

Office of Administrative Hearings

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Janice K. Brewer
Governor

Cliff Vanell
Director

1/26/2009

RECEIVED JAN 27 2009
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DeAnna Rowe, Executive Director
State Board for Charter Schools
1700 W. Washington
Room 164
Phoenix, AZ 85007

Re: 08F-RV-004-BCS

In the Matter of:

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

and

4-WINDS ACADEMY (a charter school)

Dear Ms. Rowe:

Please find the decision of the Office of Administrative Hearings for the above entitled matter.

Sincerely,

for *Cliff J. Vanell*
Cliff J. Vanell
Director



Mission Statement: We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

1 3. The Charter Contract also provided that the Board may revoke the Charter
2 Contract for any violation of the Charter Contract, state, federal or local laws,
3 ordinances or rules and regulations.²

4 4. Kirsten Lee Senske signed the Charter Contract as the authorized Charter
5 Representatives for 4-Winds.

6 5. In May 2003, 4-Winds filed a Notification Request to the Board to change its
7 Charter Representative from Ms. Senske to Esther Davis, effective July 2, 2003.³

8 6. In November 2004, 4-Winds filed a Notification Request to the Board to
9 change its Charter Representative from Ms. Davis to Steve Chavez, effective January
10 25, 2005.⁴

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

14 8. On June 5, 2008, the Board also issued a Notice of Hearing on the matters
15 alleged in the Notice of Intent to Revoke Charter, which hearing was set on September
16 10, 2008 before the Office of Administrative Hearings, an independent state agency.

17 9. On July 9, 2008, the Board filed in the Office of Administrative Hearings a
18 motion to file an amended notice of intent to revoke charter and to continue the charter
19 revocation hearing to allow 4-Winds at least 90 days to address the new violations
20 alleged in the Amended Notice of Intent to Revoke Charter.

21 10. On July 9, 2008, the Board also filed in the Office of Administrative
22 Hearings an Amended Notice of Intent to Revoke Charter. The Amended Notice of
23 Intent to Revoke charter alleged that, in addition to failing to pay payroll taxes, 4-Winds
24 had received federal funds under the No Child Left Behind Act (20 U.S.C. § 6301 *et*
25 *seq.*) ("NCLB" or "the Act") but had failed to comply with the accounting and reporting
26 requirements of NCLB, in violation of its charter contract, NCLB, and 34 C.F.R. §
27 76.731.

28
29 _____
² See Ex. 1 at ¶ 6.

³ See the Board's Ex. 2.

⁴ See the Board's Ex. 3.

1 11. 4-Winds did not respond to the motion to file an Amended Notice of Intent
2 to Revoke Charter and to continue the hearing. On July 21, 2008, the Administrative
3 Law Judge issued an order continuing the administrative fair hearing to November 24,
4 2008.

5 12. On November 19, 2008, Charter Representative Mr. Chavez requested a
6 continuance, based on physical symptoms that he was experiencing that might presage
7 a heart attack. The Board indicated that it was ready to proceed to hearing, but took no
8 position on the merits of Mr. Chavez' motion to continue.

9 13. The Administrative Law Judge granted Mr. Chavez' motion to continue,
10 setting a hearing on January 13, 2009.

11 14. On January 13, 2009, the administrative fair hearing in this matter was held.
12 The Board presented the testimony of Andrea Leder, Governmental and Financial
13 Services Manager for the Board, and Nadine Groenig, an Education Program Specialist
14 employed by the Arizona Department of Education ("ADE") to monitor schools that
15 received federal funds under NCLB, and had admitted into evidence 32 exhibits. The
16 Board called in its case-in-chief Anthony Lorenzo, the public accountant who had
17 prepared 4-Winds' Audited Financial Statement and Compliance Questionnaire for the
18 fiscal year ("FY") ending June 30, 2007, and Mr. Chavez.

19 15. Mr. Chavez presented the testimony of Mr. Lorenzo and testified on 4-
20 Winds' behalf.

