

Joint Legislative Audit Committee
February 12, 2024—9:00 a.m.



Lindsey A. Perry
Auditor General



ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

JOINT LEGISLATIVE AUDIT COMMITTEE

Date: Monday, February 12, 2024

Time: 9:00 A.M.

Place: HHR 1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024021017>

AGENDA

Call to order—opening remarks

1. Auditor General's Office (Office) fiscal year 2023 annual report
2. Office updates regarding JLAC-directed school district performance audit follow-up reports
3. Buckeye Elementary School District Performance Audit, April 2022 report and 18-month follow-up report
 - Presentation by Office
 - Presentation by Buckeye Elementary School District
4. Office presentation regarding the school district financial risk process and results, December 2023 analysis report
5. Board of Chiropractic Examiners Performance Audit and Sunset Review, July 2010 report and 18-month follow-up report, and Sunset Self-Review Summary Report, October 2021
 - Presentation by Office
 - Presentation by Board of Chiropractic Examiners

Adjournment

Members:

Senator Sonny Borrelli, Chair, 2023
Senator David C. Farnsworth
Senator Anthony Kern
Senator Juan Mendez
Senator Catherine Miranda
Senator Warren Petersen, Ex-officio

Representative Matt Gress, Chair, 2024
Representative Michael Carbone
Representative Timothy M Dunn
Representative Alma Hernandez
Representative Marcelino Quiñonez
Representative Ben Toma, Ex-officio

04/31/2024
02/05/2024
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LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

DATE: February 9, 2024

TO: Representative Matt Gress, Chair
Senator Sonny Borrelli, Vice Chair
Members, Joint Legislative Audit Committee (JLAC)

FROM: Lindsey Perry, Auditor General

SUBJECT: Auditor General's Office (Office) fiscal year 2023 annual report

Background

As a legislative agency, we are appropriately positioned to fulfill our many mandates, the most important of which is to provide independent, impartial, accurate, and timely information to the Legislature. Our audits, reviews, and investigations of State agencies, universities, counties, community college districts, school districts, and other government entities help:

- Hold these entities accountable for the funding they receive.
- Determine how effectively and efficiently they perform and serve Arizona citizens.
- Deter and detect fraud, waste, and abuse.
- Investigate allegations that public officials/employees potentially committed criminal violations.
- Assure compliance with State and federal laws and regulations.
- Provide recommendations to improve performance and compliance with laws and regulations.

Through our work, we also provide timely and useful information to various government officials for decision-making purposes; help to ensure that federal monies continue to flow to critical State and local programs; and inform the public about how taxpayer monies are used. Our reports contain recommendations designed to improve State and local government operations. Not only do we provide recommendations, but we also follow up with the audited entities to assess their efforts to implement the recommendations and, consistent with the intent of our recommendations, often find their implementation improves performance, ensures compliance with laws and regulations, and yields cost savings.

For a summary of the Office's fiscal year 2023 results, see **Attachment A**. We issue this report each year to highlight the audits, reviews, investigations, and followups we conducted throughout the fiscal year. The annual report also highlights other ways the Office provides value by lowering costs, uncovering fraud, helping government work better, and providing high-impact training.

Finally, for a summary of the Office's 2023 financial investigations, see **Attachment B**. We issue this report each year to highlight our investigations, and in 2023, we issued 4 financial investigations that led to prosecuting agencies obtaining 34 criminal charges against 5 individuals for potential losses totaling \$1,833,925. These charges related to theft, misuse of

public monies, fraudulent schemes, forgery, conspiracy, and computer tampering. Four individuals charged as a result of these or previous financial investigations pleaded guilty in 2023 to theft, misuse of public monies, and fraudulent schemes. These individuals were sentenced for a combined total of 5.5 years of probation, 125 hours of community service, and \$3,948 in fines and restitution.

Action required

None. Presented for JLAC's information only.

Attachment A

Annual Report

We make a positive difference

We help government work better by analyzing governmental operations and recommending improvements. In fiscal year 2023, we issued 185 audits, reviews, investigations, alerts, and followups with 661 recommendations.

Performance audits and sunset reviews

14 reports | 174 recommendations

These audits and reviews assess how governmental entities such as State agencies and school districts are performing—that is, how well they are fulfilling statutory mandates and serving Arizona. Sunset reviews help the Legislature decide whether to continue or terminate (“sunset”) an agency. We include recommendations to guide entities so they can better serve the public.

Followups

69 followups

After issuing performance audits and sunset reviews, we follow up with governmental entities at regular intervals to assess the status of our recommendations and issue follow-up reports showing implementation progress. We conduct regular followups within the first 2 years of report issuance and, in some instances, may follow up for several years.

Agency/school district recommendations implemented: 85%

Financial investigations and alerts

11 reports | 19 recommendations

Financial investigations occur when we receive allegations that public officials or government employees have potentially committed criminal violations, such as theft, fraud, misuse of public monies, and conflict of interest. We review these allegations, and if we uncover potential criminal violations, we submit our findings to prosecutors for independent reviews. After the prosecutor files a criminal indictment or complaint, we issue public reports with this information. We also help protect public monies by issuing timely fraud prevention alerts designed to help government deter and detect fraud.

Financial and federal compliance audits

42 reports | 462 recommendations

These annual audits help ensure State agencies, universities, community college districts, and counties properly spend, account for, and report public monies that totaled more than \$76.9 and \$68.9 billion in revenues and expenses in fiscal year 2023, respectively. Federal compliance audits also help ensure federal monies are being used in accordance with federal requirements, including federal monies allocated to the State for COVID-19 response and relief efforts.

Accountability reviews

43 reports | 2 recommendations

These reviews, such as school district compliance reviews and county and community college district expenditure limitation reports, help ensure public monies are protected and accounted for and that government entities follow certain State laws and regulations.

Special audits/reviews

6 reports | 4 recommendations

We conduct these reviews when required by law, or when the Joint Legislative Audit Committee directs us to perform them.

We add value by...

Lowering costs

Our review of the [Arizona Industrial Development Authority](#) (AIDA), which serves as a conduit issuer of bonds to finance various statutorily authorized projects, found AIDA’s fiscal year 2021 operational costs were at least 70 percent higher than other similar entities we reviewed. Because revenues generated by AIDA net of expenses are required to be transferred to the State annually, we recommended it conduct an analysis of its expenses to identify potential cost savings and therefore, remit more public monies to the State.

Our review of the [Arizona Healthcare Cost Containment System](#) (AHCCCS) found that it took more than 1 year to start investigating more than half of potential member and provider fraud or abuse incidents that were open as

of May 2022. By not investigating and resolving potential fraud or abuse incidents in a timely manner, AHCCCS potentially continues to pay thousands of dollars each year to provide healthcare coverage for a member who may have fraudulently obtained coverage or a provider seeking reimbursement for unnecessary medical services. Further, AHCCCS reported that in fiscal year 2022, its fraud investigations either recovered or saved approximately \$48.1 million in State and federal monies. We recommended that AHCCCS develop a process and time frames for prioritizing and completing member and provider fraud or abuse investigations.

Uncovering fraud

Through our financial investigations work, we investigated and reported on an [Arizona Department of Education](#) employee who deposited more than \$1.7 million in his secret checking account instead of a department checking account and altered department records to conceal his actions, resulting in 6 felony counts, including 5 for computer tampering and 1 for fraud schemes. We also identified losses of \$43,135 leading to 31 felony counts—9 forgery, 6 fraud schemes, 6 theft, 5 misuse of public monies, 3 computer tampering, and 2 conspiracy felony counts. This included our investigation of 2 former budget accounting specialists at [Wilson Elementary School District](#) who separately embezzled \$27,582 and \$5,000 when they issued themselves unauthorized district checks with forged signatures. The first was indicted on 6 felony counts, and the second was indicted on 5 felony counts.

Helping government work better

Our December 2022 [School District Financial Risk Analysis](#) found 3 Arizona school districts were at higher financial risk of not being able to operate within their available cash resources and budget constraints as compared to other Arizona school districts. This represents an improvement from our 2021 analysis that identified 6 districts at higher financial risk. We communicated with all high-risk districts to help school district decision makers recognize their financial risks and encouraged them to plan for and take necessary actions to improve their financial position. Similar to nearly all Arizona school districts, the previously high-risk districts reported using COVID-19 federal relief monies to maintain operations through June 2022, contributing to improved financial positions. In total, State-wide district operating budget limit reserves, capital budget limit reserves, and General Fund balances continued to increase in fiscal year 2022, increasing 38.4 percent, 82.1 percent, and 32 percent, respectively, since fiscal year 2020.

