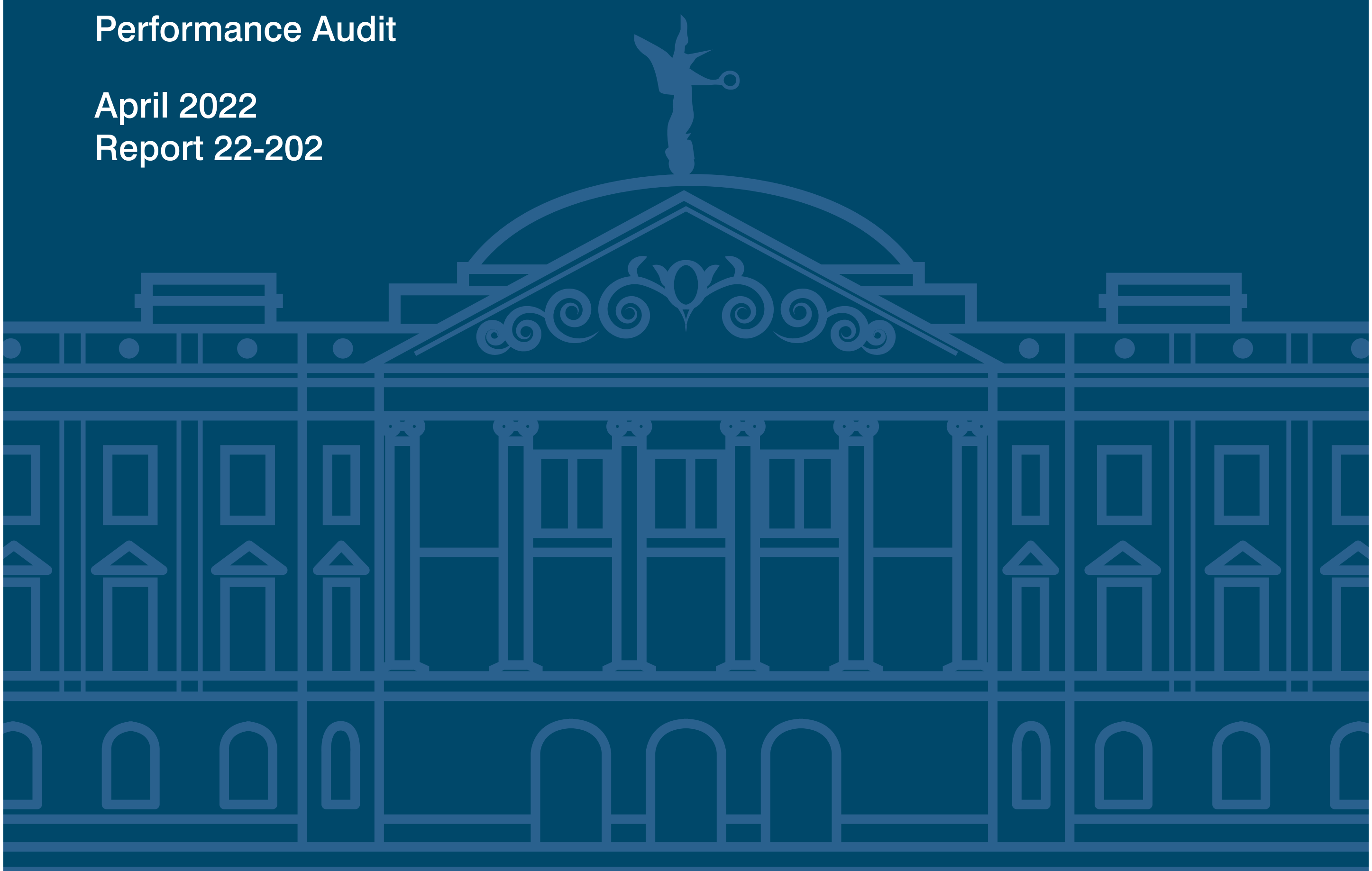
Buckeye Elementary School District
Report 2 of 2

From July 2016 through December 2021, the District paid to or on behalf of its superintendent over $1.7 million of “additional compensation.” This “additional compensation” brought the superintendent’s total compensation for that time to about $3.3 million, which was about 100 percent more than what the State’s 3 largest districts spent, on average, on superintendent compensation, resulting in a possible gift of public monies. Also, inconsistent with the core purpose of public records laws, the District omitted “additional compensation” amounts and other critical information in 2 of the superintendent’s employment agreements. Moreover, because the District miscalculated “required withholdings” related to the “additional compensation,” an estimated $571,256 of the over $1.7 million was paid beyond employment agreement terms. We have submitted our report to the Arizona Attorney General’s Office for appropriate action.

Performance Audit

April 2022
Report 22-202



A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General

ARIZONA Auditor General
Making a Positive Difference

The Arizona Auditor General's mission is to provide independent and impartial information and specific recommendations to improve the operations of State and local government entities. To this end, the Office provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits and special reviews of school districts, State agencies, and the programs they administer.

The Joint Legislative Audit Committee

Audit Staff

Vicki Hanson, Director

Christine Haidet, Manager

Paul Soldinger, Manager

Karl Calderon, Senior Auditor

Contact Information

Arizona Auditor General
2910 N. 44th St., Ste. 410
Phoenix, AZ 85018-7271

(602) 553-0333

contact@azauditor.gov

www.azauditor.gov

LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

April 12, 2022

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

The Honorable Mark Brnovich, Attorney General

Governing Board
Buckeye Elementary School District

Dr. Kristi Wilson, Superintendent
Buckeye Elementary School District

Transmitted herewith is a report of the Auditor General, *A Performance Audit of Buckeye Elementary School District—Report 2 of 2*, conducted pursuant to Arizona Revised Statutes §41-1279.03. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience. This performance audit report is the second in a series of 2 reports on the District. The first report focused on the District's efficiency and effectiveness in administration, plant operations and maintenance, food service, and transportation. This second report focuses on 1 aspect of administration—executive administrative spending, and particularly the superintendent's salary and benefits package—due to concerns identified during our audit.

