
AGENDA ITEM: Compliance Matters – Desert Star Academy, Inc.

Issue

On September 25, 2017, the Board received a complaint alleging that Desert Star Academy, Inc. (“Charter Holder”) deducted amounts from employees’ paychecks, but did not remit these amounts, and in certain cases the Charter Holder’s portion, to the health insurance or 401k providers at various times beginning in fiscal year 2016. As of the writing of this report, the Charter Holder has failed to provide all of the information requested by Board staff through the complaint process despite multiple extensions having been granted.

Background: Complaint

A.A.C. R7-5-507 addresses the Board’s complaint process. Under administrative rule, Board staff shall review each complaint submitted to the Board and determine whether the complaint is within the Board’s jurisdiction. For complaints determined to be within the Board’s jurisdiction, administrative rule requires Board staff, within 5 business days of receiving the complaint, to provide a copy to the charter holder complained against. Within 10 business days after receiving a copy of the complaint, administrative rule requires the charter holder to provide a written response to the Board that addresses each allegation, the statement of facts, and supporting evidence in the complaint. A.A.C. R7-5-507(C) permits Board staff to grant an extension to submit the written response. Administrative rule requires Board staff to review the complaint and the charter holder’s response to determine whether a violation can be substantiated and to conduct further investigation if additional information is needed.

Each complaint communication sent by Board staff to the charter holder that requires a response alerts the charter holder that “Failure to provide a response by the deadline identified above will be noted in Measure 2e of the charter holder’s operational performance dashboard”.

Due to this complaint still being under review, additional explanation or documentation related to this complaint was not provided.

Background: Employee Retirement Security Act of 1974 (ERISA)

Employee Retirement Security Act of 1974 (ERISA) regulations at 29 C.F.R. § 2510.3-102 require that an employee’s 401k retirement saving plan (“plan”) contributions be deposited in the plan as soon as it is reasonably possible, but in no event later than the 15th business day of the month following the month in which the employee’s contributions are deducted from their pay. In the case of a plan with fewer than 100 participants at the beginning of the plan year, salary reduction contributions must be deposited in the plan no later than the 7th business day after withholding by the employer.

Communication Timeline

September 25, 2017	Complaint received against Charter Holder.
October 2, 2017	Board staff sent the complaint to the Charter Representative by email and identified October 17, 2017 as the Charter Holder's deadline for submitting its response.
October 16, 2017	Charter Holder timely submitted a response.
October 24, 2017	After reviewing the October 16, 2017 response, Board staff sent a letter requesting the Charter Holder provide additional information by November 7, 2017.
October 30, 2017	Due to the Board requesting a great deal of additional documentation, staff sent an email approving the extension request and assigned a new deadline date of November 14, 2017.
November 7, 2017	Charter Holder submitted a partial response and requested an extension beyond November 14, 2017 for the remaining items.
November 8, 2017	Board staff sent an email approving the extension request for the remaining items and assigned a new deadline date of November 29, 2017. In the same email, Board staff indicated the payroll summary included insufficient detail and asked that this be addressed in the documents provided by November 29, 2017.
November 27, 2017	Charter Holder submitted a partial response and indicated the remaining items would be provided.
November 29, 2017	The remaining items requested were not provided by the given deadline.
December 5, 2017	Charter Holder submitted additional items.
On or about December 14, 2017	Board staff spoke with Charter Representative and sent email indicating the required documents were not provided in full. Board staff provided the Charter Holder a deadline of December 19, 2017 to respond in full.
December 19, 2017	<p>Charter Holder submitted a response.</p> <p>According to the 401k information provided on November 27, 2017 and December 19, 2017, the Charter Holder failed to timely remit deposits for certain paychecks in fiscal years 2016, 2017 and 2018. The response indicated the Charter Holder had to remit \$6.04 in lost earnings for fiscal year 2016. Fiscal year 2017 employee contributions covering the last five paychecks of the fiscal year (\$4,530) and employer contributions covering eight of the last ten paychecks of the fiscal year (\$7,248) were not deposited until December 18, 2017. Fiscal year 2018 employee and employer contributions covering the first five paychecks for one employee and the first four paychecks for all other employees (\$8,483 total) were not deposited until December 18, 2017 or, in one case, December 19, 2017.</p>

January 4, 2018	<p>After reviewing the December 19, 2017 response, Board staff sent letter requesting the Charter Holder provide additional information by January 19, 2018 including:</p> <ol style="list-style-type: none"> 1. Evidence that lost earnings for the late fiscal year 2017 and 2018 deposits have been calculated for each employee and credited to the respective employees' 401k accounts. 2. A fiscal year 2018 report from Health Net identifying the premiums owed for health, dental and vision coverage and the amounts paid by the charter holder by month/paycheck to date. This report would be similar to the EMI Health and UnitedHealthcare reports included in prior responses.
January 18, 2018	Board staff sent an email granting the final extension and assigned a new deadline date of January 29, 2018.
January 19, 2018	Charter Holder submitted a partial response and indicated the remaining items would be provided.
January 29, 2018	Deadline for materials was not met.
January 30, 2018	<p>Board staff sent a 7-Day Failure to Timely Submit Complaint Response Letter to the Charter Representative by email.</p> <ul style="list-style-type: none"> • The letter stated that the Charter Holder failed to timely submit, in full, the required information by the January 29, 2018 deadline and that the timely submission issue was marked on the Charter Holder's operational performance dashboard under Measure 2e. • The letter provided the Charter Holder a final opportunity to submit the required information. The Charter Holder was given a deadline of February 6, 2018 (7 calendar days) to submit the required information in its entirety per the January 4, 2018 email notification. • The letter informed the Charter Holder that "Failure to resolve/address the issue(s), as described above, by February 6, 2018 may result in the Charter Holder being placed on a subsequent Board meeting agenda for possible disciplinary action pursuant to A.A.C. R7-5-505(G)". <p>One possible disciplinary action the Board can take is 10% withholding.</p>
February 5, 2018	Charter Holder sent email indicating they were still working with the 401k provider to get the late deposits completed on the provider's forms. The Charter Representative said she would update Board staff as soon as she hears back from the 401k provider.