
- As of December 15, 2008, a total of \$50,274.13 has been withheld from CASY. Based on CASY's recent payment history, an additional approximately \$10,000 will be withheld from the school in January.

Board Options

1. The Board may direct staff to monitor CASY Country Day School's progress and provide additional updates as they become available.
2. The Board may decide to continue with the current 10% withholding of CASY's monthly State aid apportionment and/or add, as deemed appropriate, other issues identified through the fiscal year 2008 audit to the basis for the withholding including failure to comply with state payroll tax requirements, and failure to comply with Classroom Site Fund requirements. A corrective action plan for the two new items would include demonstration of an approved payment plan with ADOR and demonstration of compliance with Classroom Site Fund requirements through agreed upon procedures or FY09 audit.
3. The Board may vote to issue a Notice of Intent to Revoke the charter contract of CASY Country Day School for any or all of the following issues: a) failure to comply with federal payroll tax requirements, b) failure to remain current with its member and employer contribution obligations to the Arizona State Retirement System, c) failure to comply with state payroll tax requirements, and d) failure to comply with Classroom Site Fund requirements.

Staff's Recommendation

Staff's recommendation is Option #3.