As part of our annual financial audits of counties, community college districts, the 3 universities, and various State agencies in fiscal year 2023, we identified and reported on information technology (IT) vulnerabilities at many of these entities, including weaknesses in processes for protecting sensitive information, a lack of strong IT security controls, inappropriate and potentially unnecessary access to IT systems, and inadequate authentication requirements for IT systems to help ensure only authorized access to IT systems and data. We made a total of 173 recommendations to address the identified deficiencies and decrease the risk of inappropriate access to and use of IT systems and sensitive data. Specifically, the implementation of our recommendations will help ensure that counties, community college districts, and State agencies take necessary steps to reduce the risk of their IT systems and data being exposed to harm and help prevent and/or detect unauthorized or inappropriate access and the loss of confidentiality or integrity of these systems and data.

Holding State agencies and school districts accountable

Our review of [Hyder Elementary School District](#) found almost all district buses failed 2020 and 2021 Arizona Department of Public Safety (DPS) inspections with major violations, requiring buses to be removed from service until the defects were repaired. Although school bus drivers should conduct pretrip operational checks, the district could not provide these checks for all school buses, the checklist used by drivers was incomplete, and the drivers did not identify any of the major violations DPS found even though nearly all of them were items required to be inspected during pretrip checks. Additionally, the district did not comply with school bus driver annual and random drug testing requirements. These failures increased safety risks to the students transported on the district's school buses and may increase the district's liability if an incident compromising student safety occurred. To address these deficiencies and better protect students, we made 5 recommendations for improving the district's bus operations, including that its school bus drivers should conduct required pre-trip school bus operations checks to identify potential safety issues before transporting students. We will continue to follow up on the district's progress in implementing these critical recommendations.

Additionally, the Joint Legislative Audit Committee typically directs our Office to conduct sunset reviews of health regulatory boards. These reviews help ensure that these boards are protecting the public by fulfilling their statutory

mandates and regulatory responsibilities. For example, our review of the [Arizona State Board of Dental Examiners](#) found that the board may not have taken enforcement action consistent with the nature and severity of some complaints’ substantiated violations and did not resolve most of the complaints we reviewed in a timely manner, potentially affecting public health and safety. For example, in response to a complaint alleging that a patient’s death resulted from a licensee’s negligence, the board entered into a consent agreement that cited multiple statutory and rule violations but required the licensee to take a total of 40 hours of continuing education and voluntarily surrender his anesthesia and sedation permit. We made 32 recommendations to this board to address these and other findings. Our initial followup determined that the board is in the process of implementing most of our recommendations, and we will continue to follow up with the board on its efforts to implement all of our recommendations.

Informing stakeholders







We completed our [annual analysis of school district spending](#) that looks at State- and district-level spending. Although dollars spent on instruction and total per student spending increased from the prior year, the State-wide instructional spending percentage decreased by 0.8 percent because districts allocated a smaller proportion of the increased operational spending to instruction than in prior years. The State average teacher salary increased to \$58,366, and districts used COVID-19 federal relief monies to help fund a portion of the increase.

We continued to compile and issue reports on COVID-19 federal relief spending. First, we issued a [web-based report](#) that, in part, summarized school districts’ and charter schools’ \$2.2 billion spent through fiscal year 2022, and districts’ and charter schools’ planned future uses for their remaining \$2.4 billion. Our report included findings and recommendations related to district and charter school planned future spending, noncompliance with statutory reporting requirements, and district- and charter-reported information that appeared inconsistent and potentially misreported.

Our [Special COVID-19 Funding Report](#) provides information on the State’s allocation of \$77.8 billion in federal COVID 19 federal relief monies it received and spent from March 2020 through September 2022. Specifically, the State allocated \$32.1 billion and has spent \$30 billion of this amount to provide financial assistance to individuals and families, education, public health response and services, public safety, transportation, and aid to Arizona communities. The State distributed the remaining \$45.7 billion directly to individuals, businesses, local governments, and others.

We provide high-impact training and presentations

Our staff provide presentations to legislators and other government officials; and provide trainings, webinars, technical assistance, and other outreach to help improve governmental services.

Key presentation and training topics			Presentation and training statistics		
					
Audit findings and recommendations	Accounting controls and practices	School district accounting practices	91 presentations and briefings	22 trainings	3,300 attendees

National awards and recognition

We continue to earn accolades for our quality, relevance, and professionalism, including a sought-after [2023 National State Auditors Association Excellence in Accountability Award](#) for our [30-month followup](#) of our performance audit and sunset review of the Arizona Department of Health Services related to the department’s investigation of long-term care facility complaints. This followup found none of our recommendations to improve long-term care facility (i.e., nursing home) complaint investigations had been implemented, and we identified additional significant prioritization and investigation failures that continued to put residents’ health, safety, and welfare at risk. State audit offices throughout the United States submitted 35 audit projects for this award.

Attachment B

Financial Investigations Highlights

In 2023, we received 74 fraud-related allegations concerning school districts, counties, State agencies, universities, community college districts, and special taxing districts. We evaluated all allegations to determine sufficiency of evidentiary documentation and whether the issue would best be resolved through a financial investigation or further review by independent auditors or separate regulatory agencies.

Financial investigations

2023 reports issued

We issued 4 financial investigations that led to prosecuting agencies obtaining 34 criminal charges against 5 individuals. These charges related to theft, misuse of public monies, fraudulent schemes, forgery, conspiracy, and computer tampering.

2023 investigations summary



\$1,833,925
 Total
 potential losses



34
 Criminal
 charges



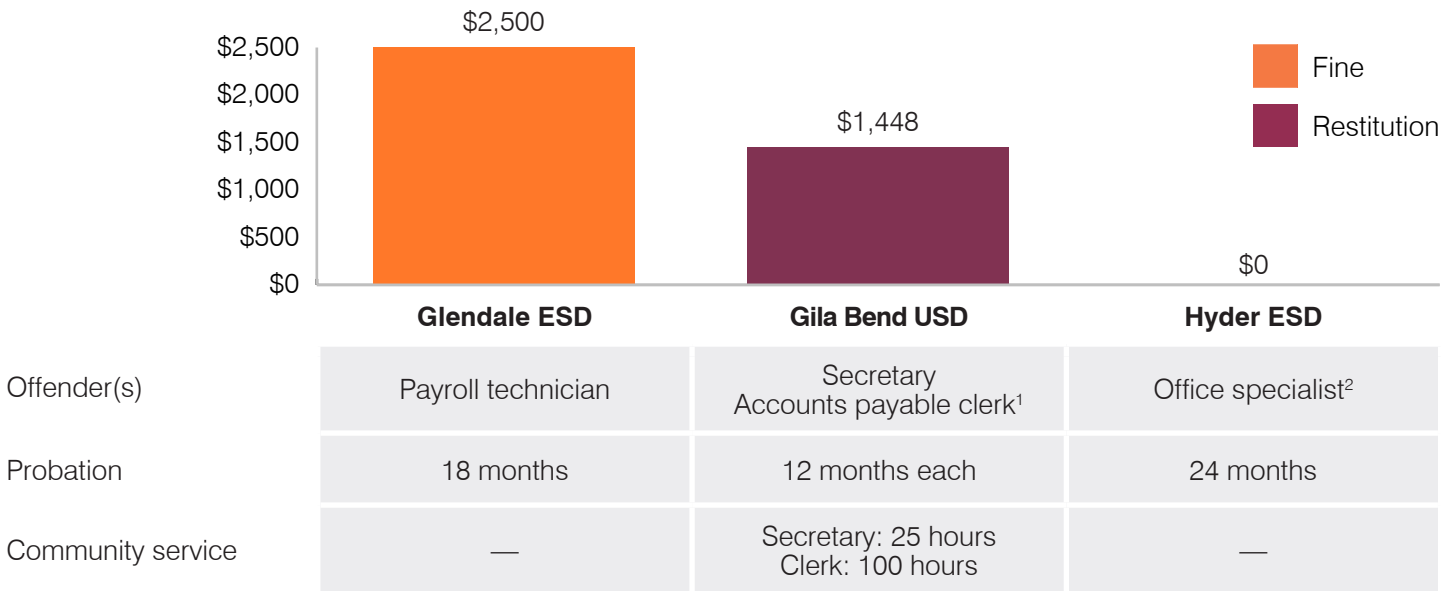
4
 Government
 entities involved

- An **Arizona State University** Technology Office manager of information technology may have embezzled \$124,093 when he used his ASU purchase card to make 810 personal purchases, including 12 gaming consoles, 10 smart watches, 2 Christmas trees, a treadmill, and a row machine. He concealed his actions when he submitted for processing 347 forged receipts and 358 false p-card business purpose descriptions, making it falsely appear as if the purchases were for valid ASU purposes.
- A **Hyder Elementary School District** office specialist may have embezzled \$7,417 when she admittedly “borrowed” the monies by issuing herself unauthorized District checks. She concealed her actions by failing to perform or provide for review checking account reconciliations and failing to obtain the second authorized signature required by District policy on over half the checks, signing the majority herself.
- Two **Gila Bend Unified School District** employees, a secretary and her daughter, an accounts payable clerk, participated in unauthorized District credit card purchases totaling \$1,476, including a laptop given to a family member as a graduation gift.
- A **Department of Education** Career and Technical Education Future Farmers of America (FFA) executive secretary may have opened a secret checking account with himself as the only signer and deposited therein \$1,700,939 of Arizona Association FFA (AZFFA) monies that should have been deposited in a Department checking account, altering Department accounting records to conceal his actions. Without the Department's or AZFFA's knowledge, the executive secretary spent this money for AZFFA and personal purposes. Because monies were commingled and certain records were unavailable, we were unable to determine how much of this money was used for AZFFA purposes.