21 HEARING EVIDENCE

22 Failure to Pay Payroll Taxes

23 16. The Board monitors charter schools by reviewing the audited financial
24 statements and compliance questionnaires that they submit annually and by conducting
25 on-site visits. The fiscal year runs from July 1 to June 30. A charter school's audited
26 financial statements for the previous fiscal year are due to the Board on November 15.

27 17. On November 16, 2006, the Board received 4-Winds' audited financial
28 statements and compliance questionnaire for the fiscal year that began on July 1, 2005
29 and ended on June 30, 2006 ("FY2006").⁵

30 ⁵ See the Board's Ex. 4.

1 18. On the Compliance Questionnaire for the fiscal year that ended on June 30,
2 2006, the auditor answered "No" to the following questions:

3 Is the school in good standing with the following regulatory
4 bodies:

5 a. Internal Revenue Service ["IRS"] for payroll taxes,
6 income taxes (if applicable) and required tax forms? (26
7 U.S.C. § 3402)

8

9 c. Arizona Department of Revenue for payroll taxes, state
10 income taxes (if applicable) and applicable tax forms?
11 (A.R.S. § 43-401 and § 43-1111)

12 d. State unemployment contribution requirements? (A.R.S.
13 § 23-721 et seq)⁶

14 19. The Corrective Action Plans for these deficiencies, which Mr. Chavez was
15 responsible for implementing, were to file quarterly federal payroll tax returns, quarterly
16 state withholding payroll tax returns, quarterly state unemployment payroll tax returns
17 on time and pay the appropriate tax when the return was filed.⁷

18 20. The audit indicated that, as of June 30, 2006, 4-Winds owed the IRS
19 \$64,868 in taxes, plus \$14,674 in penalties.

20 21. Ms. Leder testified that, when the questionnaire notes any noncompliance,
21 the Board sends the charter school a letter.

22 22. On May 9, 2007, the Board sent a letter to Mr. Chavez and 4-Winds,
23 indicating that it had reviewed the fiscal year 2006 audit package.⁸ With respect to 4-
24 Winds' non-compliance with payroll tax requirements, the Board requested that, by
25 June 8, 2007, 4-Winds "submit any backup documentation such as copies of
26 correspondence or an approved payment plan by the [IRS]."

27 23. On May 17, 2007, the Board informed Mr. Chavez and 4-Winds that, until
28 they resolved compliance issues related to the FY2006 audit, the Board had placed on

29 ⁶ See Ex. 4 at 51.

30 ⁷ See Ex. 4 at 31 to 34.

⁸ See the Board's Ex. 6.

1 hold their amendment requests to change the program of instruction, increase
2 enrollment cap, increase grade levels served, and to add additional sites.⁹

3 24. 4-Winds did not submit any backup documentation or an IRS-approved
4 payment plan to the Board before June 8, 2007.

5 25. On June 18, 2007, the Board acknowledged receipt of amendment and
6 notification requests from 4-Winds, but stated the Board would not process the
7 amendment requests and requests to change curriculum until 4-Winds addressed the
8 compliance issues identified in the FY2006 audit package.¹⁰

9 26. On July 13, 2007, Mr. Chavez on behalf of 4-Winds informed the Board that
10 he had contacted the IRS and requested information on all tax payments that were in
11 arrears and forms that had not been completed. 4-Winds had also retained tax
12 attorney Yale Goldberg to represent it in negotiations with the IRS.¹¹

13 27. Also on July 13, 2007, Mr. Goldberg sent a letter to the Board, stating that
14 he was confident, "based upon my past experiences with the [IRS] involving
15 employment tax cases like this, that within the next 90 days we should be able to
16 negotiate an installment agreement with the [IRS] to satisfy any unpaid employment
17 taxes."¹²

18 28. On August 3, 2007, the Board reminded 4-Winds that the Board had
19 required 4-Winds to file a corrective action plan by June 8, 2007 to correct its non-
20 compliance with payroll tax requirements. The Board stated that the July 13, 2007
21 letters from Mr. Chavez and Mr. Goldberg "[do] not demonstrate that the employment
22 taxes have been paid" or that 4-Winds had satisfactorily addressed the concerns raised
23 in the FY2006 audit. The Board required 4-Winds to "provide a statement from the IRS
24 that 4-Winds is current on payroll tax requirements or that 4-Winds has an IRS-
25 approved payment installment plan."¹³

26 29. 4-Winds did not provide to the Board evidence that it was current on its
27 payroll taxes or had entered into an installment payment plan with the IRS. The Board

28 ⁹ See the Board's Ex. 7.

