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**AGENDA ITEM:** Compliance Matters – Civil Penalties (The Odyssey Preparatory Academy, Inc.)

**Issue**

During a December 2011 visit, The Odyssey Preparatory Academy, Inc. was unable to provide evidence that all of its employees had been properly fingerprinted.

- On December 1, 2011, The Odyssey Preparatory Academy, Inc. was unable to provide evidence of a valid fingerprint clearance card or background check for the following personnel: bus driver, instructional assistant, and kindergarten teacher. The kindergarten teacher and instructional assistant were observed working with children on the school campus.
- In accordance with [A.R.S. §15-185.I](#) and the Board’s [Policy Statement on Civil Penalties for Fingerprinting Violations](#), on December 1 and 6, staff issued the “Notification of first time noncompliance with fingerprinting requirements under A.R.S. §15-185.I” letters.
- Within the 48-hour timeframe, The Odyssey Preparatory Academy, Inc. did provide evidence that the Department of Public Safety (DPS) had received a fingerprint clearance card application for the instructional assistant, but did not provide evidence that DPS had received the appropriate application for the kindergarten teacher or bus driver.

**Communications with School**

On December 1, Board staff conducted a first year site visit of The Odyssey Preparatory Academy – Goodyear. The school was unable to provide evidence that a kindergarten teacher and an instructional assistant had valid fingerprint clearance cards as required by A.R.S. §15-183.C.5.

- On December 1, during the site visit, staff provided the notification required under A.R.S. §15-185(I) for the instructional assistant and kindergarten teacher.
- 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 Liz Douglass and via telephone communication with Frank Yanez.
- The notification letter included a deadline of December 3 at 12:36 p.m. for The Odyssey Preparatory Academy, Inc. to provide evidence to Board office that an application for the appropriate fingerprint check had been received by DPS and thereby avoid a civil penalty of \$1,000. The actual deadline was set for December 5. When the letter was issued the 48-hour timeframe was calculated with calendar days and not business days.
- On December 1, during the site visit, staff received a copy of the fingerprint clearance card application for the instructional assistant. The Arizona Department of Education’s Common Logon website provided evidence that the FCC application had been received by DPS, but that a valid FCC had not been issued.
- On December 12, staff received a copy of the fingerprint clearance card application for the Kindergarten teacher with information of the badge number of the DPS officer that received it. Staff called DPS and verified that the fingerprints and application were received on December 9, which was after the December 5<sup>th</sup> deadline date.

During the site visit on December 1, the school was also unable to provide evidence that one of its three bus drivers had been fingerprint checked as required by A.R.S. §15-512. To demonstrate compliance for the other two bus drivers, the school provided copies of each driver’s Arizona School Bus Driver

Certificate.<sup>1</sup> During the site visit, Principal Douglass informed Board staff that she would send proof of the fingerprint check for the bus driver to the Board office. On December 5, Board staff sent an email to Principal Douglass and the charter representative notifying them that no documentation had been received for the bus driver. The email provided a deadline of 3 p.m. on December 5 to provide the information. No information was provided by the deadline.

- On December 6, staff visited the school to provide the notification required under A.R.S. §15-185(I) for the Bus Driver.
- 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 Liz Douglass.
- The notification letter included a deadline of December 8 at 10:00 a.m. for The Odyssey Preparatory Academy, Inc. to provide evidence to Board office that an application for the appropriate fingerprint check had been received by DPS and thereby avoid a civil penalty of \$1,000.
- On December 13, staff received an email from Frank Yanez, explaining that the fingerprints for the bus driver had been "dropped off last Thursday" and that he would be following up with DPS on December 13 to "see where they are in the process".
- On January 13, staff received an email from Frank Yanez, indicating that the fingerprints for the bus driver had been rejected due to not being able to read them. According to Mr. Yanez, a new application had been sent.

A link has been included to the "Notification of first time noncompliance with fingerprinting requirements under A.R.S. §15-185.I" provided to the school and includes the school's response. The confidential information provided by the school has not been included in the Board materials.

### **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. (when imposing a civil penalty) I move, based on the information contained in the Board materials and presented today, that the Board find the following:
  - 1) That The Odyssey Preparatory Academy, Inc. failed to comply with the fingerprinting requirements prescribed in A.R.S. §15-183(C) and §15-512 for three of its personnel; and
  - 2) That for civil penalty purposes under A.R.S. §15-185(I), this constitutes the first time The Odyssey Preparatory Academy, Inc. is out of compliance with statutory fingerprinting requirements; and
  - 3) That The Odyssey Preparatory Academy, Inc. failed to provide proof within the required timeframe of notification that an application for the appropriate fingerprint check has been received by the Department of Public Safety for two of the three personnel; and
  - 4) That, as a result, the Board imposes a civil penalty of \$2,000 for the two occurrences of The Odyssey Preparatory Academy, Inc.'s noncompliance with fingerprinting requirements prescribed in A.R.S. 15-183(C).

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<sup>1</sup> In order to obtain school bus driver certification, applicants are required, among other things, to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This check meets the requirements of A.R.S. §15-512.

Further, the Board directs staff to:

- Apprise the charter operator of the Board's findings and decision in this matter and its appeal rights under Arizona law;
- 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
- Timely request the Arizona Department of Education to reduce the amount of state aid that the charter operator would otherwise receive by an amount equal to the civil penalty.

2. (when not imposing a civil penalty) I move, based on the information contained in the Board materials and presented today, that the Board find the following:

- 1) That The Odyssey Preparatory Academy, Inc. failed to comply with the fingerprinting requirements prescribed in A.R.S. §15-183(C) and §15-512 for three of its personnel; and
- 2) That for civil penalty purposes under A.R.S. §15-185(I), this constitutes the first time The Odyssey Preparatory Academy, Inc. is out of compliance with statutory fingerprinting requirements; and
- 3) That no civil penalty be imposed at this time.

Further, the Board directs staff to:

- Apprise the charter operator 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 during the next five years, a civil penalty of \$1,000 per occurrence shall automatically be imposed.

3. The Board may determine that a first time violation of A.R.S. §15-183(C) and §15-512 has not occurred.

Staff's Recommendation

Staff's recommendation is Option #1.