2023 prosecutorial outcomes

Four individuals charged as a result of these or previous financial investigations pleaded guilty. These charges related to theft, misuse of public monies, and fraudulent schemes. As shown in the chart on the next page, these individuals were sentenced for a combined total of 5.5 years of probation, 125 hours of community service, and \$3,948 in fines and restitution.

2023 offender sentences: fines, restitution, probation, and community service



¹ The secretary paid the District \$1,448 restitution prior to the accounts payable clerk's sentencing. Both were jointly liable.

² The office specialist repaid the District \$7,392 of embezzled monies prior to sentencing.

Fraud prevention and detection

Civil action settlement—As a result of an Office performance audit on executive administration spending with which we assisted, a **Buckeye Elementary School District** superintendent and her spouse entered a settlement agreement with the State of Arizona. Pursuant to this agreement, these individuals paid a \$407,058 "Settlement Payment" to the District. The parties acknowledged the settlement was not an admission of liability. Prior to settlement, the parties entered into a Severance Agreement whereby the superintendent agreed to submit a voluntary and irrevocable letter of resignation, and the District agreed to pay her \$106,257 for severance and benefits.

Suggested internal control improvements—We provided victim government entities with 12 specific ways to improve internal controls directly related to their losses to help them protect public monies from future misuse.

Evaluated high-risk areas—We performed reviews at certain government entities by evaluating high-risk areas including, but not limited to, purchase card usage, cash receipts, external bank account disbursements, nonpayroll disbursements, procurement, and conflicts of interest. We communicated our results, including instances of possible waste and abuse, to Office audit teams to evaluate the results' impact on entities being audited and their stakeholders. Accordingly, those audit reports included findings related to unauthorized purchase card purchases, untimely cash deposits, unreconciled cash receipts, inadequate internal controls for bank account transactions, and unapproved employee benefit pay. Further findings included the operation of a nonprofit without legal authority, failure to address security incidents involving personal information, noncompliance with the Uniform System of Financial Records, and State property-valuation, open meeting, and conflict-of-interest laws. We also included recommendations for entities to improve internal controls over those areas and thereby help decrease the risk of fraud, waste, and abuse.

Conducted fraud prevention trainings—We conducted 4 fraud prevention and detection trainings for fellow employees, other government auditors, and university students, bringing awareness to public fraud and corruption, the forces that drive them, and best practices to prevent them.

Issued Fraud Prevention Alerts—We issued 2 Fraud Prevention Alerts describing how certain forgery and computer tampering frauds occur and what actions management can take to deter and detect them.

Participated with anti-fraud organization—Our director of financial investigations served on the board of directors for the Arizona chapter of the Association of Certified Fraud Examiners, Inc., the world's largest anti-fraud organization dedicated to preventing and detecting fraud through education and training.



LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

DATE: February 9, 2024

TO: Representative Matt Gress, Chair
Senator Sonny Borrelli, Vice Chair
Members, JLAC

FROM: Lindsey Perry, Auditor General

SUBJECT: Office updates regarding JLAC-directed school district performance audit follow-up reports

Background

The Office is responsible for conducting performance audits of Arizona school districts (districts) pursuant to A.R.S. §41-1279.03. These performance audits assess districts' spending and operational efficiency in noninstructional areas, including administration, plant operations and maintenance, food service, and transportation. These audits result in public reports that provide recommendations to improve the efficiency and effectiveness of district operations. In addition to providing recommendations, we also follow up with districts to assess their efforts to implement the recommendations and, consistent with the intent of our recommendations, often find their implementation improves performance, ensures compliance with laws and regulations, and yields cost savings.

The Legislature has appropriated the Office resources to follow up on district report findings and recommendations periodically for 2 years. Depending on the audit recommendations' complexity, we find that it sometimes takes districts longer than 2 years to implement critical recommendations. However, because our recommendations are important to improving the district, we do not simply go away after 2 years if a district has not implemented all critical recommendations.

We were asked to present an update on the 3 school districts that JLAC directed the Office to conduct additional follow-up work on during its June 21 and September 13, 2023, meetings, including our recently issued Gadsden Elementary School District 42-month follow-up report and our ongoing work at Peach Springs Unified School District and Hackberry Elementary School District. See **Attachment A** for the Gadsden Elementary School District Performance Audit 42-month follow-up report and **Attachment B** for Gadsden Elementary School District's February 6, 2024, plan to implement the outstanding recommendation (recommendation 13).

Action required

None. Presented for JLAC's information only.

Attachment A

Followup

Gadsden Elementary School District

The May 2020 Gadsden Elementary School District performance audit found that the District paid employees for time not worked, limited public access to some Governing Board (Board) meetings and wasted \$65,000 on unnecessary travel, and lacked oversight of its transportation program. We made 13 recommendations to the District, and its status in implementing the recommendations is as follows:

Status of 13 recommendations

Implemented	10
Implemented in a different manner	1
In process	1
Not implemented	1

Unless otherwise directed by the Joint Legislative Audit Committee, this report concludes our follow-up work on the District's efforts to implement the recommendations from the May 2020 report.

Finding 1: District's poor administration of employee pay resulted in hourly employees being paid for holidays and other time not worked without documentation to support Governing Board approval and inappropriate payments to some employees

1. The District should ensure that its Board is aware of and approves the number of paid holidays provided to hourly employees and ensure that hourly employee contracts or other District documents contain all agreed-upon terms of employment, including the number of days, holidays, and hours per day for which an employee will be compensated.

Implemented at 36 months—In May 2020, the District developed a new Board-approved policy outlining the paid holidays for which full-time hourly employees are eligible to be paid. Additionally, in May 2023, the Board approved fiscal year 2024 work calendars outlining the number of days that positions are expected to work and which positions are eligible for paid holidays. Beginning in fiscal year 2023, the District began including key terms of employment in its contracts, including the number of days and hours per day the hourly employees are expected to work, each employee's position, and whether the employee is considered to be full-time. The District provides information to its Board about some key employment terms such as the employee position and number of days for which an employee will be compensated. By providing information about some key agreed-upon terms of employment and the work calendars to its Board, the District provides the Board the necessary information to ensure it is aware of and approves the number of paid holidays provided to each hourly employee.

2. The District should ensure that the Board reviews and approves its hourly employee contracts and related payroll calendars so that all payments made to employees are appropriate and that all paid days are for actual time worked or part of an agreed-upon compensation package.

Implemented at 42 months—As reported in Recommendation 1, beginning in fiscal year 2023, the District's employment contracts for hourly employees included key terms of employment, such as the number of days and hours per day the employees are expected to work. In May 2023, the Board approved the District's fiscal year 2024 salary schedules and work calendars outlining the number of days that positions are expected to work and which positions are eligible for paid holidays. Additionally, in August 2023, the District began providing all

key employment terms from the employee contracts to the Board for review and approval. Finally, in September 2023, the District provided hourly employee contract templates to the Board for review and approval. According to District officials, the District will continue to provide all key employment terms for new hires to the Board for review and approval when new staff are hired or contracts are extended, and it will provide salary schedules, work calendars, and hourly employee contract templates to the Board for review and approval annually.

3. The District should develop and implement formal, written payroll policies and procedures to increase oversight at its schools and departments to ensure that all District payroll policies and procedures are applied consistently to reduce the risk of inappropriate payments.