29 ¹⁰ See the Board's Ex. 8.

30 ¹¹ See the Board's Ex. 9.

¹² See *id.*

¹³ See the Board's Ex. 10.

1 reminded 4-Winds of its failure to provide the required information on September 6,
2 2007,¹⁴ September 21, 2007,¹⁵ and October 15, 2007.¹⁶

3 30. 4-Winds did not provide evidence that it was current on payroll tax
4 requirements or an IRS-approved payment installment plan to the Board.

5 31. On October 30, 2007, Mr. Goldberg informed the Board that “[w]e have
6 requested that the employment tax account be transferred to a local revenue officer so
7 that a mutually acceptable payment plan can be arranged.”¹⁷ In addition, Mr. Goldberg
8 asserted that the employment tax liabilities for the third quarter of 2007, ending
9 September 30, 2007, had been paid and that the underlying Form 941 would be filed on
10 or before the due date of October 31, 2007.

11 32. On November 6, 2007, Ms. Leder telephoned Mr. Goldberg and asked him
12 to provide a copy of the letter requesting the transfer to a local revenue officer and
13 evidence supporting his assertion that 4-Winds was current with its 2007 payroll taxes.
14 Mr. Goldberg told her that he would get back to her in two or three days.

15 33. Mr. Goldberg did not provide Ms. Leder with the requested documentation.

16 34. On November 15, 2007, 4-Winds filed its audited financial report and
17 Compliance Questionnaire for the fiscal year ending June 30, 2007 (“FY2007”).¹⁸

18 35. On the Compliance Questionnaire for FY2007, the auditor answered “No” to
19 the following questions:

20 Is the school in good standing with the following regulatory
21 bodies:

22 a. [IRS] for payroll taxes, income taxes (if applicable) and
23 required tax forms? (26 U.S.C. § 3402)

24

25 d. State unemployment contribution requirements? (A.R.S.
26 § 23-721 et seq)¹⁹

27
28 ¹⁴ See the Board's Ex. 11.

29 ¹⁵ See the Board's Ex. 13.

30 ¹⁶ See the Board's Ex. 14.

¹⁷ See the Board's Ex. 15.

¹⁸ See the Board's Ex. 5.

¹⁹ See Ex. 5 at 21.

1 The audit stated that 4-Winds “[had] not paid Social Security, Medicare, and income
2 withholding taxes owed to the I.R.S. totaling \$102,005.”²⁰ The total unpaid payroll tax
3 liabilities, which included state as well as federal taxes, were \$111,479.²¹

4 36. The FY 2007 audit also stated that, “[i]n accordance with [IRS], Publication
5 15, deposits for income tax withholdings, social security, and Medicare are required by
6 the 15th of . . . each month for the preceding months tax collections/withholdings for
7 payrolls and withholding”²²

8 37. Mr. Lorenzo had prepared the FY 2007 audit and had been engaged to
9 prepare the FY 2008 audit, which had been due to the Board on November 15, 2008.
10 Mr. Lorenzo testified that, on the date of the hearing, the FY 2008 audit was
11 approximately 50% complete.

12 38. On November 19, 2007, the Board notified 4-Winds and Mr. Chavez that it
13 had not submitted a Corrective Action Plan regarding how it would address the
14 violations of 26 U.S.C. § 3402 regarding payment of federal payroll taxes that were
15 identified in the FY2007 audit, which the Board had required by June 8, 2007. As a
16 result, the Board would consider 4-Winds’ failure to comply with federal law at its next
17 meeting and could take action, including withholding up to ten percent of the monthly
18 state aid apportionment that would otherwise be due to 4-Winds.²³

19 39. On November 27, 2007, Mr. Goldberg informed Ms. Leder that he
20 continued to work with Mr. Chavez and 4-Winds to resolve tax liabilities with the IRS,
21 but that, “[t]o date, the case has not been assigned”²⁴ Mr. Goldberg did not
22 provide the requested documentation to show that 4-Winds had paid the payroll taxes
23 due for the quarter ending September 30, 2007.