As outlined in its response, the District does not agree with the findings and recommendations but plans to implement or implement modifications to the recommendations. My Office will follow up with the District in 6 months to assess its progress in implementing the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey A. Perry

Lindsey A. Perry, CPA, CFE
Auditor General

TABLE OF CONTENTS

Figures

TABLE OF CONTENTS

Tables

Buckeye Elementary School District

Report 2 of 2

In our fiscal year 2019 performance audit of Buckeye Elementary School District, Report 1 of 2 (Report 21-208), we identified that compared to its peer districts' average, the District spent 54 percent more per pupil on executive administration, including the superintendent's salary and benefits package. This second report focuses on that aspect of administrative spending.

As shown in Table 1, the District may have violated the Arizona Constitution's gift clause when from July 2016 through December 2021, pursuant to 3 employment agreements, without documenting a public purpose, it paid its superintendent $1,712,976 "additional compensation" within total compensation of $3,274,505, which was about 100 percent more than what the State's 3 largest districts paid their superintendents, on average.[1]

Also, inconsistent with the core purpose of public records laws, the District omitted critical information associated with this "additional compensation" in 2 of these employment agreements. Moreover, because the District miscalculated "required withholdings" related to this "additional compensation," the District overpaid the superintendent an estimated $571,256, or 33 percent, of the $1,712,976 paid. We have submitted our report to the Arizona Attorney General's Office for appropriate action.

Table 1
District paid more than $1.7 million "additional compensation" of about $3.3 million total compensation July 2016 through December 2021

Fiscal year	Base salary, performance pay, & benefit payments	"Additional compensation" payments	Total compensation payments
2016/17	$ 257,934	$ 95,726	$ 353,660
2017/18	243,260	95,726	338,986
2018/19	275,234	524,612	799,846
2019/20	275,540	454,255	729,795
2020/21	306,843	433,152	739,995
Partial 2021/22[1]	202,718	109,505	312,223
Totals	**$1,561,529**	**$1,712,976**	**$3,274,505**

1 As described in footnote 1, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports.

DISTRICT OVERVIEW

The superintendent has held this position since 2013 and, as of this report date, remains in that capacity. Additionally, 4 of the 5 governing board members serving as of this report date held their position since at least April 2016 when the governing board approved the first of 3 employment agreements calling for the superintendent to be paid "additional compensation." During their tenure and as of fiscal year 2019:

- Like the prior 3 fiscal years, District students performed below their peer group and students State-wide on State assessments. Of the approximately 5,200 District students: 24 percent passed math, 28 percent passed English language arts, and 42 percent passed science assessments.
- Of the District's 7 schools, 4 had a D or F letter grade, resulting in the District working with the Arizona Department of Education to create an integrated action plan to improve student achievement.
- The District had a poverty rate of 16 percent, and about 66 percent of the students qualified for free/reduced price meals.
- The District's average teacher salary of $44,536 was about 15 percent below the State average.

1 This "additional compensation" relates to a "Retirement Credit" provision included in 3 of the superintendent's employment agreements from fiscal years 2017 through 2023 that called for the District to provide the superintendent with "additional compensation" net of "required withholdings" for the superintendent's purchase of retirement credits through the Arizona State Retirement System (ASRS). Additionally, 2 of these agreements called for the "additional compensation" to be factored in when determining the payments for the superintendent's unused leave. The superintendent represented to us that the superintendent was purchasing retirement credits with the ASRS for 11 years of employment at 5 different school districts in another state, and the purchase would be complete in November 2021. Consequently, our analysis covers the District's payments for the superintendent's "additional compensation" from July 2016 through December 2021. The 3 employment agreements are summarized in the Appendix.

See Performance Audit Report 22-202, April 2022, at www.azauditor.gov.

Over 5-1/2 years, District paid superintendent $1,712,976 “additional compensation” of $3,274,505 total compensation, which was about 100 percent more than State’s 3 largest districts spent, on average, on superintendent compensation and may have been a gift of public monies in violation of Arizona Constitution

Arizona Constitution, Art. IX, §7, commonly referred to as “Arizona’s gift clause,” requires that a governmental entity only use public monies for a public purpose and that the value to be received by the public is not to be far exceeded by the consideration being paid by the public.[1] The District may have unlawfully gifted public monies when, without documenting any public purpose, it paid “additional compensation” of $1,712,976 to or on behalf of its superintendent from July 2016 through December 2021. This “additional compensation” brought the superintendent’s total compensation for that time period to $3,274,505, which was about 100 percent more than what the State’s 3 largest districts spent, on average, on superintendent compensation.

District paid superintendent over $1.7 million of “additional compensation”

The District entered into 3 employment agreements (see Appendix on page a-1) with the superintendent in which it agreed to pay to and on behalf of the superintendent “additional compensation” related to retirement service credits and unused leave totaling $1,712,976 from July 2016 through December 2021, as follows and as shown in Table 2 on page 2:

- **$1,509,311 of superintendent’s “additional compensation” was related to purchase of retirement service credits—**The District paid to or on behalf of the superintendent a total of $1,509,311 “additional compensation” in excess of the superintendent’s base salary and benefits for the superintendent’s Arizona State Retirement System (ASRS) purchase of 11 years of retirement service credit at 5 different school districts in another state. These ASRS-related amounts ranged from $95,726 to $464,112 annually and included monies the District paid to the superintendent and to other entities on the superintendent’s behalf. Specifically, we estimated the District paid $885,634 directly to the ASRS for the superintendent’s retirement credits, $358,109 to the superintendent, and $265,568 to taxing agencies and the ASRS on the superintendent’s behalf. As described in Finding 3 on pages 8 and 9, some of these amounts were incorrectly paid.

- **$203,665 of superintendent’s “additional compensation” was related to payments for unused leave—**In 2 of the superintendent’s employment agreements, ASRS-related “additional compensation” amounts were included in the superintendent’s “per diem rate of pay” to be applied to calculations for unused leave

[1] See also *Wistuber v. Paradise Valley Unified School Dist*., 141 Ariz. 346, 687 P.2d 354 (1984), *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010), and *Schires v. Carlat*, 250 Ariz. 371, 480 P.3d 639 (2021).

