

**Arizona State Board for Charter Schools
March 9, 2009
Executive Tower
1700 West Washington Street
Phoenix, Arizona 85007
Room B56**

MINUTES

Members Present-

Christy Farley- President
Norm Butler- Vice President
Mary Gifford- Superintendent Designee
Lynne Adams – Public Member
Arthur Ben – Charter School Teacher
Magdalena Verdugo – Charter School Operator (telephonically)
Dana Krals – Public Member

Members Absent

Ruby Alvarado-Hernandez – Public Member

Meeting began at 9:33 a.m.

Agenda Item A: Pledge of Allegiance

Agenda Item B: Moment of Silence

Agenda Item C: Roll Call:

Andrea Esparza called the roll and confirmed a quorum.

Agenda Item D: Call to the Public

The Board received Call to the Public Request forms from Theresa Rajczi and Anthony Lorenzo.

Ms. Rajci addressed the Board regarding her concerns related to agenda items M and I. Ms. Rajci said she wanted it noted for the record that CASY Country Day did not comply with timelines stated in the charter surrender agreement when it notified parents after the deadline. She asked questions related to applications for new charters, specifically on background checks.

Ms. Farley stated that the other Call to the Public Request form was from Mr. Lorenzo to address the Board on behalf of 4-Winds Academy on agenda item J. She further stated that the Board will address Mr. Lorenzo during the agenda item if there are questions.

Agenda Item E: Minutes

1. January 12, 2009
2. February 9, 2009

MOTION

Mary Gifford made a motion to approve the minutes of January 12, 2009 and February 9, 2009.
Lynne Adams seconded the motion.

Motion passed unanimously

Agenda Item E: Arizona Charter Schools Association Update

Arizona Charter Schools Association CEO, Eileen Sigmund provided an update of the Association's activities. Ms. Sigmund provided the Board with information on charter school funding basics which have been presented to the legislature. Ms.

Sigmund went into detail regarding the available revenue to charter schools, the funding formula and disparities in per-pupil funding. Ms. Sigmund expressed that this information is not intended to be a district vs. charter debate, but a review of the system of Arizona's public finance that is 29 years old.

Hearing: 10:03 a.m. to 10:40 a.m.

Agenda Item J: 4- Winds Academy, Inc.

President Farley opened this item and stated that this is the time set for consideration of the Administrative Law Judge's recommended decision in regard to No. 08F-RV-004-BCS for 4-Winds Academy, Inc., a non-profit corporation, and 4-Winds Academy, a charter school. Ms. Farley identified legal counsel as Kim Anderson, on behalf of the State of Arizona and Chris Munns, on behalf of the Arizona State Board for Charter Schools. Ms. Farley stated that the charter representative, Steve Chavez, was not present due to illness. She stated that an individual representing the school is available to answer questions on the school's behalf. Mr. Munns stated that the school is not able to present arguments to the Board without an attorney. The supreme court decision did not extend to a hearing and a charter needs to be represented by an attorney. Ms. Farley stated that the school was informed of this fact within the letter addressed to the school on January 29, 2009.

Ms. Anderson introduced herself as the Assistant Attorney General representing the state in this matter. Ms. Anderson stated that her role in this matter is as an advocate and as such will not advise the Board on this matter. She indicated that Mr. Munns, with the Solicitor General's office, will provide legal advice if necessary. Ms. Anderson presented the Board with legal arguments and modifications on behalf of the state. Ms. Anderson said 4-Winds Academy, Inc. breached their contract and federal law when it failed to pay payroll taxes and when it failed to provide reports to ADE for NCLB. The charter had more than 90 days to cure the problem. Ms. Anderson said the Board must accept, reject, or modify the Administrative Law Judge's decision.

Christy Farley asked all board members to confirm that they have received and reviewed all materials related to this hearing. All members confirmed that they have received and reviewed the materials.

