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**BEFORE THE ARIZONA STATE BOARD  
FOR CHARTER SCHOOLS**

**In the Matter of:**

**4-WINDS ACADEMY, INC.**  
(a non-profit corporation)

and

**4-WINDS ACADEMY**  
(a charter school).

No. 08F-RV-004-BCS

**RESPONSE IN PARTIAL  
OPPOSITION TO MOTION FOR  
REHEARING, REVIEW AND/OR  
MODIFICATION**

This Response is filed in partial opposition to 4-Winds Academy, Inc. (“4-Winds”) and 4-Winds Academy’s (“School”) Motion for Rehearing, Review and/or Modification (“Motion”). The State of Arizona opposes 4-Winds’ requests that the Board: (1) overturn the Revocation Order; (2) set a hearing to review and hear evidence to support the over turning of the Revocation Order issued March 11, 2009 revoking 4-Winds’ charter; and (3) modify its Order to reflect that the

revocation shall take effect and the Charter Contract terminated on June 30, 2009. 4-Winds has failed to allege a sufficient basis for rehearing or review in this matter. However, the State does not oppose 4-Winds' request that the Arizona State Board for Charter Schools ("Board") modify its revocation Order to provide that the effective date of the Board's Order revoking 4-Winds charter contract be May 22, 2009, the School's last day of instruction.

### **I. Background**

On May 30, 2002, 4-Winds entered into a Charter Contract with the Board pursuant to which the Board issued a charter to 4-Winds to operate 4-Winds Academy as a charter school in Springerville, Arizona. The Charter Contract provides that the Board may revoke the Charter Contract for any violation of the Charter Contract, state, federal or local laws, ordinances or rules or regulations. Under A.R.S. § 15-183(I), the Board may revoke a charter at any time if the charter school breaches one or more provisions of its contract.

On June 7, 2008, the Board filed a Notice of Intent to Revoke Charter alleging that 4-Winds breached its Charter Contract and federal law when it failed to pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States. On July 9, 2008, the Board filed an Amended Notice of Intent to Revoke Charter alleging that, in addition to failing to pay payroll taxes, 4-Winds had received federal funds under the No Child Left Behind Act (20 U.S.C. § 6301 *et seq.*)("NCLB"), but had failed

to comply with the accounting and reporting requirements of NCLB, in violation of its charter contract, NCLB and 34 C.F.R. § 76.731.

Following a full hearing held at the Office of Administrative Hearings on January 13, 2009, the Administrative Law Judge (“ALJ”) found inter alia:

4-Winds did not challenge the Board’s evidence, which showed that, for most of the time since Mr. Chavez became charter representative on January 25, 2004, 4-Winds has not paid payroll taxes and has been late in submitting required tax forms.

4-Winds had more than seven months since the Board issued its Notice of Intent to Revoke 4-Winds’ Charter for its failure to pay the payroll taxes that federal . . . law require[s], far more than the 90 days that A.R.S. § 15-183(I) requires. 4-Winds was aware of its violation since November 16, 2006, when it filed its audited financial statements and compliance questionnaire for FY2006.

The Board therefore has carried its burden to prove, by a preponderance of the evidence, that 4-Winds violated federal . . . statute and the Charter Contract by failing to pay federal . . . payroll taxes.

4-Winds did not dispute that it failed to file required reports or to account for funds received under Title I and Title II of NCLB. 4-Winds had at least 6 months to correct this deficiency, far more than the 90 days that A.R.S. § 15-183(I) requires.

The Board therefore also has sustained its burden to prove that 4-Winds violated federal statute and regulation and the Charter Contract by failing to file the reports or to account for the funds it received under the NCLB in FY2007.

On March 11, 2009, the Board considered the ALJ’s recommended decision and reviewed the administrative record and then voted to adopt and

modify the ALJ's recommended decision. The Board issued modified findings of fact and conclusions of law and ordered that the Charter between the Board and 4-Winds be revoked.

## **II. Effective Date of Revocation of the Charter Contract**

The Board's Order of March 11, 2009 notified the parties as follows:

The parties are hereby notified that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless a party submits a written motion for rehearing or review within thirty (30) days after the service of this Order.

\* \* \*

In the alternative, the parties may seek judicial review of the Board's decision pursuant to A.R.S. §§ 41-1092.08(H) and 12-901 et seq. within thirty (30) days after service of this Order.