24 40. On November 28, 2007, the Board’s executive director informed Mr.
25 Chavez and 4-Winds that the Board had met on November 27, 2007, and had “passed
26
27

28 ²⁰ *Id.* at 29.

29 ²¹ *See id.* at 14.

30 ²² *Id.*; *see also* the Board’s Ex. 31 (referenced IRS publication “Employer’s Tax Guide”).

²³ *See* the Board’s Ex. 16.

²⁴ *See* the Board’s Ex. 17.

1 a motion requesting that [ADE] withhold 10% of the school's monthly state aid
2 apportionment for the school's failure to comply with payroll tax requirements."²⁵

3 41. On January 2, 2008, the Board noted that 4-Winds' FY2007 audit had
4 identified repeated issues of noncompliance with payroll tax requirements. The Board
5 required Mr. Chavez and 4-Winds to provide "[a] statement from the [IRS] indicating
6 that [4-Winds was] current with all payroll tax requirements or an IRS-approved
7 payment plan" or "[a] statement explaining the reason for the continued
8 noncompliance."²⁶

9 42. On February 29, 2008, the Board sent "a friendly reminder" to Mr. Chavez
10 and 4-Winds that it had not received the Corrective Action Plan that had been due on
11 February 1, 2008, along with a copy of its January 2, 2008 letter.²⁷

12 43. On May 7, 2008, the Board sent another letter to Mr. Chavez and 4-Winds,
13 informing them that it still had not received a Corrective Action Plan for 4-Winds' failure
14 to pay payroll taxes, which violation was identified on the FY2006 and FY2007 audits.²⁸
15 As a result, the Board would address the matter at its next meeting and could take
16 action, including issuing a Notice of Intent to Revoke 4-Winds' charter.

17 44. At the Board's May 12, 2008 meeting, it voted to issue a Notice of Intent to
18 Revoke the Charter of 4-Winds for its failure to comply with federal law regarding
19 reporting and payment of payroll taxes.

20 45. On June 10, 2008, the Board informed Mr. Chavez and 4-Winds that it had
21 issued a Notice of Intent to Revoke 4-Winds' charter contract and having 10% of its
22 monthly state aid withheld for failure to comply with federal tax requirements.²⁹

23 46. As of the date of the hearing, 4-Winds and Mr. Chavez had not provided
24 documentation that it was current with payroll tax liabilities or that it had entered into an
25 agreement with the IRS for an installment payments on past due tax liabilities.

26 47. Mr. Lorenzo testified that, as of the date of the hearing, 4-Winds owed
27 approximately \$230,000 to the IRS, including penalties, interest, and back taxes.

28 ²⁵ The Board's Ex. 18.

29 ²⁶ See the Board's Ex. 19.

30 ²⁷ See the Board's Ex. 20.

²⁸ See the Board's Ex. 21.

²⁹ See the Board's Ex. 22.

1 48. Mr. Lorenzo testified that 4-Winds had not signed an agreement with the
2 IRS to begin making installment payments on its payroll tax liability, although it was in
3 the process of negotiating such an agreement. It had an appointment on January 28 or
4 29, 2009 with local IRS Revenue Officer Sandra Lewis.

5 49. Mr. Lorenzo testified that, on June 6, 2008, 4-Winds had signed a power of
6 attorney to him, authorizing him to speak to the IRS on its behalf. He had provided all
7 the requested forms to the IRS, but it took 6 to 8 weeks for the IRS to process the
8 forms.

9 50. Mr. Lorenzo testified that 4-Winds had paid the federal taxes for October
10 2008 on November 24, 2008. He did not know where 4-Winds stood regarding
11 payment of FY2008 or FY2009 payroll taxes, other than that one payment. The taxes
12 for December 2008 would not be due until January 15, 2009.