MOTION

Lynne Adams made a motion to adopt the Findings of Fact Nos. 1 through 6 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to modify Findings of Fact No. 7 to delete the two references pertaining to allegations related to 4-Winds violation of state law and state payroll taxes. The modified Finding of Fact No. 7 will read as follows:

On June 5, 2008, the Board issued a Notice of Intent to Revoke Charter. The Board alleged that 4-Winds had violated federal law and the Charter Contract by failing to pay federal payroll taxes for its employees.

Ms. Adams stated that this modification is supported by the amended Notice of Intent to Revoke the Charter on page 4, paragraph 25.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to adopt the Findings of Fact Nos. 8 through 31 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to delete Finding of Fact No. 32 for the reason that support for the finding is not located in transcript, hearing or any of the exhibits admitted during the hearing.

Mary Gifford seconded the motion.

Motion passed unanimously
MOTION

Lynne Adams made a motion to modify Finding of Fact No. 33 to read as follows:

However, Mr. Goldberg did not enclose documentation in support of the statements and assertions made in his letter dated October 30, 2007 to Ms. Leder.

Ms. Adams stated that this modification is supported by Exhibit No. 15 and the by the testimony found in the transcript of the June 13, 2009 charter revocation hearing, pages 122, line 10 through page 123, line 7.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to adopt Findings of Fact Nos. 34 through 37 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to modify Finding of Fact No. 38 to correct the date of “FY2007” to “FY2006.”

Ms. Adams stated that this modification is supported by Exhibit 16 which was admitted during the hearing.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to modify Finding of Fact No. 39 to add the following statement:

Mr. Goldberg did not provide a statement from the IRS that 4-Winds was current on payroll tax requirements or that 4-Winds had an IRS approved payment installment plan, therefore, as modified, Finding of Fact No. 39 will read as follows:

On November 27, 2007, Mr. Goldberg informed Ms. Leder that he continued to work with Mr. Chavez and 4-Winds to resolve tax liabilities with the IRS, but that, “to date, the case has not been assigned....” [footnote 24:] Mr. Goldberg did not provide a statement from the IRS that 4-Winds was current on payroll tax requirements or that 4-Winds had an IRS approved payment installment plan.

Ms. Adams stated that this modification is supported by the testimony of Ms. Leder located on the transcript of the hearing dated January 13, 2009, at p. 124, ln. 4-17.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to adopt Finding of Fact No. 40 in its entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Lynne Adams made a motion to modify Finding of Fact No. 41 to indicate that Exhibit 19 also required Mr. Chavez and 4-

Winds to provide information recognizing that future violations may result in disciplinary action from the Board and to delete “or” found in that paragraph. As modified, the Finding of Fact No. 41 will read as follows:

On January 2, 2008, the Board noted that 4-Winds’ FY2007 audit had identified repeated issues of noncompliance with payroll tax requirements. The Board required Mr. Chavez and 4-Winds to provide “a statement from the IRS indicating that 4-Winds was current with all payroll tax requirements or an IRS-approved payment plan,” and “a statement explaining the reason for the continued noncompliance,” and “recognition that future violations may result in disciplinary action from the Board.” Ms. Adams stated that footnote 26 should be moved to the end of this paragraph.

Ms. Adams further stated that this modification is supported by Exhibit 19.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt Findings of Fact No. 42 through 49 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to modify Finding of Fact No. 50 to add the statement that:

Mr. Lorenzo testified that he did not believe that 4-Winds had paid its federal payroll tax payment for November 2008, which was due to the IRS by November 15, 2008.

As modified, Finding of Fact No. 50 will read as follows:

Mr. Lorenzo testified that 4-Winds had paid the federal taxes for October 2008 on November 24, 2008. He did not know where 4-Winds stood regarding payment of FY 2008 or FY 2009 payroll taxes, other than that one payment. Mr. Lorenzo testified that he did not believe that 4-Winds had paid the federal payroll tax payment for November 2008, which was due to the IRS by November 15, 2008. The taxes for December 2008 would not be due until January 15, 2009.