It is clear from the Board's Order that unless a request for rehearing or review was submitted within 30 days after service of the Order, the Board's Order of March 11, 2009 revoking the charter contract between the Board and 4-Winds was a final decision of the Board, i.e., one that terminates the proceedings before the administrative agency. A.R.S. § 12-901(2); A.R.S. § 15-183(I). For the purposes of judicial review, A.R.S. § 12-901(2) provides that decisions in administrative adjudications are not "final" for purposes of administrative review in superior court until after a request for rehearing or review is denied, or the decision on a request for rehearing or review is rendered. The "effective date" of the Board's Order revoking the charter contract between the Board and 4-Winds is dependent upon various factors: whether a request for rehearing or review is filed, when the decision on a request for rehearing or review is rendered, whether judicial review

of the Board's Order is sought under A.R.S. §§ 41-1092.08(H) and 12-901 et seq., and whether a stay of the administrative decision is granted under Rule 3 of the Rules of Procedure for Judicial Review of Administrative Decisions. The Board's failure to "provide a date certain for closing the school" or to "provide a date certain for the effective date of the contract revocation" does not affect the validity of the Order.

### **III. The Board's Findings and Conclusions**

4-Winds' Motion does not dispute or refute any of the Board's Findings of Facts or Conclusions of Law contained in its March 11, 2009 Order. 4-Winds' argument that neither the Board nor the Arizona Department of Education ("ADE") had the authority to determine 4-Winds' compliance with federal regulations and statutes is without merit. As a recipient of NCLB funds, 4-Winds was required to expend the funds for the purposes and activities mandated by NCLB. 20 U.S.C. § 6825. The ADE is charged with the obligation to monitor 4-Winds' use of the federal funds and to assure 4-Winds' compliance with the terms of the funds. 34 C.F.R. § 80.40 and 80.43.

The record in this matter establishes that in FY2007, 4-Winds received Title I and Title II funds under NCLB. (Exhibit 23.) Nadine Groenig, Education Program Specialist, ADE, assigned to 4-Winds since May 2007, testified that at the time of her on-site review of 4-Winds on April 30, 2008, she determined that 4-Winds was not in compliance with the NCLB as it related to the requirements of the Title I and Title II programs. (Transcript ["TR"] 01/13/09, page 71, lines 21 to

23, page 75, lines 4-11, and page 85, line 3 to page 86, line 5). Ms. Groenig also testified that as of the date of the charter revocation hearing, 4-Winds was out of compliance with the accounting and reporting requirements for its receipt of NCLB funds under Titles I and II. (TR, 01/13/09, page 106, line 22 to page 107, line 6.) 4-Winds' Motion ignores ADE's authority over 4-Winds' expenditure of NCLB funds and the authority that is granted to the Board under A.R.S. § 15-183 and 4-Winds' charter contract. A.R.S. § 15-183(I) provides that the Board may revoke a charter at any time if the charter school breaches one or more provisions of its charter. 4-Winds' charter contract provides that the Board may revoke 4-Winds' charter contract for any violation of the charter contract, State, Federal or local laws. (Exhibit 1 at 6.) Viewed together, these provisions extend authority to the Board to determine whether violations of state and/or federal law have occurred when determining whether charter revocation is indicated. Any other interpretation would nullify the Board's regulatory authority and its role as sponsor. Accordingly, 4-Winds provides no basis upon which the Board's Order should be "overturn[ed]."

#### **IV. 4-Winds' Request for Review or Reconsideration**

In support of its request that the Board review or reconsider its Order, 4-Winds alleges that there is new evidence which documents that a payment arrangement has been reached with the Internal Revenue Service that was not available at the time of the hearing. There was testimony offered by 4-Winds at the charter revocation hearing that it was in the process of negotiating an

agreement with the IRS to begin making installment payments on its payroll tax liability. (Board's Finding of Fact No. 11 adopting the ALJ's Finding of Fact No. 48.) Yet, the Board also concluded that 4-Winds was aware of its violation of federal law in failing to pay payroll taxes since November 16, 2006, when it filed its audited financial statement and compliance questionnaire for FY2006.

(Board's Conclusion of Law No. 19, modifying the ALJ's Conclusion of Law No.

4.) The Board also concluded that 4-Winds had more than seven months since the Board issued its Notice of Intent to Revoke 4-Winds' charter for its failure to pay the payroll taxes that federal law requires, far more than the 90 days than A.R.S. § 15-183(I) provides. (*Id.*) Moreover, on March 9, 2009, the time at which the Board considered the ALJ's recommended decision in this matter, undersigned counsel advised the Board that on March 3, 2009, 4-Winds faxed information to the Charter Board office reflecting that on March 2, 2009, the IRS agreed to 4-Winds' payment of its delinquent payroll taxes in installments. It was the State's position that the Board's findings of fact must be based exclusively on the record admitted at the hearing and that this information was not part of the record admitted at the hearing. In any event, it was the finding of the Board that 4-Winds' assurances at hearing that it would make an installment payment agreement with the IRS was too little, too late and, further, that it did not appear that 4-Winds had the financial capacity to pay what is owed to the IRS, even over time, and continue to educate its students. (Board's Conclusion of Law No. 20, adopting the ALJ's Conclusion of Law No. 5.)