Implemented at 36 months—At the beginning of fiscal year 2021, the District replaced its hard copy time sheets with an electronic timekeeping system to track employee time more consistently and trained its employees on the use of the system to reduce the risk of inappropriate payments to employees. In May 2023, the District developed and implemented formal, written payroll policies and procedures for its schools and departments to ensure employees accurately enter their time in the timekeeping system, supervisors review their employees' time consistently, and employees are paid for actual hours worked. We reviewed reports from the electronic timekeeping system for 2 pay periods in May 2023 and found that the District complied with its policy in the areas we reviewed, such as having supervisory approval for each employee's hours worked.

4. The District should separate responsibilities for entering and updating employee payrates and deductions in the accounting system from the responsibilities for processing payroll to reduce the risk of inappropriate adjustments to employee pay and benefits.

Implemented in a different manner at 42 months—In August 2023, the District updated its accounting system access to remove responsibilities for entering and updating employee deductions in the accounting system from employees responsible for processing payroll. However, according to District officials, the District did not remove the responsibilities for entering employee payrates from these employees because having the ability to enter payrates was necessary for these employees to perform their job responsibilities. Instead, the District developed a compensating control that requires an administrative employee with read-only accounting system access to review change logs for changes to employee payrates made by employees responsible for processing payroll to ensure that any changes made by the employees are appropriate. Our review of the District's change log reviews for October 2023 found that the District was following its developed compensating control.

Finding 2: District limited public access to Governing Board meeting by holding it out of State and wasted more than \$65,000 of public monies on unnecessary travel expenses

5. The District should consult with legal counsel to ensure its meeting policies and procedures, including the locations selected for conducting meetings, comply with open meeting law.

Implemented at 6 months—The District consulted with its legal counsel and is now holding all Board meetings at the District. In addition, we had forwarded our May 2020 performance audit report to the Arizona Attorney General's Office (Office), and in July 2020, the Office sent the District's Board a letter stating that the Office had determined that a violation of open meeting laws occurred in connection with holding the June 30, 2018, public meeting at an out-of-State location. The Office required the District to share the Office's finding of a violation of open meeting laws with the public at the next Board meeting, which the District did at its August 2020 meeting. The Office also required all District Board members, the superintendent, and any staff who play a role in the Board's public meetings to review the open meeting law statutes and Arizona Agency Handbook regarding open meetings and submit an affidavit of completion to the Office.

6. The District should consult with legal counsel to determine and implement any necessary procedures to address potentially invalid District actions taken at meetings that were not easily accessible to the public.

Implemented at 6 months—The District consulted with legal counsel regarding the adherence of its policies and procedures to open meeting laws and to identify and address potentially invalid District actions taken at meetings

not easily accessible to the public. The District determined that no prior actions of the District are void and require ratification.

7. The District should discontinue holding Board meetings outside the District's boundaries, which is contrary to open meeting law and is an unnecessary expense to the District.

Implemented at 24 months—All in-person Board meetings are now held at the District.

8. The District should follow *Uniform System of Financial Records for Arizona School Districts* (USFR) requirements and implement procedures to ensure that all travel expenditures and reimbursements are planned for the convenience of the District using the most reasonable and economic means and do not exceed Arizona Department of Administration (ADOA)-established maximum rates.

Implemented at 24 months—The District has implemented new procedures to help ensure that travel expenditures and reimbursements are planned using the most reasonable and economic means, which include not paying or reimbursing employees for amounts above the ADOA-established maximum rates. We reviewed a sample of 3 fiscal year 2022 travel reimbursements and found the District followed USFR requirements and its procedures.

Finding 3: Inadequate oversight of District transportation program led to potential student safety risk, reporting errors, and increased risk of fuel and supplies misuse

9. The District should develop and implement procedures to ensure that bus driver certification requirements are met and appropriately documented in accordance with the State's Minimum Standards.

Implemented at 24 months—The District is now using computer software to track and document bus driver certification requirements. We reviewed files for 4 of the 22 fiscal year 2022 bus drivers and found that all certification requirements were current and appropriately documented in accordance with the State's Minimum Standards. Additionally, the District implemented procedures to randomly select drivers for drug and alcohol testing and appropriately maintained documentation of the test results.

10. The District should establish and implement a policy that states what school bus preventative maintenance work will be completed at what mileage and time frame and perform and document the bus preventative maintenance in a systematic and timely manner in accordance with the policy and the State's Minimum Standards.

Implemented at 42 months—In July 2020, the District began using fleet management software to track its school bus preventative maintenance, and in May 2023, the District developed a formal, written policy and checklist that states what school bus preventative maintenance work will be completed at what mileage and time frame intervals. Our review of preventative maintenance performed for 5 of the District's 24 school buses in 2023 found that the District was following its formal, written school bus preventative maintenance policy for the school buses we reviewed.

11. The District should accurately calculate and report to the Arizona Department of Education (ADE) for State funding purposes the number of route and other miles traveled and actual number of eligible students transported.

Implemented at 24 months

12. The District should work with ADE regarding needed corrections to its transportation funding reports until all funding errors that the misreported mileage and riders caused are fully corrected.

Not implemented—Despite District officials being aware of the District's fiscal year 2018 transportation reporting error since before the performance audit was issued in May 2020, they waited until March 2022 to contact ADE to request that the District's fiscal year 2018 miles and riders and the funding generated from those miles and riders be updated. However, ADE can modify data that impacts State aid for only the previous 3 years, and because of the District's significant delay in reporting, ADE was not able to process the District's request to modify its fiscal year 2018 miles and riders. As discussed in our Gadsden Elementary School District performance audit report (Arizona Auditor General report 20-204), because transportation funding is based on miles and riders reported in the prior fiscal year, the District's reporting errors in fiscal year 2018 resulted in the District being overfunded by about \$218,000 in State monies in fiscal year 2019.

13. The District should evaluate and implement additional controls over its fuel and supplies inventory to help ensure proper accounting of all fuel and supply usage, including safeguarding fuel keys, reconciling all fuel logs to fuel purchases, maintaining accurate fuel and supplies inventory records, and investigating any discrepancies identified.

Implementation in process—In July 2020, the District purchased new fuel and supply management systems to help track and manage its fuel usage and supplies inventory. According to District officials, each vehicle in the District's fleet is assigned a fueling key, which is kept with the vehicle, and additional fuel keys are securely stored in the transportation office. Additionally, the fuel-management system requires employees to input a unique identification number and the odometer reading when fueling vehicles. In the prior 36-month followup, we reported that District officials stated the District had begun developing a process to conduct weekly reviews of odometer entries to identify errors, and monthly reviews of fuel logs for reasonableness and appropriateness and that its process would require staff to investigate any discrepancies identified during these reviews. However, we reviewed District fuel logs from July through November 2023 for 5 school buses and identified discrepancies the District was unable to explain, such as fueling occurring on weekends or late at night. In response to our inquiries about the fuel log discrepancies, the District updated its process for reviewing fuel logs in November 2023 to check for additional discrepancies, including fueling dates or times occurring outside of normal operating hours. Additionally, District officials indicated they had identified a report in the District's supplies inventory system that calculates a miles-per-gallon usage for each vehicle in the District's fuel-management system based on information provided when fueling, including the odometer reading and amount of fuel put into the vehicles. District officials indicated that staff would also review this report as part of its process for reviewing fuel usage and investigating discrepancies.

In October 2023, the District performed a transportation inventory review and found that its transportation inventory log had several discrepancies, such as items that were recorded as being in the District's physical inventory but were not physically present when the District performed its review. After we questioned District officials about the discrepancies, the District updated its transportation supplies inventory log in November 2023 based on its current inventory on-hand and performed another inventory review demonstrating that the updated inventory log was accurate at the time the District provided it to us for review. However, because the District did not resolve the discrepancies identified during its initial inventory review and updated its inventory log based on its current transportation inventory on-hand during the followup, it could not provide evidence to support that its inventory review process ensures that inventory items were used only for authorized District purposes. According to District officials, the District is working on strategies to ensure the transportation supplies inventory log continues to accurately reflect the actual transportation supplies inventory, and officials plan to perform full inventory reviews every 6 months.