Ms. Adams stated that this modification is supported by the testimony of Anthony Lorenzo at the TR, dated January 13, 2009, p.38, ln. 13-17.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to modify the last sentence of Finding of Fact no. 57 to delete the distinction between “public and charter schools. As modified, Finding of Fact No. 57 will read as follows:

In FY 2007, 4-Winds had received \$48,703.23 in Title I Funds and \$2,493.00 in Title II funds under NCLB [footnote 30 follows here]. The purpose of such funding was to close disparities in student educational achievement. ADE may monitor compliance with federal law by requiring information from public schools, including charter schools, which receive such funds.

Ms. Adams stated that this modification is supported by the testimony of Nadine Groenig at TR, 01/13/09, at p. 74, ln. 15 to p. 75, ln. 2. Ms. Adams further stated that this modification is also supported by A.R.S. § 15-101(3).

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt Findings of Fact Nos. 51 through 56 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt Findings of Fact Nos. 58 through 69 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to modify Finding of Fact No. 70 to correct the date of the Board's meeting from June 5, 2008 to June 9, 2008.

Ms. Adams stated that this modification is supported by Exhibit 22 which was entered at the hearing.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt Findings of Fact Nos. 71 through 74 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt Conclusions of Law No. 1 through 3, No. 5 and Nos. 7 through 13 in their entirety.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to modify Conclusion of Law No. 4 to delete the reference to allegations pertaining to 4-Winds' failure to pay the payroll tax required by state law as follows:

4-Winds had more than seven months since the Board issued the 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 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 statement and compliance questionnaire for FY 2006.

Ms. Adams stated that this modification is supported by Finding of Fact No. 7, as modified and adopted, and by the amended Notice of Intent to Revoke Charter at p.4 par. 25.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to modify Conclusion of Law No. 6 to delete the reference to state statute and state payroll taxes. Therefore, as modified Conclusion of Law No. 6 will read as follows:

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

Ms. Adams stated that this modification is supported by Finding of Fact No. 7 and Conclusion of Law No. 4 as modified

and adopted.

Mary Gifford seconded the motion.

Motion passed unanimously

MOTION

Ms. Adams made a motion to adopt the order based on the Findings of Fact and Conclusions of Law as modified, adopted and accepted by this Board. Ms. Adams stated that the order shall read as follows:

Consequently, given 4-Winds's violation of federal law and regulation and its charter contract, the nature of those violations, and 4-Winds's failure to correct the problems associated with the proposed revocation of its charter, the Board adopts the ALJ's recommendation and enters an Order that the charter contract between the Board and 4-Winds Academy, Inc. be revoked.

The Board also further orders that 4-Winds make available a complete copy of the School's student educational records to each student upon request of the student, the student's parent or guardian ad litem, or the student's receiving school.

Mary Gifford seconded the motion.

Motion passed unanimously

President Farley stated that the school has indicated that they have entered into a payment plan with the IRS. Ms. Farley stated that as represented in the testimony in the hearing before the ALJ and the Board's Conclusions of Law that this issue has been open and staff has been dealing with it since November of 2006. Ms. Farley further stated that the school still has outstanding issues related to NCLB.

Mr. Lorenzo addressed the Board further related to the timeline of the issues. Mr. Lorenzo stated that he was the C.P.A. who conducted the audit for the year ending June 30, 2007. By Spring, 2008, when no progress had been made in reaching an agreement with the IRS, Mr. Lorenzo was given power of attorney for the charter entity and contacted the IRS on the charter entity's behalf. By December, 2008, all outstanding federal documents had been received by the IRS which allowed the charter entity to work with the IRS on a repayment plan. Currently, there are terms of an agreement with the IRS for repayment. Ms. Adams stated for the record that Mr. Chavez did present Mr. Lorenzo's testimony at the hearing and Ms. Adams did consider his testimony but the Board cannot consider additional information outside of the record at this time.

End of hearing: 10:40 a.m.

Hearing: 10:41 a.m. to 11:11 a.m.

Agenda Item K: U.S. Mental Math Federation, Incorp.