Table 2
"Additional compensation" District paid to superintendent was related to retirement service credit and unused leave
July 2016 through December 2021

Fiscal year	Base salary, performance pay, & benefit payments	"Additional compensation" of ASRS-related payments	"Additional compensation" part of unused leave payments	Total compensation payments
2016/17	$ 257,934	$ 95,726	$ 0	$ 353,660
2017/18	243,260	95,726	0	338,986
2018/19	275,234	464,112	60,500	799,846
2019/20	275,540	404,417	49,838	729,795
2020/21	306,843	358,076	75,076	739,995
Partial 2021/22[1]	202,718	91,254	18,251	312,223
Totals	**$1,561,529**	**$1,509,311**	**$203,665**	**$3,274,505**

[1] As described in footnote 1 in the Report Highlights, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports.

payouts. Prior payments to the superintendent for unused leave were apparently paid like other school districts and the State of Arizona, using only the superintendent's base salary to calculate unused leave payouts.[2] However, starting with fiscal year 2019, the District's employment agreements with the superintendent had been changed to include a "per diem rate of pay" provision, which encompassed the superintendent's base salary plus 9 extra compensation elements, including the superintendent's "additional compensation." This contract modification resulted in the superintendent receiving substantially higher payouts for unused leave. Specifically, from December 2018 through December 2021, the District paid the superintendent $203,665 for unused vacation and personal leave that resulted from including this ASRS-related "additional compensation" in the superintendent's "per diem rate of pay." This amount was 55 percent of the total $372,755 the District paid the superintendent for unused leave during this time period.

"Additional compensation" approved by governing board without documented public purpose increased superintendent's July 2016 through December 2021 annual compensation far above prior compensation and peer superintendents' compensation

The superintendent's annual compensation averaged $172,813 for the superintendent's first 3 years in that position—fiscal years 2014 through 2016—but then increased substantially thereafter without any documented public purpose or change in responsibilities and well beyond that of peer district superintendents.' Specifically, the superintendent emailed the District's attorney in March 2016 with the subject line "contract," writing that the superintendent had talked with another Arizona school district superintendent "for language specific to purchasing out of state years through a contract with the ASRS. This is something that I would like to be sure is included in the contract. I tried my best to take his language and insert it properly but I am thinking it needs cleaned up."

Subsequently, the District included in the superintendent's 3 employment agreements from fiscal years 2017 through 2023, a "Retirement Credit" provision that resulted in "additional compensation" without documenting a public purpose. The District's attorney collaborated with the superintendent's attorney in drafting the first

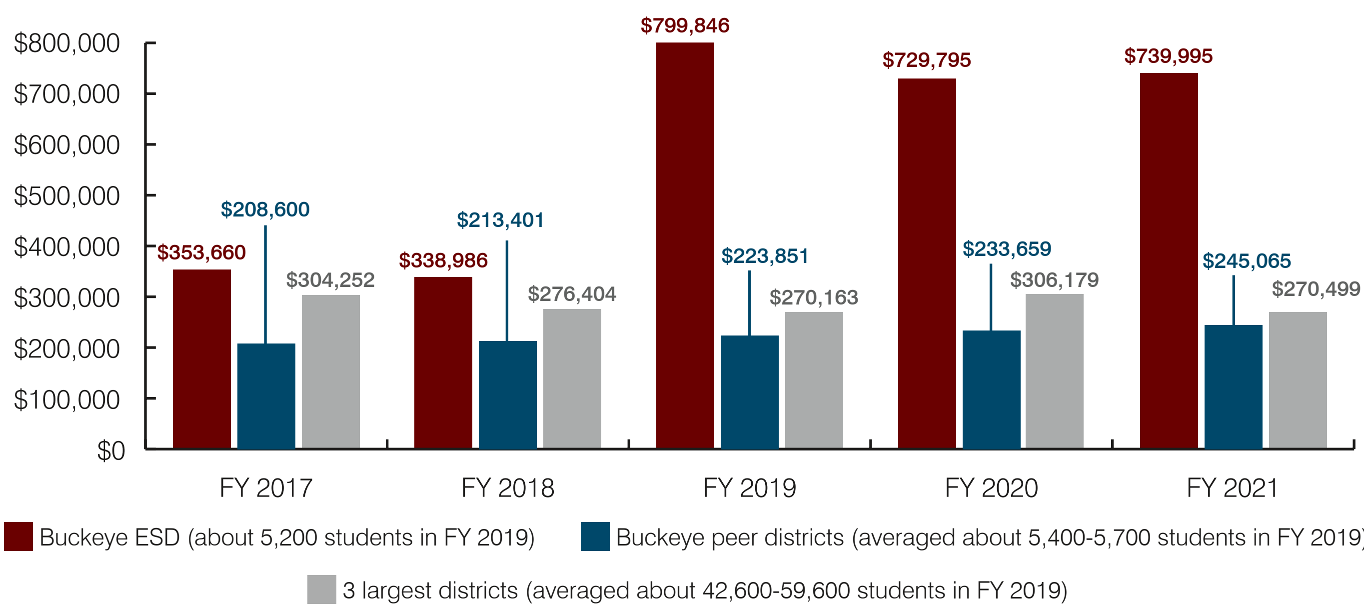
[2] For payments of unused vacation leave to nonseparating employees, the Arizona Department of Administration follows the Fair Labor Standards Act as a best practice and pays at the employee's base salary. Likewise, the 4 peer school districts referred to in this report also paid at the superintendents' base salary rates for unused leave of nonseparating superintendents in fiscal year 2019.

agreement prior to governing board approval, but we were unable to confirm further attorney involvement prior to the governing board's approval of the last 2 agreements.[3] As shown in Table 2 on page 2, this "additional compensation" exceeded all the superintendent's other compensation and benefits, including base salary, performance-based pay, and amounts the District paid for the superintendent's tax-deferred annuity, transportation and telephone allowances, professional memberships, "community involvement," and attendance at professional meetings and conferences.

Moreover, this "additional compensation" was evidently not for additional duties as the superintendent's job duties and responsibilities remained the same. Specifically, although employment agreements from fiscal years 2013 and 2014 were not available, the duties described in the superintendent's employment agreements from fiscal years 2015 through 2023 did not change. Likewise, during our interview with the superintendent, the superintendent did not claim this "additional compensation" was related to an increase in responsibilities. Rather, the superintendent said it was a negotiated contract term that the superintendent and the governing board thought would be a good way to meet desires on both ends.

