
AGENDA ITEM: Compliance Matters – Civil Penalties (New World Educational Center)

Issue

Through the corrective action plan submitted in response to fingerprinting violations identified in the fiscal year 2009 audit, New World Educational Center was unable to provide evidence that all of its employees had been properly fingerprinted.

- On April 9, 2010, New World Educational Center was unable to provide evidence of a valid fingerprint clearance card for its assistant principal.
- In accordance with [A.R.S. §15-185\(I\)](#) and the Board’s [Policy Statement on Civil Penalties for Fingerprinting Violations](#), on April 13th, staff issued the “Notification of first time noncompliance with fingerprinting requirements under A.R.S. §15-185.I” letter.
- Within the 48-hour timeframe, staff did not receive evidence that the Department of Public Safety had received a fingerprint clearance card application for the assistant principal. On April 15th, staff received an email describing efforts to obtain confirmation of the application’s receipt.

Communications with School

New World Educational Center’s fiscal year 2009 audit identified noncompliance with fingerprinting requirements. Specifically, the audit indicated that, “For one employee required to have a valid fingerprint clearance card, the employee’s fingerprint clearance card had expired as of the testing date of April 13, 2009.” Because of the noncompliance identified in the audit, the school was required to submit a corrective action plan (CAP), which included providing a list of employees and copies of their fingerprint clearance cards or the date of receipt of the fingerprint check conducted pursuant to A.R.S. §15-512.

On April 9, 2010, Board staff received the school’s CAP. The CAP did not include a copy of Assistant Principal Josue Martinez’s fingerprint clearance card. During follow-up communications on April 9th, the school indicated that it could not locate Mr. Martinez’s fingerprint clearance card information and that he would be fingerprinted on April 12th. The unavailability of a copy of a fingerprint clearance card does not mean that the individual does not possess a fingerprint clearance card. Using information from Mr. Martinez’s expired fingerprint clearance card obtained through a previous CAP submitted by the school, staff contacted the Arizona Department of Public Safety (DPS). On April 9th, DPS indicated that an application for a fingerprint clearance card had been denied in 2006 and that no subsequent applications had been received to date. DPS was unable to provide information as to the basis for the denial.

Since staff confirmed with DPS that Mr. Martinez did not have a valid fingerprint clearance card, on April 13th, staff visited New World Educational Center to provide the notification required under A.R.S. §15-185(I). The charter representative was not available, so staff met with Principal Jesus Armenta.

- In accordance with A.R.S. §15-185(I) and the Board’s Policy Statement on Civil Penalties for Fingerprinting Violations, staff issued the [“Notification of first time noncompliance with fingerprinting requirements under A.R.S. §15-185.I” letter](#) and reviewed the letter, the Board’s policy statement and the civil penalty law’s requirements with Principal Armenta.
- The notification letter included a deadline of Thursday, April 15, 2010 at 9:45 a.m. for New World Educational Center to provide evidence to our office that an application for the appropriate fingerprint check had been received by DPS and thereby avoid a civil penalty of \$1,000.
- Within the 48-hour timeframe, staff did not received evidence that DPS had received a fingerprint clearance card application for Mr. Martinez. At 11:49 a.m. on April 15th, staff received [an email describing the school’s efforts to obtain confirmation of the application’s receipt by DPS](#). The email included a copy of Mr. Martinez’s fingerprint clearance card application, which was not included in the Board’s meeting materials. Mr. Martinez also contacted staff on April 13th and shared some of the same information as contained in the April 15th email.

Per a conversation with the school’s auditor on April 14th, staff determined that the individual with an expired fingerprint clearance card identified in the fiscal year 2009 audit, which resulted in the CAP, was Mr. Martinez.

On April 27th, the school informed staff that DPS had confirmed that Mr. Martinez’s fingerprint clearance card

application had been entered into its system. Staff contacted DPS on April 27th and was told that DPS began processing Mr. Martinez's application on April 22nd. DPS estimated that it would be another three to four weeks before a determination would be made regarding Mr. Martinez's card.

Board Options

In accordance with the Board's policy statement, the Board must review all possible first time occurrences and make the final determination as to whether each will count as a first time occurrence.

1. If the Board determines that this a) constitutes the first time that the charter school is out of compliance with the fingerprinting requirements and b) that the school provided timely proof of the required submissions, the motion should include: I move that the one occurrence, as it has been presented and documented in the Board materials and discussed, constitutes New World Educational Center's first time for civil penalty purposes under A.R.S. § 15-185(I). This motion is based on the following findings:
 - 1) New World Educational Center failed to comply with fingerprinting requirements prescribed in A.R.S. §15-183(C); and
 - 2) New World Educational Center provided proof within the required timeframe of the written notification that an application for the appropriate fingerprint check has been received by the Department of Public Safety.Further, the Board directs staff to:
 - 3) Apprise New World Educational Center of the Board's findings and decision in this matter; and
 - 4) Notify the Charter Operator that if the Board determines that the charter school subsequently violates the fingerprinting requirements during the next five years, a civil penalty of \$1,000 per occurrence shall automatically be imposed.

2. If the Board determines that this a) constitutes the first time that the charter school is out of compliance with the fingerprinting requirements and b) that the school failed to provided timely proof of the required submissions, the motion should include: I move to impose a civil penalty of \$1,000 for the one occurrence as it has been presented and documented in the Board materials. This motion is based on the following findings:
 - 1) New World Educational Center failed to comply with fingerprinting requirements prescribed in A.R.S. §15-183(C);
 - 2) Written notification was provided to New World Educational Center as required by A.R.S. § 15-185(I);
 - 3) This is the first time for civil penalty purposes that New World Educational Center is out of compliance with statutory fingerprinting requirements; and
 - 4) New World Educational Center failed to provide proof within 48 hours of the written notification that an application for the appropriate fingerprint check has been received by the Department of Public Safety.Further, the Board directs staff to:
 - 1) Apprise the Charter Operator of the Board's findings and decision in this matter and its appeal rights under Arizona law;
 - 2) Notify the Charter Operator that if the Board determines that the charter school subsequently violates the fingerprinting requirements during the next five years, a civil penalty of \$1,000 per occurrence shall automatically be imposed; and
 - 3) Timely request the Arizona Department of Education to reduce the amount of state aid that the charter school would otherwise receive by an amount equal to the civil penalty.

3. The Board may determine that a first time violation of A.R.S. §15-184(C) or §15-512 has not occurred.

Staff's Recommendation

Staff's recommendation is Option #2.