13 51. Mr. Lorenzo admitted that, to enter into installment payment agreement with
14 the IRS, the IRS requires that an employer has timely filed a certain number of payroll
15 taxes. An employer must be current for the last quarter. On the date of the hearing, 4-
16 Winds was not current with its tax payments, as far as he knew. 4-Winds was current
17 with filing its Form 941s and Form 990s to report taxes that were due.

18 52. Mr. Chavez admitted at the hearing that 4-Winds was delinquent in its
19 federal payroll tax payments for FY2006 and FY2007. He testified that Mr. Lorenzo had
20 proposed a plan under which a third party would intercept equalization payments that
21 were coming to 4-Winds and make payments on the federal tax liability and send the
22 remainder to 4-Winds for operating expenses.

23 53. Mr. Chavez testified that the interceptor would have to be someone with
24 financial expertise. Mr. Lorenzo could not be the interceptor if he continued to provide
25 auditing services to 4-Winds. Mr. Chavez knew that he would need to propose an
26 interceptor to the IRS at the meeting at the end of January 2009. The interceptor would
27 need to be paid for the service.

28 54. Mr. Chavez testified that he knew that the federal tax liability had
29 "snowballed" and that the IRS would expect a substantial payment. In December, 4-
30 Winds had received an equalization payment of \$35,000, which was consistent with
previous amounts. However, due to a loss of eight students who moved away from the

1 community and a special education student who had "integrity issues," 4-Winds did not
2 expect to receive any equalization payment in January 2009.

3 55. Mr. Chavez testified that he had recruited 3 students from Sanders, in the
4 Navajo Nation. 4-Winds is eligible for impact monies and applied for such funds in
5 February 2008. Funding is usually paid in November or December, but Mr. Chavez had
6 not received any funding as of the date of the hearing.

7 56. Mr. Chavez testified that 4-Winds was a performing school and had met
8 ADE's requirements for Annual Yearly Progress. 4-Winds has 46 students, including
9 12 in kindergarten.

10 **Failure to File Reports and Account for NCLB Funds**

11 57. In FY 2007, 4-Winds had received \$48,703.23 in Title I Funds and
12 \$2,493.00 in Title II funds under NCLB.³⁰ The purpose of such funding was to close
13 disparities in student educational achievement. ADE may monitor compliance with
14 federal law by requiring information from public and charter schools that receive such
15 funds.

16 58. Ms. Groenig testified that Title I ensures that all children, including
17 economically disadvantaged children, receive a high quality education. Title II funds
18 are to ensure that children are served by high quality professionals, including teachers,
19 assistant principals, and principals, by providing professional education and
20 development.

21 59. ADE is the grantee of NCLB monies and is required by federal law to
22 monitor the use of such funds by subgrantee local educational agencies ("LEAs") like 4-
23 Winds. ADE is authorized to require subgrantees to report the activities that NCLB
24 monies funded. Ms. Groenig has been assigned to monitor 4-Winds since May 2007.
25 Ms. Groenig testified that she is responsible for monitoring 25-30 other LEAs in Arizona.

26 60. ADE conducts on-site reviews of subgrantee LEAs' use of NCLB funds. On
27 February 12, 2008, Ms. Groenig on behalf of ADE confirmed to Mr. Chavez that an on-
28 site review team from the Academic Achievement Division of ADE, consisting of herself,
29

30

³⁰ See the Board's Ex. 23.

1 Barbara Presler, and Nancy Konitzer, would meet with him at 4-Winds from 8:30 a.m. to
2 3:30 p.m. on April 8, 2008 to review its compliance with NCLB requirements.³¹

3 61. Ms. Groenig testified that she attached to her February 12, 2008 letter a
4 copy of ADE's on-site monitoring protocol, which is the form that ADE uses to conduct
5 its on-site reviews and contains the questions that subgrantee LEAs will be asked and
6 describes the documentation that they will be expected to provide at the on-site
7 reviews.³² For all areas of inquiry, an LEA will be scored as in compliance, partial
8 compliance, or out of compliance.