Finally, the superintendent's annual compensation increased dramatically under these 3 employment agreements, ranging from a low of $338,986 to a high of $799,846, which not only far exceeded the superintendent's prior annual District compensation, but also the reported average annual compensation amounts of peer districts' superintendents and the superintendents of the State's 3 largest districts, which ranged from a low of $208,600 to a high of $306,179 (see Figure 1). For fiscal years 2017 through 2021, the District's superintendent's compensation was 163 percent higher (or about 2-½ times higher) than the reported average of peer districts' superintendents, and 108 percent higher (or more than 2 times higher) than superintendents of the State's 3 largest districts. The State's 3 largest districts averaged about 10 times the number of District students in fiscal year 2019.

Figure 1
District's superintendent's annual compensation was more than peer district superintendents' and 3 largest Arizona district superintendents' average annual compensation[1]
Fiscal years 2017 through 2021
(Unaudited)



[1] The 3 largest districts were Chandler USD, Mesa USD, and Tucson USD. Surveyed peer districts included Avondale ESD, Creighton ESD, Littleton ESD, and Madison ESD. One-time payments, such as for moving expenses and severance payments, were excluded.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent compensation survey information received from the districts. The districts' surveyed information included total compensation amounts paid to superintendents during each fiscal year, including salaries, performance pay, and benefits.

[3] Two of the 3 employment agreements lacked critical compensation information, as described in Finding 2 on page 5.

Recommendations

The District should:

1. Work with District legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board.
2. Evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure "that the value to be received by the public is not to be far exceeded by the consideration being paid by the public" as stipulated in the Arizona Constitution, Art. IX, §7.

District response: As outlined in its **response**, the District does not agree with the finding and recommendations but will implement a modification to recommendation 1 and will implement recommendation 2.

District was not transparent when it omitted superintendent's "additional compensation" amounts and other critical information that would have enabled the public to monitor the District and superintendent's performance in 2 of 3 employment agreements

In Arizona, "the core purpose of the public records law is to allow the public access to…government information so that the public may monitor the performance of government officials and their employees."[4] Further, State public records laws seek to increase public access to government information and to make government agencies accountable to the public.[5,6] However, the District was not transparent and did not enable the public to monitor District and superintendent's performance when it omitted critical information related to the "additional compensation" it would pay the superintendent in 2 of the superintendent's 3 employment agreements, such as the amount of the "additional compensation" to be paid to the superintendent and the amounts used for the superintendent's "per diem rate of pay" applied to calculations for unused vacation and personal leave payouts. Thus, former and current governing board members lacked critical information necessary to make informed decisions regarding the "additional compensation" to be paid to the superintendent, and public transparency and assurance that public monies were being used appropriately was limited.

District omitted critical information related to superintendent's "additional compensation" in 2 of 3 employment agreements

As discussed in Finding 1 (see pages 1 through 4), from July 2016 through December 2021, the District paid $1,712,976 of public monies to and on behalf of the superintendent for "additional compensation," but 2 of the superintendent's 3 employment agreements lacked critical

Figure 2

Two of superintendent's 3 employment agreements lacked critical information related to "additional compensation"

	Agreement #1	Agreement #2	Agreement #3
Dollar amount of "additional compensation"	✓	⊘	⊘
Limit of "additional compensation"	✓	⊘	⊘
Number of service purchase agreements or years	✓	⊘	⊘
Number of retirement service years authorized to purchase per agreement year	✓	⊘	⊘
Amounts used for "per diem rate of pay"	✓	⊘	⊘

Source: Auditor General staff analysis of District-provided superintendent employment agreements.

4 Arizona Attorney General Opinion I91-004 (January 4, 1991).

5 A.R.S. §§39-101 through 39-161.

6 Arizona Attorney General. (2018). Arizona Agency Handbook. Retrieved on January 18, 2022, from https://www.azag.gov/outreach/publications/agency-handbook.

information necessary for the governing board to have made informed decisions regarding the "additional compensation" to be paid to the superintendent (see Figure 2 on page 5). Specifically:

- The District specified the dollar amount of "additional compensation" to be paid to the superintendent only in 1 employment agreement. Specifically, the first employment agreement specified that the "additional compensation" was "not to exceed" $1,800 per pay period [$46,800 annually], net of "required withholdings."[7] Before the governing board approved this employment agreement, the superintendent emailed the District's attorney, including the former governing board president, writing "Sorry it's so complicated, I can assure you however, the district's cost will not exceed 1,800.00 per pay period for the three year contract. I would like to be sure the board is aware of the costs and provide as much documentation as possible but honor the wish to keep the actual amount out of the contract. I hope I have provided that information here."

- The last 2 of these 3 agreements did not include amounts, or even limits on amounts, of "additional compensation," the number of service purchase agreements for retirement service credits the District was compensating the superintendent for, and how many years of retirement service credit the superintendent was authorized to purchase for each fiscal year of the employment agreement.

- Finally, only the first of the 3 employment agreements disclosed information that would allow the governing board and the public to estimate per diem rates of pay used for determining amounts to be paid to the superintendent for unused vacation and personal leave. In fact, the District apparently acted consistently with the Arizona Department of Administration (ADOA) practices under Agreement #1 and used the superintendent's base salary to calculate a per diem rate of pay for the unused leave payout of $19,534 in fiscal year 2017. However, in Agreements #2 and #3, the per diem rate of pay was changed, and relevant amounts were not disclosed, thus limiting public transparency and the governing board's ability to make informed decisions regarding "additional compensation" for unused leave to be paid to the superintendent. Specifically, as previously mentioned in Finding 1 (see page 2), Agreements #2 and #3 defined the "per diem rate of pay" to be the superintendent's base salary, plus the following 9 extra compensation elements: the superintendent's ASRS-related compensation, FICA payments, performance-based pay, and amounts the District paid for the superintendent's tax-deferred annuity, transportation allowance, telephone allowance, professional memberships, "community involvement," and attendance at professional meetings and conferences. The largest amount used in this "per diem rate of pay" was the ASRS-related compensation; however, this amount was not disclosed.

As a result, from December 2018 through December 2021, the District paid the superintendent annual amounts ranging from $72,112 to $128,256 for unused leave (see Table 3). These amounts were not publicly disclosed or otherwise able to be estimated, thus limiting public transparency and assurance that public monies were being used appropriately. These amounts not only far exceeded the superintendent's fiscal year 2017 unused leave payout of $19,534 from the District, but also that of reported amounts of all other nonseparating superintendents at peer districts and even at the State's 3 largest school districts, which ranged from a low of $0 to a high of $18,904 during fiscal years 2019 through 2021.