Ms. Adams stated that she will not be participating in this agenda item because she did not participate in the original motion related to this matter. President Farley stated that this item was a motion for clarification on the Board's actions at the previous meeting and asked if representatives from U.S. Mental Math were present. The school confirmed their presence and stated that they did not have legal representation. In response to Ms. Farley's question regarding legal representation, Mr. Munns stated that, because the school is proceeding before the Board in seeking a charter which constitutes practice of law, the representatives are not able to present arguments to the Board without legal representation.

Carrie O'Brien stated that she held a conversation with Dr. Fawzia Mai Tung, a representative of the school, and indicated that the school had spoken to an attorney but had not retained an attorney. Ms. O'Brien further stated that she informed Ms. Tung that the state would be willing to delay the consideration of the motion if the school would be retaining an attorney. The option was again offered to the school by Ms. Farley. The school declined the offer to delay the consideration of the motion.

Carrie O'Brien introduced herself as the Assistant Attorney General representing the state in this matter. Ms. O'Brien presented the areas of issue. Ms. O'Brien stated that a motion for clarification was filed that seeks to clarify if the Board intended to include or exclude several grounds in its motion to reject the application and deny the charter to U.S. Mental Math, Inc. The two areas of concern are in the comprehensive program of instruction and the detailed business plan. It is

unclear what the Board intends to do with the areas at issue. Ms. O'Brien stated that it is within the sole discretion of the Board to determine if an applicant is sufficiently qualified to operate a charter school. On behalf of the state, Ms. O'Brien requested the Board fight this deficiency of the business plan and this motion.

MOTION

Mary Gifford made a motion to go into Executive Session for the purposes of received legal advice. Arthur Ben seconded the motion.

Motion passed 6-0
(abstain: Lynne Adams)

Executive Session: 10:45 a.m. to 10:57 a.m.

Returned to Regular Session

The Board held a discussion regarding the clarification of the previous motion and denial of the application for a charter and discussions held at the time the previous motion was made. Christy Farley stated that the issues are still areas of concern.

MOTION

Mary Gifford made a motion to clarify the previous motion to reject the application and deny the charter of U.S. Mental Math for the reasons that it failed to demonstrate a comprehensive program of instruction as demonstrated by: 1.2b, 1.3.2b, 1.3.3e, 1.3.7e and 1.3.4b.

After further discussion, Ms. Gifford withdrew her motion for further clarification. The amended motion is as follows:

Mary Gifford made a motion to clarify the motion to reject the application and deny the charter for U.S. Mental Math Federation, Incorp. for reasons that it failed to demonstrate evidence of a comprehensive program of instruction as noted in sections 1.2b, 1.3.2b, 1.3.4b, 1.3.3e, 1.3.7e.

Dana Krals seconded the motion.

Motion passed 6-0
(abstain: Lynne Adams)

Ms. Farley stated that there was a detailed discussion at the last meeting related to a detailed business plan. She further stated that issues related to the detailed business plan remain issues of concern.

Agenda Item G: Superintendent's Report

Mary Gifford provided an update on activities of the department. Ms. Gifford reported that beginning the current week, the department will be holding workshops related to the stimulus package and how it affects NCLB-related funds. Ms. Gifford reported that those workshops are on-going. She also reported that the department is working with the Governor's Office on the formula for the new parts of the stimulus fund and how it will affect public schools in the state.

Agenda Item H: Subcommittee Reports

1. Legislative Update

Mary Gifford provided an update on the discussions held during recent Legislative Subcommittee meetings. Ms. Gifford reported that the subcommittee reviewed pending legislation and held discussions regarding bills that impact charter schools and the Board directly. DeAnna Rowe provided further information related to HB2456 and HB2516. The Board held a discussion related to this item. In regard to HB2516, President Farley stated that charter schools that want to serve a single gender should be allowed to go through the regular amendment process or should be able to put it in a contract application and the Board should continue to oppose until amended. Following a discussion of legislation providing biennial audits, Ms. Farley stated that the issue should be added to the next legislative subcommittee meeting with consideration to the impact on staff workload if implemented. Related to the biennial audit discussion, Superintendent Designee Gifford stated

that she would like to request advice from the Attorney General's office on whether or not the charter agreement permits the Board to compel charters to do annual audits for cause. Ms. Gifford said that she believes the Board can request a report at any time but she would like clarification on this issue.