In support of its request that the Board review or reconsider its Order, 4-Winds also alleges and that there is new evidence showing either compliance or substantial compliance with its NCLB requirements. To the contrary, as evidenced by the attached Affidavit of Nadine Groenig, 4-Winds' Education Program Specialist, Arizona Department of Education, 4-Winds is no closer to compliance with its NCLB requirements than it was on January 13, 2009, the date of the charter revocation hearing.

Accordingly, 4-Winds has failed to show a basis for its request that the Board set a hearing to review and hear evidence.

**V. 4-Winds' Request that the Board Modify Its Order**

4-Winds' Motion also requests that the Board modify its Order to provide for the revocation to take effect on its last day of instruction (May 22, 2009) or at the end of FY2009 (June 30, 2009). Without agreeing with or commenting on the reasons listed by 4-Winds in its Motion, it is the position of the State that it does not oppose modification of the Board's Order to provide that the charter contract between the Board and 4-Winds be revoked effective May 22, 2009, the School's last day of instruction. An effective date of May 22, 2009 would minimize disruption of instruction to 4-Wind's current students by allowing them to finish out the remainder of their current school year at the School.

**VI. Conclusion**

4-Winds has failed to provide a basis for the Board to "overturn" its Order or for the Board to review and hear further evidence. Therefore, its request to



overturn the Order or to set a hearing to review and hear evidence should be denied. With respect to 4-Winds' request that the Board modify its Order, the State does not oppose modification of the Board's Order to provide that the charter contract between the Board and 4-Winds be revoked effective May 22, 2009 at 11:59 p.m. in order to permit students to remain at 4-Winds through its last day of instruction.

Dated this 23rd day of April, 2009.

TERRY GODDARD  
Attorney General

Kim S. Anderson  
Kim S. Anderson  
Assistant Attorney General

ORIGINAL Response delivered this 23rd  
day of April, 2009, to:

The Arizona State Board for Charter Schools  
1700 West Washington  
Room 164  
Phoenix, Arizona 85007

COPY of the foregoing Response  
mailed this 23rd day of April, 2009, to:

Leonidas G. Condos  
The Condos Law Office, P.L.C.  
1820 East Ray Road  
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Attorney for 4-Winds

By Kim Anderson & Roberta Curry  
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**ATTACHMENT**

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No. 08F-RV-004-BCS

**AFFIDAVIT OF NADINE  
GROENIG**

I, Nadine Groenig, do hereby state under penalty of perjury that:

1. I am an Education Program Specialist for the Arizona Department of Education.
2. My duties include responsibility for processing applications for federal funding and plans for the use of federal funds, providing technical assistance, and conducting cycle monitoring under the No Child Left Behind Act for anywhere from 25 to 30 charter schools and school districts.

3. I have been assigned as the Education Program Specialist for 4-Winds Academy since May 2007.

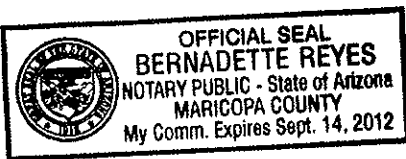
4. At the charter revocation hearing in this matter on January 13, 2009, I testified that during the course of an on-site monitoring visit conducted on April 30, 2008, it was determined that 4-Winds was not in compliance with the No Child Left Behind Act as it relates to its Titles I and II programs.

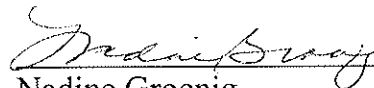
5. At the charter revocation hearing in this matter on January 13, 2009, I testified that the Compliance Activities Worksheet dated January 8, 2009 and admitted as Exhibit 30 was an accurate reflection of the areas in which 4-Winds continued to remain out of compliance under the No Child Left Behind Act, Titles I and II.

6. Since January 13, 2009, 4-Winds has submitted documents pertaining to Titles I and II of the No Child Left Behind Act. However, these documents were insufficient to bring 4-Winds into compliance with its reporting and accounting obligations under the No Child Left Behind Act.

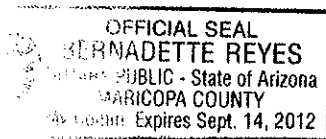
7. To date, 4-Winds has failed to establish that it is in compliance or is in substantial compliance with its reporting and accounting obligations under the No Child Left Behind Act.


Executed this 22<sup>nd</sup> day of April, 2009.



  
Nadine Groenig

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of April, 2009.



  
Notary Public  
My Commission expires: 9-14-2012