Table 3
Superintendent's unused leave compensation amounts not disclosed in employment agreements December 2018 through December 2021

Fiscal year	Amounts not disclosed
2018/19	$ 91,650
2019/20	80,738
2020/21	128,256
Partial 2021/22[1]	72,112
Total	**$372,756**

1 As described in footnote 1 in the Report Highlights, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent employment agreements.

7 As shown in Figure 3 on page 8, the District miscalculated "required withholdings," and paid the superintendent an extra $37,478 in fiscal year 2017 and an extra $38,119 in fiscal year 2018, or a total of about 80 percent more than the specified "not to exceed" limit.

Although voting governing board members were aware they were agreeing for the District to pay for the superintendent’s purchase of retirement credits, none knew the District was paying for 11 years, and most did not know the costs of those credits

Although the voting governing board members expressed to us they were aware they were agreeing to pay the superintendent to purchase retirement credits, none of them expressed an understanding of how many service purchase agreements were included or that the District was paying for 11 years of retirement service credits in the superintendent’s 3 employment agreements. Similarly, only 1 governing board member indicated an understanding of the costs involved, stating she was not surprised by the superintendent’s annual compensation amounts ranging from about $340,000 to $800,000. Nonetheless, when we described to the governing board members the amount the District had been paying the superintendent in “additional compensation” payments, they all represented to us that the amounts were either fair or justified, and some said, “You get what you pay for,” or “…worth every penny…” One board member stated “…whatever we have to pay to keep [the superintendent], we pay,” although none of the superintendent’s 3 employment agreements required more than 3 years of employment. Still, in fiscal year 2019, 4 of the District’s 7 schools received a D or F letter grade, District students performed below their peer group on State assessments, and the District’s average teacher salary was about 15 percent below the State average.

Recommendation

The District should:

3. Ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately.

District response: As outlined in its **response**, the District does not agree with the finding and recommendation but will implement the recommendation.

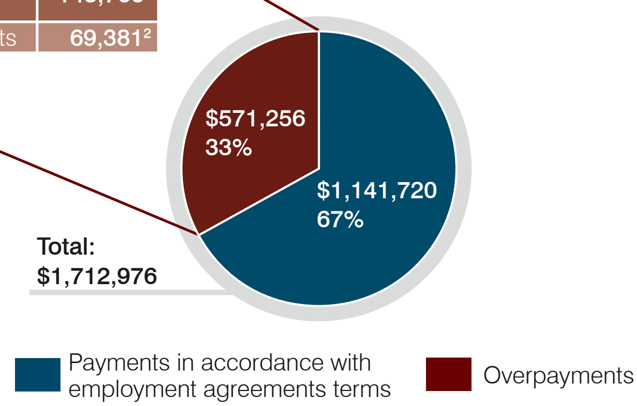
District miscalculated superintendent's "required withholdings," overpaying an estimated $571,256 "additional compensation," or 33 percent of total paid

From July 2016 through December 2021, the District miscalculated "required withholdings" for the superintendent's "additional compensation" when it failed to correctly apply pretax status and certain compensation limits for ASRS-related payments. As a result, of the $1,712,976 "additional compensation" the District paid to and on behalf of the superintendent, it overpaid an estimated $571,256, or 33 percent, of the total paid (see Figure 3). The estimated overpayments ranged from a low of $37,478 in fiscal year 2017 to a high of $217,578 in fiscal year 2019.[8]

Figure 3
District errors resulted in estimated overpayments of $571,256, or 33 percent, of total "additional compensation" paid to or on behalf of superintendent
July 2016 through December 2021

Fiscal year	Overpayment amount
2016/17	$ 37,478
2017/18	38,119
2018/19	217,578
2019/20	145,414
2020/21	101,729
Partial 2021/22[1]	30,938
Total	**$571,256**

Superintendent's net pay	$358,109
Taxes and retirement contributions	143,766
Unused leave payments	69,381[2]



[1] As described in footnote 1 in the Report Highlights, our analysis of the District's payments for the superintendent's "additional compensation" ended in December 2021, thereby covering the first half of fiscal year 2021/22.

[2] Unused leave payments are presented in total, including associated taxes and retirement contributions and net amounts paid to the superintendent.

Source: Auditor General staff analysis of District-provided payroll reports and superintendent employment agreements.

[8] Calculations of employee withholdings are based on total compensation. As a result, for some withholdings, we estimated the portion of the withholding attributable to the "additional compensation."

All 3 of the superintendent's employment agreements state, "The District shall pay additional compensation in an amount such that, after deductions of required state and federal taxes and any other required withholdings, the net (as opposed to the gross) additional compensation amount shall equal the requisite amount of the Superintendent's monthly payment to obtain the retirement credit…" In other words, the District agreed to pay the superintendent not only for purchases of retirement service credits with the ASRS, but also for required State and federal taxes and any other required withholdings on those purchases of retirement service credits.

All 5 of the superintendent's 2016 through 2018 ASRS service purchase agreements for the purchase of 11 years of retirement service credit for other public service at another state's school districts called for payments to be made through payroll deductions, which the District complied with. This payment practice is approved by the IRS as a pretax salary reduction that reduces the participating member's taxable income by the amount of the payroll deduction authorized under the agreement.

However, District calculations for the superintendent's "deductions of required state and federal taxes" associated with this ASRS-related "additional compensation," did not account for the superintendent's pretax status of ASRS service credit payments or retirement contributions. Accordingly, because the superintendent's ASRS service credit payments and retirement contributions did not increase the superintendent's federal and State income tax liabilities, no deductions were required, and the District should not have paid these taxes. Likewise, when calculating amounts for "deductions for . . . any other required withholdings," the District did not always correctly account for certain compensation caps and thresholds, which limited the amount the superintendent must contribute to fund ASRS pension benefits and social security and Medicare (aka FICA) taxes.

As a result, after deducting ASRS service credit payments and "required withholdings," the District paid an estimated $501,875 not required by the employment agreement terms. As shown in Figure 3 on page 8, of this overpayment amount, we estimated that $358,109 was incorrectly paid directly to the superintendent and $143,766 was incorrectly paid on behalf of the superintendent for federal and State taxes, FICA taxes, and ASRS contributions. Additionally, because the District included the $501,875 described above when calculating the superintendent's "per diem rate of pay" for unused leave payouts from December 2018 through December 2021, the District paid the superintendent an additional estimated $69,381 not required by employment agreement terms (see Figure 3).