9 62. Ms. Groenig testified that, when the ADE review team arrived at 4-Winds on
10 April 8, 2008, Mr. Chavez was not there. Students were being administered the AIMS
11 test and many substitute teachers were overseeing the process. The team decided that
12 these conditions were not ideal for review of 4-Winds' compliance with NCLB, and so
13 told the teachers to go back to their classes. The team performed a document review
14 and interviewed one teacher.

15 63. On April 16, 2008, Ms. Groenig sent an e-mail containing ADE's preliminary
16 compliance review to Mr. Chavez.³³ 4-Winds was out of compliance or in partial
17 compliance with every category from the on-site protocol that was reviewed. Ms.
18 Groenig scheduled another review for April 30, 2008.

19 64. Ms. Groenig testified that, on April 30, 2008, the ADE review team met with
20 Mr. Chavez, Daniel Mikeworth, and Joyce Kruger. The team conducted the on-site
21 review like any other, except that team went over the preliminary results from the April
22 8, 2008 review with 4-Winds' representatives.

23 65. Many areas remain out of compliance or in partial compliance for 4-Winds'
24 Title I and Title II activities on April 30, 2008. Ms. Groenig testified that ADE's major
25 concern under Title I was that 4-Winds had provided project summaries that showed
26 how the monies had been used. ADE could not find any evidence, such as invoices,
27 purchase orders, or receipts, that 4-Winds had actually used the money in the ways
28 described on the project summaries.

29 ³¹ See the Board's Ex. 24.

30 ³² See the Board's Ex. 25.

³³ See the Board's Ex. 26.

1 66. Ms. Groenig testified that the teachers at 4-Winds appeared confused
2 about what a Title I program was, each one giving a different or contradictory answer. It
3 appeared that Title I funds had been used for a structured English immersion, which
4 was not allowed under NCLB. Other programs provided funding for this purpose.

5 67. Ms. Groenig testified that the review team determined that most of 4-Winds'
6 instructors were not highly qualified. Most lacked bachelor's degrees and were
7 "paraprofessionals," not teachers. One instructor had an educational background that
8 would have rendered her highly qualified but she did not have a reading endorsement.
9 Yet, letters to parents referred to instructors as "teachers," which Ms. Groenig testified
10 was misleading.

11 68. On May 6, 2008, ADE informed Mr. Chavez and 4-Winds of the results of its
12 team's on-site review of 4-Winds' NCLB programs.³⁴ Attached to the letter was a
13 Compliance Summary Report and Compliance Activities Worksheet, which described
14 the activities to be done to bring 4-Winds in compliance for every area in which it had
15 been found to be out of compliance or in partial compliance, the person responsible for
16 the activity, and the due date for completion of the activities.

17 69. Ms. Groenig testified that ADE had determined some of the due dates.
18 Others had been determined in consultation with 4-Winds. The due dates ranged from
19 May 30, 2008 to November 3, 2008. Ms. Groenig testified that the short due dates
20 were for items that should have been readily available to 4-Winds, especially because
21 Mr. Chavez had known since February 8, 2008 what ADE would require.

22 70. At the Board's meeting on June 5, 2008, it voted to amend the Notice of
23 Intent to Revoke to include 4-Winds' failure to comply with federal accounting and
24 reporting requirements for the receipt of NCLB monies. On June 10, 2008, the Board
25 informed 4-Winds and Mr. Chavez of its decision.³⁵

26 71. On August 27, 2008, Ms. Groenig provided an updated summary to Mr.
27 Chavez and 4-Winds of NCLB compliance items that were still overdue.³⁶

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³⁴ See the Board's Ex. 27.

³⁵ See the Board's Ex. 22.

³⁶ See the Board's Ex. 29.

1 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
2 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
3 than the other."⁴¹

4 3. 4-Winds did not challenge the Board's evidence, which showed that, for most
5 of the time since Mr. Chavez became charter representative on January 25, 2005, 4-
6 Winds has not paid payroll taxes and has been late in submitting required tax forms.