2. Policy Rule & Contracts Subcommittee

Norm Butler and Martha Morgan, Deputy Director, reported on discussions from a recent Policy Rule & Contracts Subcommittee meeting held on February 25. Mr. Butler stated that one of the discussions related to the new charter application is scheduled later on the agenda.

Ms. Morgan reported that in subcommittee discussions of possible perpetual contracts, the Board felt that they prefer to stay on track with renewal. Ms. Morgan further reported that staff will receive training by Dr. Damian Betebenner and Rebecca Gau in which they will learn how to create growth data profiles. The ASBCS is incorporating this growth model as an additional performance measure for school effectiveness during five-year interval reviews and at renewal. Ms. Morgan stated that the Board's work with Dr. Betebenner is funded through its participation in the *State Leadership for High Quality Charter Schools* grant, sponsored by the National Governors Association's Center for Best Practices and the Center for School Change, Humphrey Institute, at the University of Minnesota.

Agenda Item G: Executive Director's Report

1. Status of charters with previous and/or on-going board actions: 4-Winds Academy, Inc., Academy of Arizona, Ascending Roots Scholastic & Athletic Premise, Inc., Bradley Academy of Excellence, Inc., CASY Country Day School, Dove Learning, Inc., E.A.G.L.E. Academy, Phoenix Advantage Charter School, Inc., Vechij Himdag Alternative School, Inc.

Ms. Rowe provided an update of on-going Board actions and schools under compliance monitoring.

2. Budget Update

DeAnna Rowe provided the Board with an update on the proposed 2010 budget and recent discussions related to the Board's budget.

Agenda Item L: Consent Agenda

1. Desert Star Community School, Inc. – Increase grades served
2. Esperanza Community Collegial Academy – Change mission statement
3. Laveen Preparatory School: a Challenge Academy – USFRCS and Procurement Exemptions

MOTION

Lynne Adams made a motion to adopt the consent agenda as presented. Mary Gifford seconded the motion.

Motion passed unanimously

Agenda Item M: New Charter Application for 2010-2011

Mike Dunbar, Academic Program Specialist, presented the Board with information regarding changes to the new charter application package for the 2010-2011 application cycle. Mr. Dunbar presented detailed information regarding each of the changes for this application cycle. Mr. Dunbar also stated that due to budget cuts and limited staff, staff will be offering only two (2) workshop dates and making the Power Point presentation available on the website. Mr. Dunbar also provided the proposed Prospective Applicant Workshop dates which will be April 3, 2009 and May 6, 2009.

MOTION

Norm Butler made a motion to approve the modifications to the New Charter Application for the 2010-2011 application cycle. Dana Krals seconded the motion.

Motion passed unanimously

Agenda Item N: Good Cause Extension for Consideration

The Board extended congratulations to the school for their recognition in the Arizona Republic as one of the top 25 high schools. Linda Proctor Downing addressed the Board and provided further information relating to the request for a Good Cause Extension for Arizona Agribusiness & Equine Center, Inc.

MOTION

Lynne Adams made a motion to approve the Good Cause Extension to the signing and execution of the charter contract for Arizona Agribusiness and Equine Center, Inc. until July 1, 2010 with a planned opening date of Fall 2010-2011 and that the applicant submit any documentation necessary to bring the application current with policy, rule, state or federal law at least 90 days prior to the signing of the contract.

Arthur Ben seconded the motion.

Motion passed unanimously

Agenda Item O: Board Comments

None

Agenda Item P: Adjournment

The meeting adjourned at approximately 11:54 a.m.

Signature

Date