After we informed the District of this "required withholdings" calculation issue, it contracted with an accounting firm to recalculate some of the superintendent's "additional compensation," and that firm's calculations were consistent with our analysis. Because the District did not contract with the firm to review the entire 5-1/2 years that "additional compensation" was paid to the superintendent or to address factors other than pretax status of ASRS contributions such as certain compensation caps or payments for unused leave that we addressed, the firm's amount differed from ours. Specifically, in September 2021, the firm found that because of the District's failure to correctly account for the pretax status of ASRS service credit payments and contributions over a 4.7 year period, the District paid the superintendent $388,917 more than the superintendent's employment agreements required.

Recommendations

The District should:

4. Work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements.

5. Work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District.

District response: As outlined in its **response**, the District does not agree with the finding and recommendations but will implement modifications to the recommendations.

Auditor General makes 5 recommendations to the District

The District should:

1. Work with District legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board (see Finding 1, pages 1 through 4, for more information).

2. Evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure "that the value to be received by the public is not to be far exceeded by the consideration being paid by the public" as stipulated in the Arizona Constitution, Art. IX, §7 (see Finding 1, pages 1 through 4, for more information).

3. Ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately (see Finding 2, pages 5 through 7, for more information).

4. Work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements (see Finding 3, pages 8 through 9, for more information).

5. Work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District (see Finding 3, pages 8 through 9, for more information).

Summary of "additional compensation" provisions in superintendent's fiscal years 2017 through 2023 employment agreements

Each of the superintendent's employment agreements described below technically covered 3 fiscal years, but Agreements #1 and #2 effectively covered only 2 fiscal years because the last year of each of those agreements was void when the District entered into the subsequent employment agreement with the superintendent, which included the prior agreement's final year. In November 2021, when Agreement #3 was effective, the District made the final payment for the superintendent's purchase of 11 years of retirement service credit with the ASRS. Our analysis went through December 2021, covering the first fiscal year and next 6 months of Agreement #3, which remains in effect as of this report date.

Fiscal years 2017–2019 employment agreement (Agreement #1)—Agreement #1 had a base salary of $165,000 and called for the District to provide the superintendent with "additional compensation" to allow the superintendent to purchase 1 year of retirement service credit for each fiscal year of the agreement (3 years) and specified the compensation was limited to $1,800 per pay period [$46,800 annually], net of required withholdings.

The agreement also allowed for the superintendent to be paid at the superintendent's current per diem rate for up to 30 unused vacation days. Although the per diem rate was not defined in the employment agreement, the District apparently acted consistently with the Arizona Department of Administration practices and used the superintendent's base salary to calculate the unused vacation leave payout.

Fiscal years 2019–2021 employment agreement (Agreement #2)—Agreement #2 had a base salary of $175,000 and did not specify or limit compensation amounts for the superintendent's retirement service credit purchases to 1 year for each year of employment and did not describe or place a limit on the compensation dollar amount. Instead, the agreement called for the District to provide the superintendent with an unstated amount of "additional compensation" to complete the purchase of remaining retirement credit on the "2016-2019 purchase service agreement." The District also agreed to provide the superintendent with "additional compensation" for "purchase service agreements beginning 2018-2021," but no dollar amount, number of agreements, or time limit was stated. This "additional compensation" was to be net of required withholdings, and the District agreed to pay the superintendent's share of FICA (social security and Medicare taxes) payments.

This agreement also allowed the superintendent to be paid at the superintendent's current per diem rate for up to 30 unused vacation days, but this time, the per diem rate was defined in the employment agreement. Specifically, in addition to the superintendent's base salary, the District included the following 9 extra compensation elements: the superintendent's ASRS-related compensation, FICA payments, performance-based pay, and amounts the District paid for the superintendent's tax deferred annuity, transportation allowance, telephone allowance, professional memberships, "community involvement," and attendance at professional meetings and conferences.

Fiscal years 2021–2023 employment agreement (Agreement #3)—Agreement #3 had a base salary of $189,000 and again did not specify or limit compensation amounts for the superintendent's retirement service credit purchases to 1 year for each year of employment and did not describe or place a limit on the compensation dollar amount. Instead, the agreement called for the District to provide the superintendent with an unstated amount of "additional compensation" to complete the purchase of remaining retirement credit on "the" purchase service agreement. The District also agreed to provide the superintendent with "additional compensation" to complete the purchase of remaining retirement credit for "a purchase service agreement ending in 2021-22." This "additional compensation" was to be net of required withholdings, and the District agreed to pay the superintendent's share of FICA payments "on both of the service purchase agreements." Although the superintendent's employment agreement reads as if there were only 2 service purchase agreements, the District was paying for 4 service purchase agreements.

This agreement also defined the per diem rate to be the superintendent's base salary plus the 9 other extra compensation elements described earlier, but also added that the superintendent could be paid for up to 50 days of both unused vacation days and unused personal leave days.

AUDITOR GENERAL'S COMMENTS ON DISTRICT RESPONSE

We appreciate the District's response and the Governing Board (Board) president's letter, including the District's agreement to implement either all the recommendations or a modification of them. However, these 2 documents include certain inaccurate or misleading statements that necessitate the following comments and clarifications:

1. The Board president's "Response to Finding Number 1" asserts on page 2 of her letter that the Auditor General's office "believes that the value paid [to the superintendent] exceeded benefits received and therefore there has been a gift of funds."

   We disagree with the Board president's assertion that we "believe" or, in other words, made a legal determination, that "there has been a gift of funds." Rather, our report includes factual District superintendent compensation amounts compared to other Arizona school districts' reported superintendents' compensation amounts. These facts show the District paid its superintendent about 100 percent more than the superintendents at the State's 3 largest districts. We did not assert there had been a gift of public monies but recommended the District work with its legal counsel and the Arizona Attorney General's Office to determine whether a gift of public monies was made, and if so, what needs to be done to resolve the issue.

2. The Board president's "Response to Finding 1" also asserts on page 2 of her letter that "Board members indicated that the payment for the retirement credit was initiated in an exchange for the Superintendent's promise to remain with the District."

   The District did not provide us with any documentation to support that its $1,712,976 payment of "additional compensation" for the superintendent was in exchange for a "promise." Neither did the District provide us with documentation to show the public's value of this "promise" in relation to the $1,712,976 paid with public monies.

