

**FROM THE STATE BOARD OF EDUCATION**

**STATE OF WYOMING**

**IN THE MATTER OF THE REQUEST            )**  
**FOR STATE LAW EXEMPTIONS FROM        )**  
**PODER ACADEMY,                                )**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL  
ORDER**

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This matter comes before the Director of the Wyoming State Board of Education as a request that PODER Academy be exempted from certain state law requirements. Upon consideration of this application, the Board finds and concludes as follows:

**Jurisdiction**

Wyoming’s charter school act provides that the Board may grant charter schools exemptions from state law requirements. Wyo. Stat. Ann. § 21-3-305(c). This process is initiated by a district submitting the charter school’s request to the Board within ten days of the district approving the charter school application. *Id.* PODER Academy’s requests were received by the Board on June 29, 2015. Accordingly, this matter is properly before the Board.

## Findings of Fact

1. PODER Academy is a duly organized charter school located within Laramie County School District Number 1 (LCSD1).
2. The Academy submitted a charter school application to the Board of Trustees of LCSD1.
3. The Academy and LCSD1 negotiated a charter agreement that was subsequently accepted by the LCSD1 Board of Trustees.
4. LCSD1 forwarded to the Board the Academy's application along with a list of state laws that the Academy sought to waive.
5. The following are the laws that the Academy seeks waiver:
  - Wyo. Stat. Ann. § 21-4-103 (enforcement of compulsory attendance and attendance officers; and
  - Wyo. Stat. Ann. §§ 21-7-104, 106, 107, 110, and 112 (part of the Wyoming Teacher Employment Act)

## Principles of Law

6. The Board has authority under Wyoming law to grant or deny a charter school request for waiver of state law requirements. Wyo. Stat. Ann. § 21-3-305(c).
7. Board and Department rules limit this authority to "statutes and rules and regulation within [the Board's] statutory authority or control." *Rules, Wyo. Dep't of Educ., Charter Schools*, ch. 32 § 14(f) (April 12, 2010).
8. If a charter school does not receive notice of denial within 45 days, the request is deemed granted. *Id.*
9. Addressing first the truancy provision of Wyo. Stat. Ann. § 21-4-103, that provision

states in its entirety:

The primary responsibility for the enforcement of this article [dealing with compulsory attendance] shall be upon the board of trustees of the school district, which shall appoint an attendance officer or officers to carry out the provisions of this article. Said officer shall be paid out of the district treasury such sum as may be provided in the order of appointment.

10. By its own terms, Wyo. Stat. Ann. § 21-4-103 applies to school districts and gives them the enforcement authority over compulsory attendance. This is not a “statute[] and rule[] and regulation within [the Board’s] statutory authority or control.” *Rules, Wyo. Dep’t of Educ., Charter Schools*, ch. 32 § 14(f) (April 12, 2010).
11. In addition, Wyo. Stat. Ann. § 21-4-103 directs the conduct of the district, not of an individual school. Any exemption would effectively relieve the district of its obligations, not the charter school. Furthermore, there is nothing in the law that suggests that it applies to charter schools rather than public school districts.
12. For these reasons, the Board finds that it does not have the legal authority to grant the Academy’s request to exempt it from Wyo. Stat. Ann. § 21-4-103 and the Academy’s request for a waiver should be denied.
13. The Teacher Employment Act defines a “teacher” as “[a]ny person employed under contract by the board of trustees of a school district as a certified professional employee.” Wyo. Stat. Ann. § 21-7-102(a)(vii).
14. The Act’s provisions apply only to teachers as defined by the Act. For example, Wyo. Stat. Ann. § 21-7-106(a) provides that “[a] continuing contract teacher shall be notified of a recommendation of termination by the superintendent or any member of the board [of trustees] designated by the superintendent . . . .”
15. A charter school is a private organization that enters into a contract with a Board of Trustees to provide educational services. *See generally* Wyo. Stat. Ann. § 21-3-304 (defining the characteristics of charter schools). While a charter school is legislatively

designated as a public school, Wyo. Stat. Ann. § 21-3-304(b), this does not change the relationship between the school and district.

16. Consequently, as a matter of law, the employees of charter schools are not employees of the district. This conclusion is reinforced by the fact that the charter school act provides some protection for teachers who choose to teach at a charter school in their districts. Wyo. Stat. Ann. § 21-3-313 addresses what happens when district employed teachers go to work for a charter school. It provides that in the first year, the teacher is on a leave of absence from the district. *Id.* § 313(a). The leave of absence may be renewed for up to two one-year periods. *Id.* After that time, the teacher's employment status is determined by the charter agreement. *Id.* This constitutes a legislative acknowledgement that charter school employees are not district employees. Otherwise, there would be no need to provide for a leave of absence or other employment protections for teachers.
17. As a result, the teachers employed at the Academy are not "teachers" for the purpose of the Teacher Employment Act, and the Act does not apply to charter schools.
18. As an initial matter, the Board lacks authority over the Teacher Employment Act and has no part of its enforcement. But more importantly, the Board cannot logically waive legal requirements that do not apply to the Academy in the first place. Accordingly, the Board finds that the Academy's requests for waiver of portions of the Teacher Employment Act should be denied as moot.

## Order

The Wyoming State Board of Education therefore enters final decision in this matter as follows. PODER Academy's requests for waiver of state law requirements are denied because 1) the Board has no authority to grant these particular waivers, and 2) none of the statutory provisions for which exemptions are sought apply to PODER Academy.

Dated this \_\_\_\_\_ day of August 2015.

For the Wyoming State Board of Education,

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Pete Gosar, Chair  
Wyoming State Board of Education  
2300 Capitol Ave.  
Hathaway Building, 2nd Floor  
Cheyenne, WY 82002

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of August, 2015, the foregoing Findings of Fact, Conclusions of Law, and Final Order was served by placing true and correct copies thereof in the U.S. Mail, postage prepaid, addressed to:

Marcos Martinez  
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And the original of the document was filed as part of the administrative record in this matter as follows:

Department of Education  
Chelsie Oaks  
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Cheyenne, WY 82002

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Chelsie Oaks, Board Executive Secretary  
Wyoming Department Education