Attachment B

Response

Gadsden Elementary School District



GADSDEN ELEMENTARY SCHOOL DISTRICT NO. 32

1350 E. Cesar Chavez Blvd.

P.O. Box 6870

San Luis, AZ 85349

(928) 627-6540

FAX: (928) 627-3635

Lizette Esparza, Superintendent

Omar Duron, Associate Superintendent

"STUDENT CENTERED LEARNING IN
AN ENGLISH LEARNING COMMUNITY"

Governing Board

Luis Marquez, President

Tadeo De La Hoya, Clerk

Rosa Varela

Maria Luz Hoyos

Liliana Arroyo

RE: Plan to implement outstanding recommendation (recommendation #13)

Dear Senator Sonny Borrelli, Representative Matt Gress and Joint Legislative Committee,

Our last follow-up report regarding the implementation status of the recommendations from our May 2020 audit report has been issued and found that we implemented 11 of 13 findings. We are unable to implement 1 recommendation due to its 2-year delay in working with the Arizona Department of Education to correct transportation funding reporting errors. Recommendation #13 was found to be "implementation in process".

An error occurred when the Fuel Master System, which tracks fuel inventory and fueling information directly from the fuel tanks, was not synchronized with Fleetio, the district's fuel management and inventory system, due to manual importing of information. An upgrade to a cloud-based version of Fuel Master has been approved for purchase. This upgrade will automatically synchronize information directly into Fleetio in real-time, thus avoiding any potential human errors.

However, the Transportation Director diligently reviews fleet reports daily, identifying and rectifying errors in odometer entries, fueling dates and times, unusual fueling instances, miles per gallon usage, and any other unusual inconsistencies. Corrections are promptly made, and comprehensive investigations are conducted to document and address the sources of these errors.

Regarding inventory discrepancies noted in the report, it was found that the department's mechanics withdrew physical items from on-hand inventory before completing the corresponding work order, which would automatically subtract items from the inventory system. To address this issue, mechanics are now instructed to finalize work orders before retrieving items from on-hand inventory, enabling real-time system updates. Additionally, the fuel inventory review process has been adjusted to a monthly basis to ensure accuracy and establish an accurate inventory baseline before transitioning to a biannual review cycle.

We have continued working with our transportation department, our process will continue until we have fully implemented the recommendation.

Please contact me if you have any questions,

Respectfully,

A handwritten signature in black ink, featuring a large, stylized 'L' and 'E' that are interconnected, followed by a horizontal line extending to the right.

Lizette Esparza
Gadsden District #32 Superintendent



LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

DATE: February 9, 2024

TO: Representative Matt Gress, Chair
Senator Sonny Borrelli, Vice Chair
Members, JLAC

FROM: Lindsey Perry, Auditor General

SUBJECT: Buckeye Elementary School District Performance Audit, April 2022 report and 18-month follow-up report

Background

We conducted a performance audit of Buckeye Elementary School District (District) and issued 2 reports. The first report issued December 2021, focused on the District's efficiency and effectiveness in 4 operational areas—administration, plant operations and maintenance, food service, and transportation—and its compliance with certain State requirements. Key findings from the first report included:

- District's plant operations and maintenance spending was 18 percent more per square foot than peers' because it had disadvantageous solar contract terms, used more water, and paid more per gallon for water.
- District had an estimated \$400,000 loss in each of calendar years 2018 and 2019 for solar power, and it spent approximately \$260,000 more on water and sewage than peer districts.
- District employees made purchases without required prior approval and paid for purchases without having the required evidence of receiving them.
- District allowed too much access to its sensitive computerized data, which, in combination with other IT deficiencies, increased risk of unauthorized access, errors, fraud, and data loss.

We made 14 recommendations to the District and, as of our 18-month followup, which we issued in February 2024, the District had implemented 3 recommendations, was in the process of implementing 8, and had not implemented the remaining 3 recommendations.

The second report, issued April 2022, focused on 1 aspect of administration—executive administrative spending, and particularly the superintendent's salary and benefits package—due to concerns identified during our audit. We found that 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 made 5 recommendations to the District and submitted our report to the Arizona Attorney General’s Office for appropriate action.

We conducted an 18-month review of the District’s efforts to implement the 5 recommendations from this April 2022 report and issued our follow-up report noting the District resolved through a civil settlement agreement 2 recommendations, implemented 1 recommendation, partially implemented 1 recommendation, and was in the process of implementing the remaining recommendation made to it.

We were asked to present the District’s April 2022 performance audit report and the 18-month follow-up report. Karl Calderon, Division of School Audits Manager, will provide an overview of the initial and follow-up reports.

Attachment A includes the District’s second performance audit report, issued in April 2022, and **Attachment B** includes the District’s 18-month follow-up report, issued in February 2024.

Action required

None. Presented for JLAC’s information only.

Attachment A

Report

Buckeye Elementary School District

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





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

Representative **Joanne Osborne**, Chair
Representative **Tim Dunn**
Representative **Steve Kaiser**
Representative **Jennifer L. Longdon**
Representative **Pamela Powers Hannley**
Representative **Rusty Bowers** (ex officio)

Senator **Nancy Barto**, Vice Chair
Senator **Rosanna Gabaldon**
Senator **David Livingston**
Senator **Juan Mendez**
Senator **Kelly Townsend**
Senator **Karen Fann** (ex officio)

Audit Staff

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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



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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

1

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

“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

Recommendations

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

5

District omitted critical information related to superintendent’s “additional compensation” in 2 of 3 employment agreements

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

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Fiscal years 2017 through 2021
(Unaudited)

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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.



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.¹ 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

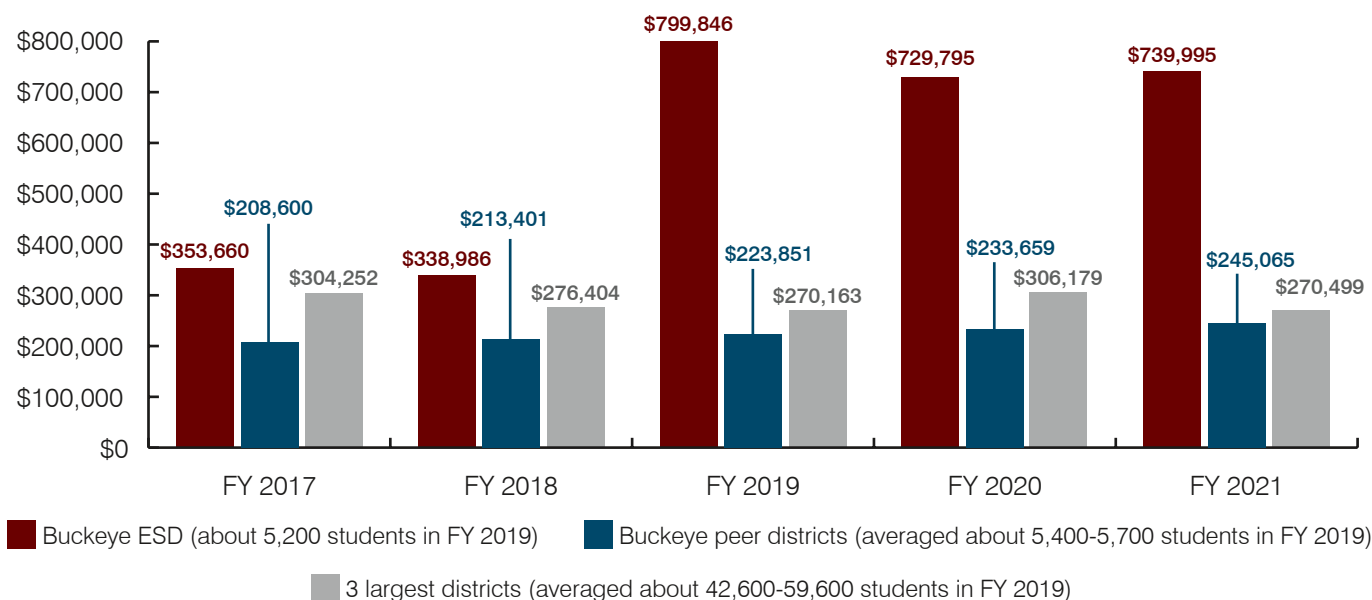
² For payments of unused vacation leave to nonseparating employees, the Arizona Department of Administration follows the Fair Labor Standards Act as a best practice and pays at the employee’s base salary. Likewise, the 4 peer school districts referred to in this report also paid at the superintendents’ 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 compensation¹
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"	✓	✗	✗

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>.

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

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.