3. The Board president's "Response to Finding Number 2" on page 3 of her letter asserts the "Auditor General's finding that failing to include the amount paid for the retirement credit within the body of the employment contract violated Arizona's Public Records Law is unsupported by the requirements of those statutes."

   We disagree with the Board president's assertion that we made a legal determination the Arizona Public Records Law was "violated." Rather, our report states the District was not transparent and did not enable the public to monitor the District and superintendent's performance when it omitted critical information related to the superintendent's "additional compensation" amounts in 2 of the 3 employment agreements. Specifically, we identified the District only included an "additional compensation" amount in the first employment agreement of $1,800 per pay period (or $93,600 for the 2 years that agreement was in effect). Despite including these amounts in the first employment agreement and for an unknown reason, the District did not follow the same transparent approach with the Superintendent's subsequent 2 employment agreements, which included a significantly greater amount in "additional compensation." As a result, the District omitted from the second and third employment agreements $1,619,376 of the superintendent's $1,712,976 "additional compensation" amounts over 5-1/2 years.

4. The District asserts on page 2 of its response that "The Governing Board agreed to pay the superintendent a retirement credit and agreed that the amount to be paid would be sufficient to cover all tax liability associated. . . . The Arizona State Retirement System expressly authorizes the use of post-tax pay to purchase retirement credit."

   The District's assertion that the superintendent's retirement credits were purchased using post-tax pay is wrong. Although the Arizona State Retirement System (ASRS) authorizes the use of post-tax pay to purchase retirement credits, as described on page 9 in our report, the superintendent did not elect to use this method for the superintendent's 5 service purchase agreements with ASRS. Rather, per the superintendent's election, the District deducted and sent to the ASRS the superintendent's retirement credit payments through pre-tax deductions. This is an important distinction because the District failed to correctly apply pre-tax status when it calculated the "additional compensation," which led to overpayments to and on behalf of the superintendent. As a result of this and other errors, the District overpaid an estimated $571,256 beyond what the Board agreed to pay.

DISTRICT RESPONSE

April 5, 2022

Via E-mail and U.S. Mail

Lindsay A. Perry, CPA CFE
Auditor General
2910 N. 44th Street
Phoenix, AZ 85018

Re: Buckeye Elementary School District No. 33 Response to Report No. 22-202

Dear Ms. Perry:

The purpose of this letter is to provide a written response to the second report issued as part of the Auditor General's performance audit of Buckeye Elementary School District No. 33 (District).

I. Response to Finding Number 1

The Governing Board of the District has authority under state law to employ a superintendent for up to three years. A.R.S. § 15-503(A). The Board has specific statutory authority to set salary and benefits for the ensuing year. A.R.S. § 15-502(A). Pursuant to this express statutory authority, the District entered into a series of employment agreements with Superintendent Kristi Wilson, who was hired as the superintendent in 2013.

Beginning in April 2016, Dr. Wilson asked and the Board agreed to add a benefit of employment to allow her to purchase back retirement credit from other states.[1] The Board has specific statutory authority to approve this as a benefit of employment for its chief executive officer. Id. The Governing Board members knowingly agreed to this provision of the Superintendent's contract and all three agreements were approved by the Board at public

[1] Page 1 of the second report states the District paid monies directly to ASRS for the superintendent's retirement credit. In fact, the superintendent is the only one authorized to pay funds to buy back prior years of service; the District forwarded funds to ASRS on the superintendent's behalf and using the superintendent's compensation.

meetings.[2] The Superintendent completed payments for the retirement credits in November 2021.

The Governing Board does not accept that finding of the Auditor General's office that its authorized payments to the Superintendent pursuant to the contracts negotiated between the parties constitute a gift of public funds in violation of Article 9, Section 7 of the Arizona Constitution. A school district's payments to its superintendent have an express public purpose as that individual is responsible for the efficient administration of all matters related to the education of the District's 5878 students and 727 staff members.

The Auditor General's office believes that the value paid exceeded benefits received and therefore there has been a gift of funds. It is the elected Governing Board that is tasked with evaluating whether the benefits the District received are proportional to the costs. The report points to the District's letter grades for its schools, which have not been updated since 2019. The District's letter grades are influenced by many factors outside the Superintendent's control. Additional, isolating on this criterion ignores many of the other indicators of benefits received under the Superintendent's leadership. The District has gained 1061 students (FY2013 to FY2022). The District operates in a fiscally responsible manner and is scheduled to carry over $4,900,000 in excess of funds expended into fiscal year 2022-2023. During the Superintendent's tenure, the District has opened 2 new schools, added 8 new classrooms to a school, established a foundation and 1 new preschool and a Family Resource Center. In at least one academic year, the Superintendent also performed the duties of an Assistant Superintendent who left mid-year.

As noted in the second report, all of the Governing Board members interviewed indicated that the District received sufficient value for services rendered. Board members indicated that the payment for the retirement credit was initiated in an exchange for the Superintendent's promise to remain with the District. Buckeye Elementary is one of the fastest growing school districts in the state, located in a city that is one of the fastest growing in the nation. The Board placed value on retaining continuity of leadership during its continued accelerated growth period. Dr. Wilson's credentials are of the highest order and have been recognized at the state and national level. Most recently, she has been elected as the national

[2] The Governing Board also expressly authorized that the Superintendent would be paid for up to fifty (50) unused leave days at her per diem rate. The contract document defined the Superintendent's per diem rate to include in the calculation the costs associated with payment of the retirement credit. The District asserts this is also a bargained for exchange between the parties and was expressly authorized. The District has revised the definition of the superintendent's "per diem" rate in her employment contract to begin on July 1, 2022.

25555 WEST DURANGO STREET
BUCKEYE, AZ 85326
(623) 925-3400
BESD33.ORG

president of the association of administrators in which she leads 14,000 superintendents nationwide.

In December 2021, the Auditor General's office published its financial risk analysis of Arizona school districts, identifying six Arizona schools that are at financial risk of not being able to operate within available cash resources and budget constraints. Buckeye Elementary was not on that list. Under the Auditor General's analysis of value provided as per the second report, theoretically those school districts have not received value for the services provided by their chief administrative officers and should not be paying them salaries.

