

**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

**MOTION TO ACCEPT, REJECT
OR MODIFY THE
ADMINISTRATIVE LAW
JUDGE'S DECISION**

(For March 9, 2009 meeting of the
Arizona State Board for Charter
Schools)

Pursuant to A.R.S. § 41-1092.08(B), undersigned counsel requests that the Arizona State Board for Charter Schools accept, reject or modify the recommended decision of the Administrative Law Judge (ALJ) in this matter as follows:

FINDINGS OF FACT

1. Adopt Finding of Fact Nos. 1 through 6 in their entirety.
2. Modify Finding of Fact No. 7 to delete the two references to allegations pertaining to 4-Winds' violation of state law and state payroll taxes 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.

This modification is supported by the Notice of Intent to Revoke Charter at p. 4 par. 25.

3. Adopt Findings of Fact Nos. 8 through 31 in their entirety.
4. Delete Finding of Fact No. 32.

This deletion is requested for the reason that support for this Finding cannot be located in the transcript of the hearing or the Exhibits admitted during the hearing.

5. Modify Finding of Fact No. 33 as follows:

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

This modification is supported by Exhibit 15 and by the testimony of Ms. Leder found in the transcript of the January 13, 2009 charter revocation hearing (“TR, 01/13/09”), page 122, lines 10-22.

6. Adopt Findings of Fact Nos. 34 through 37 in their entirety.
7. Modify Finding of Fact No. 38 to correct the date of “FY2007” to “FY2006”. This modification is supported by Exhibit 16.

8. Modify Finding of Fact No. 39 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, “[t]o date, the case has not been assigned” [footnote 24: *See* the Board’s Ex. 17]. 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.

This modification is requested for the reason that support for the statement that Mr. Goldberg was requested to provide documentation to show that 4-Winds had paid the payroll taxes due for the quarter ending September 30, 2007 cannot be located in the transcript of the hearing or the Exhibits admitted during the hearing. The modification adding the statement that “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” is supported by the testimony of Ms. Leder at TR, 01/13/09, at p. 124, ln. 4-17.

9. Adopt Findings of Fact No. 40 in its entirety.

10. Modify Finding of Fact No. 41 to change the second “or” to “and.”

Also, modify Finding of Fact No. 41 to add that the Board also required Mr. Chavez and 4-Winds to provide information recognizing “that future violations may result in disciplinary action from the Board”. The modified Finding will then 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” [footnote 26: *See* the Board’s Ex. 19] and “recognition that future violations may result in disciplinary action from the Board”.

This modification is supported by Exhibit 19.

11. Adopt Findings of Fact Nos. 42 through 49 in their entirety.

12. Modify Finding of Fact No. 50 to add to the Finding 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 its 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.

This modification is supported by the testimony of Anthony Lorenzo at TR, 01/13/09, p. 38, ln. 13-17.

13. Adopt Findings of Fact Nos. 51 through 56 in their entirety.

14. Modify the last sentence of Finding of Fact No. 57 to delete the distinction between “public and charter schools” as follows: ADE may monitor compliance with federal law by requiring information from public schools, including charter schools, which receive such funds. The modified Finding will then 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: *See* the Board’s Ex. 23] 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.

This modification is requested for the reason that charter schools are public schools. 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. This modification is also supported by

A.R.S. § 15-101(3).

15. Adopt Findings of Fact Nos. 58 through 69 in their entirety.

16. Modify Finding of Fact No. 70 to correct the date of the Board's meeting from June 5, 2008 to June 9, 2008. This modification is supported by Exhibit 22.

17. Adopt Findings of Fact Nos. 71 through 74 in their entirety.

CONCLUSIONS OF LAW

18. Adopt Conclusions of Law No. 1 through 3 in their entirety.

19. Modify Conclusion of Law No. 4 to delete the reference to allegations pertaining to 4-Winds' failure to pay the payroll taxes 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.

This modification is supported by Finding of Fact No. 7, as modified, and by the Notice of Intent to Revoke Charter at p. 4 par. 25.

20. Adopt Conclusion of Law No. 5 in its entirety.

21. Modify Conclusion of Law No. 6 to delete the reference to state statute and state payroll taxes as follows:

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.

This modification is supported by Finding of Fact No. 7 and Conclusion of Law No. 4, as modified.

22. Adopt Conclusion of Law Nos. 7 through 13 in their entirety.

RECOMMENDED ORDER

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

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

Dated this 11th day of February, 2009.

TERRY GODDARD
Attorney General


Kim S. Anderson
Assistant Attorney General

ORIGINAL Motion mailed this 11th
day of February, 2009, to:

The Arizona State Board for Charter Schools
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COPY of the foregoing Motion
mailed this 11th day of February, 2009, to:

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