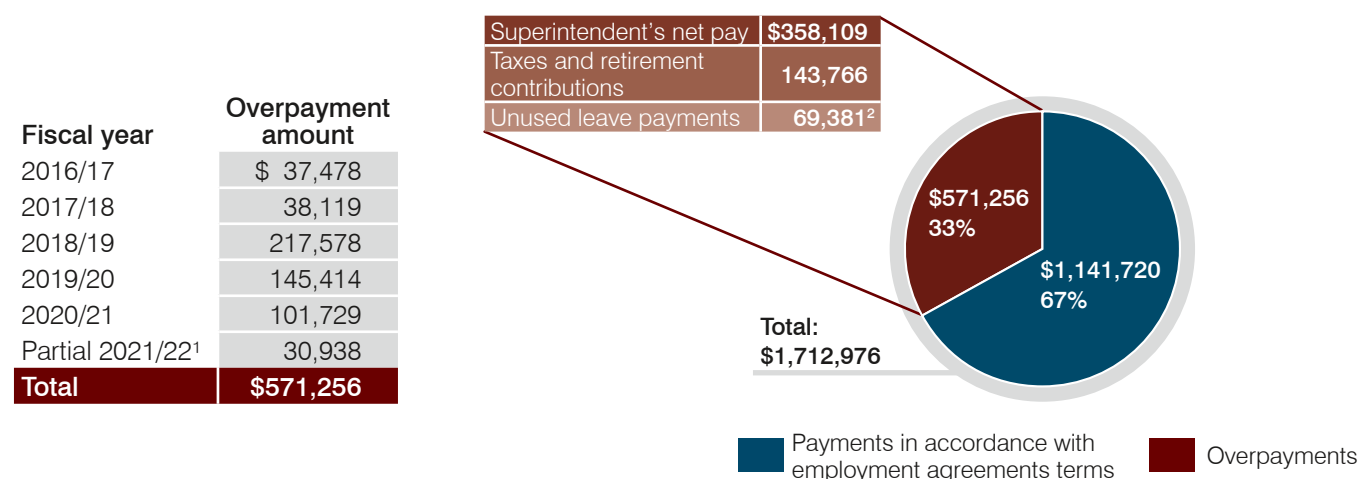
District response: As outlined in its [response](#), the District does not agree with the finding and recommendation but will implement the recommendation.

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



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.



SUMMARY OF 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



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. 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.



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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. 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

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.



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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.



Attachment B

Followup

Buckeye Elementary School District

The Buckeye Elementary School District performance audit was released in a series of 2 reports. The first report (Report 21-208) focused on the District's efficiency and effectiveness in administration, plant operations and maintenance, food service, and transportation. The second report (Report 22-202) focused on 1 aspect of administration—executive administrative spending, and particularly the superintendent's salary and benefits package—due to concerns identified during our audit. Report 2 of 2 found that 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 submitted our second report to the Arizona Attorney General's Office for appropriate action.

We made 5 recommendations to the District in the second report, and its status in implementing the recommendations is as follows:

Status of 5 recommendations

Resolved through civil settlement agreement	2
Implemented	1
Partially implemented	1
Implementation in process	1

We will conduct a 30-month followup with the District on the status of the recommendations that have not yet been implemented.

Report 2 of 2

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

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.

Resolved at 18 months through civil settlement agreement—On December 28, 2022, the Arizona Attorney General, on behalf of the State, filed a civil complaint against the District and its then superintendent alleging the District violated the Arizona Constitution's gift clause (gift clause) by paying the "additional compensation" to its

superintendent and seeking to recover all illegally paid monies. Specifically, the complaint alleged that by making the \$1.7 million in payments of “additional compensation” for retirement credits and unused leave, the District violated the gift clause and illegally paid public money in violation of Arizona Revised Statutes (A.R.S.) §35-212. The complaint further alleged that the District violated the gift clause and illegally paid public money in violation of A.R.S. §35-212 when it paid its superintendent \$571,256 more than it was required to pay under 3 employment agreements. The Attorney General sought to recover all monies illegally paid in violation of the gift clause, as permitted under A.R.S. §35-212.

In September 2023, the District’s governing board (Board) considered and approved a severance agreement between the District and the superintendent to whom it paid the \$1.7 million in “additional compensation.” Under the terms of the severance agreement, the superintendent agreed to submit a voluntary and irrevocable letter of resignation, and the District agreed to pay the superintendent approximately \$106,300 for salary payments through December 2023 and unused accrued leave. Further, as part of the severance agreement, the District agreed to settle the December 2022 lawsuit filed by the State against the District and the superintendent (lawsuit). In November 2023, the Arizona Attorney General’s Office, the District, and the former superintendent signed a settlement agreement to resolve the lawsuit. The settlement agreement required the former superintendent to repay the District \$407,058 within 30 days of receiving the fully executed settlement agreement, and that after the District received the settlement payment, the parties would stipulate to dismissal of the lawsuit. The settlement agreement also stated that it resolved any claim for relief related to the allegations in the lawsuit and that it fully settled all claims or losses that the parties had against each other. Further, the settlement agreement stated that by signing the agreement and accepting the consideration provided and benefits of it, the parties were forever giving up any right to seek future monetary relief from each other. The settlement agreement also acknowledged the superintendent’s last day of employment, and the State reserved the right to refile the lawsuit if representations made by the District and the former superintendent related to the superintendent’s separation were contradicted by later-discovered evidence. On November 17, 2023, the District received the \$407,058 settlement payment from the former superintendent and on November 29, 2023, a notice of settlement and voluntary dismissal was filed with the court.

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.

Implemented at 18 months—In December 2023, the District entered into an employment agreement with its new superintendent. District officials reported that the Board reviewed superintendent compensation packages at similar districts before entering into this agreement. We reviewed the superintendent’s employment agreement and found that its terms document the types and amounts of compensation the District will pay its superintendent. For example, the agreement specifies the superintendent’s base pay amount; maximum amount of performance pay; the rate at which the District will pay the superintendent for any unused leave sold back to the District; and amounts for other benefits such as car allowances and cell phone stipends. The agreement also documents the responsibilities the superintendent will perform in exchange for the compensation received. The superintendent’s maximum possible annual compensation according to the terms of the employment agreement is approximately \$223,000, which is lower than the fiscal year 2021 average of superintendents’ compensation packages from districts we surveyed during the performance audit.

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

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.

Implementation in process—As discussed in the explanation for recommendation 2, we reviewed the new superintendent's employment agreement and found that it documented the types and amounts of compensation the District agreed to pay the superintendent. The employment agreement also documented the responsibilities the superintendent would perform in exchange for the compensation. We will review this recommendation at the 30-month followup to ensure the District pays the superintendent in accordance with the terms of the employment agreement.

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

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.

Resolved at 18 months through civil settlement agreement—As discussed in the explanation for recommendation 1, on December 28, 2022, the Arizona Attorney General, on behalf of the State, filed a civil complaint against the District and its then superintendent. The lawsuit was resolved in November 2023 when the 3 parties signed a settlement agreement that resolved all claims for relief related to the allegations in the lawsuit. Pursuant to the terms of the settlement agreement, the former superintendent was required to repay \$407,058 to the District. We confirmed that the District received repayment from the former superintendent for this amount.

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

Partially implemented at 18 months—Our April 2022 performance audit report found that the District had overpaid an estimated total of \$143,766 to the IRS, Social Security Administration, Arizona Department of Revenue, and the ASRS on behalf of its former superintendent due to errors it made in calculating required withholdings. The District performed an analysis to determine the amounts it may be able to recover related to these overpayments. The District's analysis determined that based on IRS guidance, it could not claim credit or seek a refund from the IRS or Arizona Department of Revenue for excessive income tax withholding on the "additional compensation" paid to the former superintendent because the calendar year in which the taxes were withheld had already closed. Additionally, the District estimated maximum potential refunds for excess Medicare taxes and ASRS long-term disability contributions associated with the overpayments to the former superintendent of approximately \$4,100 and \$850, respectively. At the time of our review, although the District conducted an analysis, it had not recovered any of the overpayments it made to these 4 entities and indicated that it did not intend to pursue potential refunds available to it because it considered it financially imprudent to do so.



LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

DATE: February 9, 2024

TO: Representative Matt Gress, Chair
Senator Sonny Borrelli, Vice Chair
Members, JLAC

FROM: Lindsey Perry, Auditor General

SUBJECT: Office presentation regarding the school district financial risk process and results, December 2023 analysis report

Background

A.R.S. §41-1279.03 requires the Office to monitor the percentage of every dollar spent in the classroom. This annual spending analysis for each Arizona school district is a look back at individual district and State-wide spending. To supplement this analysis, the Office began using a year-round process to gather and analyze the most current data available for 10 financial risk measures. We publish our school district financial risk analysis each December to provide the Legislature, school districts, the public, and other stakeholders the most current information on school district finances. Our analysis allows school districts to plan for future budgets or identify and create solutions for possible financial problems indicated by our analysis.

