



# BUCKEYE

ELEMENTARY SCHOOL DISTRICT #33  
A community passionate about student success

April 5, 2022

Via E-mail and U.S. Mail

Lindsay A. Perry, CPA CFE  
Auditor General  
2910 N. 44<sup>th</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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.



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meetings.<sup>2</sup> 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. Additionally, 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

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<sup>2</sup> 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.





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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.



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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 amount 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  
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.