The Auditor General has specifically found that the District spent a similar amount per pupil in total on administration when compared to its peer districts' average (the District spent $1,030 per pupil; peer districts spent $1,047 per pupil). See Performance Audit Report 21-208 issued December 21, 2021 (page 1). In a report published earlier this week, the Auditor General's office confirmed that the Districts' administrative spending is "comparable" to peer districts and specifically noted. "Every year, school districts must decide where to allocate their resources." See School District Spending Analysis – Fiscal Year 2021 issue March 1, 2022. The fact that the District poured more of the administrative costs into its chief executive officer than into other areas of administration is within the Governing Board's discretion with respect to its fiscal management of the District. The District's overall administrative spending is within targets monitored by the Auditor General's office. It is difficult to understand the Auditor General's second guessing of the Board's allocation of resources when the resources have been spent in line with peer districts with respect to administrative costs.

II. Response to Finding Number 2

The Auditor General's finding that failing to include the amount paid for the retirement credit within the body of the employment contract violated Arizona's Public Records Law is unsupported by the requirements of those statutes. The District is obligated to allow the public to view District records during business hours. A.R.S. § 39-121; the laws do not require that all amounts paid via an employment contract be delineated numerically within the body of the contract. For instance, teacher's employment contracts contain benefits and supplemental pays that are not delineated numerically such as awards of classroom site funds and health insurance benefits. The District's payroll records, including all amounts paid to the Superintendent, are open for inspection and available to the public. The Superintendent's compensation was available for disclosure upon request by any party; this meets the requirements of Arizona's Public Records Laws.

25555 WEST DURANGO STREET
BUCKEYE, AZ 85326

(623) 925-3400
BESD33.ORG

While the District does not believe that it violated any sunshine laws with respect to the superintendent's contracts issued in 2018 and 2020, it has adopted the recommendations of the Auditor General's office with respect to the current form of the superintendent's employment contract.

III. Response to Finding Number 3

The contract provisions in the Superintendent's contract authorized a supplemental pay to provide the Superintendent with funds for her to purchase retirement credit from another state. The contracts specify that the payments would include all costs associated with tax withholdings so that the Superintendent would receive the net amounted needed for the purchases. The funds were paid to allow the Superintendent to buy service credit, not to directly add to her retirement accounts through any available pre-tax mechanism.

The Arizona State Retirement System (ASRS) expressly authorizes a public employee to use post-tax dollars to purchase retirement credit. ASRS notes payment options to include with an after tax payment: https://www.azasrs.gov/content/service-purchase.

The District treated the retirement credit payments as supplemental pay. Treasury Regulations Section 21.3402(g)-1 defines supplemental wages as all wages paid by an employer that are not regular wages. Examples of supplemental wages are tips, bonuses, back pay, commissions, etc. Under federal tax law, employers must withhold for supplemental pays as directed in I.R.S. Circular E.

The District is willing to work with tax advisors and its auditors to review how the retirement credits were purchased and if any remediation is required.

IV. Conclusion

For the foregoing reasons, the District respectfully requests that the Auditor General's second report reflect the District's position taken herein.

Sincerely,
Jane Hunt
Jane Hunt
Governing Board President

Finding 1: Over 5-1/2 years, District paid superintendent $1,712,976 “additional compensation” of $3,274,505 total compensation, which was about 100 percent more than State’s 3 largest districts spent, on average, on superintendent compensation and may have been a gift of public monies in violation of Arizona Constitution

District Response: The District does not agree with the finding.
The Governing Board did not gift public monies in approving a contractual benefit of employment for the superintendent. This is especially true given that the District’s administrative expenses are lower than peer districts. See Performance Audit Report 21-208 issued December 21, 2021 (page 1). A.R.S §§ 15-502(A) and 15-503(A) provide direct statutory authority for the Governing Board to hire a superintendent and to fix the salaries and benefits as necessary for the ensuing school year. The Board acted within its statutory authority and discretion to allocate administrative expenses to its chief operating officer.

Recommendation 1: The District should work with District legal counsel and the Arizona Attorney General’s Office to determine whether a gift of public monies was made and, if so, what needs to be done to resolve the issue, including determining whether the governing board was legally authorized to pay these monies and whether these monies should be recovered from the governing board.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.

Recommendation 2: The District should evaluate its superintendent compensation amounts before entering into an employment agreement, document the public purpose, and ensure “that the value to be received by the public is not to be far exceeded by the consideration being paid by the public” as stipulated in the Arizona Constitution, Art. IX, §7.

District Response: The District does not agree with the recommendation but will implement the recommendation.

Finding 2: District was not transparent when it omitted superintendent’s “additional compensation” amounts and other critical information that would have enabled the public to monitor the District and superintendent’s performance in 2 of 3 employment agreements

District Response: The District does not agree with the finding.
The District was transparent with respect to monies paid as remuneration to the superintendent at all times in compliance with A.R.S. § 39-121 et. seq. Arizona’s public records law require that the public have access to payroll records; it does not require that each component of an employee’s total compensation be itemized in an employment contract. Employment contracts issued by school districts uniformly list approved benefits without specified dollar figures attached (e.g, classroom site funds, performance based pay, health insurance etc).

Recommendation 3: The District should ensure that its superintendent employment agreements clearly document all compensation amounts and critical information necessary to make informed decisions about its superintendent compensation to allow for public transparency, assurance that governing board members know what they are agreeing to, and that public resources are being used appropriately.

District Response: The District does not agree with the recommendation but will implement the recommendation.

Finding 3: District miscalculated superintendent's "required withholdings," overpaying an estimated $571,256 "additional compensation," or 33 percent of total paid

District Response: The District does not agree with the finding.
The Governing Board agreed to pay the superintendent a retirement credit and agreed that the amount to be paid would be sufficient to cover all tax liability associated. The District issued payments as supplemental pay and correctly applied withholdings as required by the federal tax law. The Arizona State Retirement System expressly authorizes the use of post-tax pay to purchase retirement credit.

Recommendation 4: The District should work with District legal counsel to immediately recover all overpayments that were paid to the superintendent beyond what was authorized by the superintendent's employment agreements.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.

Recommendation 5: The District should work with the Internal Revenue Service, the Social Security Administration, the Arizona Department of Revenue, and the ASRS to determine if any overpayments could be refunded to the District.

District Response: The District does not agree with the recommendation but will implement a modification to the recommendation.

ARIZONA
Auditor General
Making a Positive Difference