Collectively, the 10 risk measures relate to a district's overall financial risk of not being able to operate within its available cash resources and budget constraints. Our analysis focuses on identifying the districts at the highest risk based both on their current and potential future financial difficulties. Districts that currently spend more than their budget limits or available cash resources likely missed the signs of their increasing financial risk in years their revenues or spending reserves substantially decreased. Identifying districts at the highest risk of both current and potential future financial difficulties can help district decision-makers recognize the need to take action to improve their financial position.

As of December 21, 2023, 4 Arizona school districts are at higher financial risk than other Arizona school districts based on analysis of 10 financial risk measures, including Antelope Union High School District, Isaac Elementary School District, Santa Cruz Elementary School District, and Tonto Basin Elementary School District. All 4 highest-risk districts are experiencing risk related to operating and capital budget limit reserves and General Fund change in fund balance, while 3 of the districts are also experiencing risk from decreasing student counts and frozen property tax rates.

Last year, we found that 3 Arizona school districts were at higher financial risk—2 of last year's highest-risk districts, Cedar Unified School District and Double Adobe Elementary School District, improved enough to be removed from the current highest-risk districts list, generally by improving

their budgetary reserves and financial position. Like nearly all Arizona districts, these previously high-risk districts reported using COVID-19 federal relief monies in fiscal years 2021 through 2023, contributing to improved budgetary reserves and financial positions after fiscal year 2020, when they first received relief monies.

We were asked to present a summary of the December 2023 school district financial risk analysis, and Meghan Hieger, Accountability Services Division Director, will provide this overview. See **Attachment A** for a summary of the December 2023 analysis.

Finally, we provide our analysis results and the underlying data for the highest-risk districts and other Arizona school districts in an interactive, user-friendly, web-based format. This format will allow you to easily view detailed information for a single district or more summarized information for all districts State-wide, by county, or by legislative district. The website also explains the measures analyzed and how the analyses can be used to better understand a district's overall financial risk. To review the full risk analysis, please click on the following hyperlink: [Overview - School district financial risk analysis](#) or visit our website at <https://frisk.azauditor.gov>.

Action required


None. Presented for JLAC's information only.




























Attachment A

Summary

December 2023 analysis overview

School district financial risk analysis summary results

 = district is high risk for the corresponding measure

Overall highest-risk districts	Change in weighted student count	Budget limit reserve—Operating budget	Budget limit reserve—Capital budget	Financial position—General Fund operating reserve ratio	Financial position—General Fund operating margin ratio	Financial position—General Fund change in fund balance	Capital monies redirected to operations	Small school budget limit adjustment	Frozen tax rate	Receivership
Antelope UHSD										
Isaac ESD										
Santa Cruz ESD										
Tonto Basin ESD										
Total number of districts at high risk for each measure	68 of 207	40 of 207	46 of 207	16 of 207	27 of 207	40 of 207	35 of 207	8 of 207	14 of 207	1 of 207

How to determine if your district is at financial risk

For our school district financial risk analysis, we analyze the most current data available for 10 financial risk measures in the 7 categories listed below to identify the Arizona districts with the highest financial risk.

Receivership

Is the district operating under a State Board of Education (SBE)-appointed receiver as of December 4, 2023?

Change in weighted student count

Is the number of students attending the district, used to calculate base funding, declining substantially and causing revenue decreases?

Budget limit reserves

Is the district substantially diminishing its Maintenance and Operation and Unrestricted Capital Outlay Funds' budget limit reserves; has the district exceeded its legal budget limits in the most recently completed fiscal year or on average over the last 5 years; or does the district have an unfunded budget limit reserve?

Financial position

Is the district currently spending more in its general operating fund than it is receiving to operate, causing substantial declines in operating reserves? Or has the district's spending in recent years led to negative balances in its general operating fund?

Capital monies redirected to operations

Is the district redirecting a substantial portion of their intended capital funding to current operational spending leaving lower than average resources for capital needs?

Small school budget limit adjustment

Has the district recently lost the ability to increase its budget limit with a small school adjustment or is the district's small school adjustment at least 10 percent unfunded?

Frozen tax rates

Has the district's property tax rate been frozen by the property tax oversight commission based on the constitutional limit for residential property taxpayers?



LINDSEY A. PERRY
AUDITOR GENERAL

ARIZONA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

DATE: February 9, 2024

TO: Representative Matt Gress, Chair
Senator Sonny Borrelli, Vice Chair
Members, JLAC

FROM: Lindsey Perry, Auditor General

SUBJECT: Board of Chiropractic Examiners Performance Audit and Sunset Review, July 2010 report and 18-month follow-up report, and Sunset Self-Review Summary Report, October 2021

Background

The Office is responsible for conducting sunset reviews of State agencies, boards, and commissions under Arizona's sunset law. Under this law, each year, the Legislature reviews several agencies to determine if they should be continued, modified, or allowed to terminate. If the agencies are continued, the Legislature determines the length of time until the next sunset review. In June 2010, the Office released a performance audit and sunset review report on the Arizona Board of Chiropractic Examiners (Board) as part of the Board's sunset review.

Established in 1921, the Board is responsible for regulating chiropractors in the State. The Board does this by issuing licenses, including certifications in acupuncture and physiotherapy. The Board is responsible for receiving and investigating complaints, and for disciplining licensees who violate statutes.

Our 2010 review found that the Board should improve 4 key aspects of its complaint-handling process. Specifically, it should:

1. Ensure that board and staff decisions about whether to open a complaint are consistent with statutory authority by enhancing its complaint-opening policy to provide additional guidance.
2. Where possible, limit its subpoenas to records directly related to the nature of the complaints it is investigating.
3. Not review a licensee's complaint or disciplinary history until after the complaint is adjudicated to avoid prejudicing its review.
4. Consider establishing disciplinary guidelines to help ensure that its disciplinary actions are consistent. Finally, the Board should seek a statutory change clarifying how it can use advisory letters.

We made 7 recommendations to the Board, and as of the Board's 18-month follow-up review, the Board had implemented all 7 recommendations.

Finally, the Board was subject to a recent sunset review and, as directed by JLAC, submitted a self-review summary report in October 2021 responding to the various sunset factor questions. Laws 2022, Chapter 51, continued the Board until July 1, 2030, and the Board's next sunset review is due October 1, 2029.

We were asked to present the Board's June 2010 performance audit and sunset review report and the 18-month follow-up report. Jeff Gove, Performance Audit Division Director, will provide an overview of the initial and follow-up reports.

Attachment A includes the Board's performance audit and sunset report, issued in June 2010, **Attachment B** includes the Board's 18-month follow-up report, issued in December 2011, and **Attachment C** includes the Board's Sunset Self-Review Summary Report, submitted in October 2021.

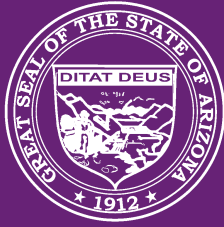
Action required

None. Presented for JLAC's information only.

Attachment A

Report – June 2010

Board of Chiropractic Examiners



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Board of Chiropractic Examiners

June • 2010
REPORT NO. 10-06



Debra K. Davenport
Auditor General

The **Auditor General** is appointed by the Joint Legislative Audit Committee, a bipartisan committee composed of five senators and five representatives. Her mission is to provide independent and impartial information and specific recommendations to improve the operations of state and local government entities. To this end, she provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits of school districts, state agencies, and the programs they administer.

The Joint Legislative Audit Committee

Representative **Judy Burges**, Chair

Senator **Thayer Verschoor**, Vice Chair

Representative **Tom Boone**

Senator **John Huppenthal**

Representative **Cloves Campbell, Jr.**

Senator **Richard Miranda**

Representative **Rich Crandall**

Senator **Rebecca Rios**

Representative **Kyrsten Sinema**

Senator **Bob Burns** (*ex officio*)

Representative **Kirk Adams** (*ex officio*)

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DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

June 30, 2010

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Patrice Pritzl, Executive Director
Board of Chiropractic Examiners

Transmitted herewith is a report of the Auditor General, a Performance Audit and Sunset Review of the Board of Chiropractic Examiners. This report is in response to a November 3, 2009, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board of Chiropractic Examiners (Board) agrees with most of the findings and plans to implement or implement in a different manner all of the recommendations. We have attached a brief reply to the Board's response to address some statements in the response.

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

This report will be released to the public on July 1, 2010.