7 4. 4-Winds had more than seven months since the Board issued its Notice of
8 Intent to Revoke 4-Winds' charter for its failure to pay the payroll taxes that federal and
9 state law require, far more than the 90 days that A.R.S. § 15-183(l) requires. 4-Winds
10 was aware of its violation since November 16, 2006, when it filed its audited financial
11 statements and compliance questionnaire for FY2006.

12 5. Yet 4-Winds at the time of hearing owed more than \$160,000, or three times
13 more to the IRS than it had owed in November 2006. Although 4-Winds was current in
14 filing the required reports, there was no evidence that it had paid payroll taxes for any
15 month except October 2008, and those it had paid late. 4-Winds' assurances at hearing
16 that it would make an installment payment agreement with the IRS are too little, too late.
17 It does not appear that 4-Winds has the financial capacity to pay what is owed to the IRS,
18 even over time, and continuing to educate its students.

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

22 7. 4-Winds did not dispute that it failed to file required reports or to account for
23 funds received under Title I and Title II of NCLB. 4-Winds had at least six months to
24 correct this deficiency, far more than the 90 days that A.R.S. § 15-183(l) requires.

25 8. Federal statute authorizes a state agency like ADE who receives federal
26 funds to improve the education of ELL students under NCLB to make subgrants to
27 LEAs such as 4-Winds.⁴² The state agency must require a plan from the subgrantee
28
29

30 ⁴¹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁴² See 20 U.S.C. § 6825.

1 regarding expenditure of the funds⁴³ and is responsible for monitoring the subgrantee's
2 compliance with the plan.⁴⁴

3 9. 4-Winds did not offer any evidence to justify its failure to file reports and to
4 account for NCLB funds or suggest any plan to remedy this deficiency. As with 4-Winds'
5 failure to pay payroll taxes, it appears on this record that 4-Winds may not be able to
6 account for NCLB funds or, if necessary, to repay such funds.

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

10 11. With respect to the penalty, A.R.S. § 15-183 does specify the circumstances
11 under which revocation of a charter should occur but only states that the sponsor "*may*
12 revoke a charter at any time if the charter school breaches one or more provisions of its
13 charter."⁴⁵ The statute requires that the sponsor "*shall* allow the charter school at least
14 ninety days to correct the problems associated with the reasons for the proposed
15 revocation of the charter," which occurred in this case, but that "[t]he final determination
16 of whether to revoke the charter shall be made at a public hearing called for such
17 purpose."⁴⁶

18 12. 4-Winds' failure to account for NCLB funds evidences a lack of
19 accountability, and deprived its eligible students of the education to which they were
20 lawfully entitled.

21 13. In light of the scope and nature of 4-Winds' violations, and the fact that 4-
22 Winds failed to remedy those deficiencies within the statutorily-prescribed cure period,
23 the Administrative Law Judge concludes that 4-Winds' Charter should be revoked. 4-
24 Winds' current efforts are too late and, in any event, insufficient to warrant further
25 reprieve.

26 **RECOMMENDED ORDER**

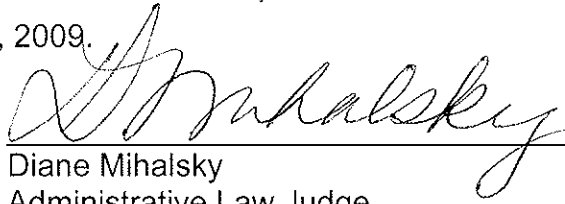
27 For the foregoing reasons, the Administrative Law Judge recommends that the
28 Charter Contract between the Board and 4-Winds Academy, Inc. be revoked.

29 ⁴³ See 20 U.S.C. § 6826.

⁴⁴ See 34 C.F.R. § 80.40(a).


30 ⁴⁵ See A.R.S. § 15-183(l) (emphasis added).

1 Done this day, January 22, 2009.

2 
3 Diane Mihalsky
4 Administrative Law Judge

5 Original transmitted by mail this
6 26 day of January, 2009, to:

7 Arizona State Board for Charter Schools
8 DeAnna Rowe, Executive Director
9 1700 W. Washington St.
10 Room 164
11 Phoenix, AZ 85007

12 By 
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⁴⁶ See *id.* (emphasis added).