Sincerely,

Debbie Davenport
Auditor General

Attachment

cc: Members, Board of Chiropractic Examiners

REPORT HIGHLIGHTS PERFORMANCE AUDIT

Our Conclusion

The Board of Chiropractic Examiners (Board) should improve four key aspects of its complaint-handling process. (1) It should ensure that board and staff decisions about whether to open a complaint are consistent with statutory authority by enhancing its complaint-opening policy to provide additional guidance. (2) It should, where possible, limit its subpoenas to records directly related to the nature of the complaints it is investigating. (3) It should not review a licensee's complaint or disciplinary history until after the complaint is adjudicated to avoid prejudicing its review. (4) It should consider establishing disciplinary guidelines to help ensure that its disciplinary actions are consistent. Finally, the Board should seek a statutory change clarifying how it can use advisory letters.



2010

Key complaint-handling processes need improvement

Established in 1921, the Board is responsible for regulating chiropractors in the State. The Board does this by issuing



licenses, including certifications in acupuncture and physiotherapy. The Board also receives and investigates complaints. When necessary, the Board disciplines licensees who violate statutes.

Opening complaints—Chiropractic statutes indicate there are two key provisions for opening complaints: whether the complaint involves a licensee, and whether there is a potential statute violation.

To help open new complaint investigations, the Board adopted a complaint-opening policy in February 2010. The policy provides that complaints will be opened only:

- When they fall within the Board's jurisdiction;
- When there is sufficient information; and
- After review by the Board when the Executive Director cannot determine whether it is appropriate to open a complaint.

The guidance is a step in the right direction, but it should be more specific. For example, the policy does not establish that, according to statute, a complaint can be opened only if it involves the actions of a licensed chiropractor. The policy should provide staff with greater direction on actions to take if a complaint does not

involve a licensed chiropractor, such as what information staff should gather so the Board can seek injunctive relief and how staff should distinguish that the complaint involves a nonjurisdictional issue.

Investigating complaints—When investigating complaints, the Board generally subpoenas all of a patient's records and medical information, without regard to the nature of the allegations in the complaint. However, statute provides that the Board should subpoena only information that is relevant to the investigation. In 3 of the 42 complaints we reviewed, the Board subpoenaed more records or information than necessary. One of these involved the chiropractor billing a patient \$11 more than the co-pay. In that matter, the Board subpoenaed all the patient's records, including health history, treatment plans, and x-rays.

Requesting irrelevant information causes the chiropractor extra time to assemble and copy the records, and the board staff to review the records. It also may cause a perception that the Board is searching for statute or rule violations in addition to those identified in a complaint.

Where possible, the Board should limit its subpoena to the minimum amount and type of information needed to address the complaint allegations. Some Arizona health regulatory boards limit the amount and type of records requested in subpoenas. For example, Podiatry Board staff indicated that complete medical records are not always necessary, and they are sometimes able to limit records requests to records associated with a particular event or situation.

Adjudicating complaints—The Board generally handles the adjudication process properly, but it should change two procedures.

First, the Board should stop considering the licensee's complaint and disciplinary history prior to deliberations about the allegations in the complaint. Because the complaint and disciplinary history are not relevant to whether the allegations of a new complaint are or may be true, this information may prejudice assessments of new complaints.

Second, the Board and its staff should not allow complainants to withdraw complaints alleging statute violations. Doing so prevents the Board from fulfilling its mission to protect the public. Auditors identified three cases where the Board and its staff have inconsistently permitted complainants to withdraw complaints. In two cases, complainants were allowed to withdraw complaints even though the complaints alleged potential violations and board staff had conducted investigative work. For example, in one complaint, board staff allowed the complainant to withdraw a complaint involving billing and record-keeping concerns even though its investigation identified statute violations. The staff presented information about the complaint at a board meeting, and the Board voted to table the complaint for 6 months. Despite the Board's vote, when the complainant decided to withdraw the complaint, a staff member sent a letter to the licensee stating that the complaint was being withdrawn. In contrast, another complainant was not permitted to withdraw a complaint because it alleged statutory violations.

Applying discipline—We identified one complaint where the Board appeared to issue inconsistent discipline to a licensed chiropractor. Specifically, a licensee received a \$250 civil penalty for failing to obey an order to attend a board meeting, while four other licensees who also ignored a board order to attend a board meeting during the same time period did not receive a civil penalty. The Board could help ensure greater consistency in discipline by developing disciplinary guidelines.

The Board should also seek a statutory change to clarify how it can use advisory letters. Some Arizona

health regulatory boards can issue an advisory letter when they have not found a statutory violation but have a concern based on the circumstances. Statute implies that the Board can issue an advisory letter only if it finds a statutory violation of insufficient seriousness to merit discipline.

Other concerns unfounded—During the audit, members of the public contacted us, raising concerns about conflicts of interest and the Board's documentation standards. However, we found board members appear to appropriately recuse themselves when they have a conflict of interest. In addition, the Board's form for assessing licensees' recordkeeping is based on rules, policy, and clinical competencies outlined by the nationally recognized Council on Chiropractic Education (Council). Statute allows the Board to hold licensees accountable to recognized standards, and the Council's competencies appear to be the type of recognized standard contemplated by statute.

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concluded •

INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Chiropractic Examiners (Board) pursuant to a November 3, 2009, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

Board history and responsibilities

Laws 1921, Ch. 118, established the Board of Chiropractic Examiners, which is responsible for regulating chiropractors in the State. The primary focus of chiropractic therapy is the relationship between the functions of the spine and the nervous system, and the effects of these relationships on health. According to A.R.S. §32-925, the practice of chiropractic therapy includes physical examinations, the use of diagnostic x-rays, and adjustment of the spine and joints.

The Board's mission is: *"protecting the health, welfare and safety of the public through the enforcement of the laws governing the practice of chiropractic."* The Board has various responsibilities that are designed to help accomplish its mission, including:

- Issuing and renewing licenses to ensure that persons practicing chiropractic therapy possess required qualifications;
- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators; and
- Providing consumer information to the public.

Licensure and certification requirements

One of the ways the Board regulates the profession is through its licensing and renewal processes. A.R.S. §§32-921 and 32-922 contain the following requirements to obtain a license to practice chiropractic:

- Graduate from an approved chiropractic college. The Council on Chiropractic Education currently accredits 15 doctor of chiropractic programs in 18 locations in North America;
- Pass all parts of the national exam;
- Pass the Board's Arizona jurisprudence exam, which tests an applicant's knowledge of the Board's statutes and rules, with a score of 75 percent or higher; and
- Complete a criminal background check, be a person of good character and reputation, and be physically and mentally able to practice chiropractic skillfully and safely.

According to A.R.S. §32-922.01, the Board also allows for licensure by reciprocity to individuals licensed in other states that have similar licensing requirements and reciprocal privileges. Arizona has reciprocity with four states: Colorado, Louisiana, Missouri, and New York. Additionally, A.R.S. §32-922.02 provides the Board authority to issue licensees specialty certifications in acupuncture and physiotherapy. According to the Board's administrative rules, acupuncture is the stimulation of certain points on or near the surface of the body to control and regulate the flow and balance of energy in the body. According to the National Board of Chiropractic Examiners, physiotherapy is the treatment or prevention of injuries and illnesses utilizing physical agents such as heat, cold, ultrasound, or electrical stimulation. These certifications, which remain active as long as the chiropractor's license is active, require the following:

- **Acupuncture**—Completion of at least 100 hours of study in acupuncture at an accredited chiropractic college or post-graduate study with staff of an accredited chiropractic college, and passage of the National Board of Chiropractic Examiners exam in acupuncture with a score of 375 or higher.
- **Physiotherapy**—Completion of at least 120 hours of study in physiotherapy at an accredited chiropractic college and passage of the National Board of Chiropractic Examiners exam in physiotherapy with a score of 375 or higher.

After an individual is licensed, A.R.S. §32-923 requires that his/her license be renewed annually. See textbox for the fees associated with the licensing process. Licensees are also required by A.R.S. §32-931 to annually complete 12 hours of continuing education to maintain their licenses. According to board information, during fiscal year 2009, the Board issued 2,472 licenses (79 initial licenses and 2,393 renewed licenses).¹ The Board also issued 12 acupuncture certificates and 82 physiotherapy certificates.² Additionally, in fiscal year 2009, the Board registered 454 chiropractic assistants and approved 9 preceptorship training programs through which a chiropractic student may practice under the supervision of a licensed chiropractor.

Complaint investigation and resolution process

The Board also regulates the profession by investigating and adjudicating complaints involving potential statutory violations and unprofessional conduct by licensed chiropractors as authorized by statute. A.R.S. §32-924 specifies 28 actions that are grounds for disciplinary action, including any conduct or practice that constitutes a danger to the health, welfare, or safety of the patient or public; billing for procedures not provided; advertising in a false or misleading manner; and practicing chiropractic under a false or assumed name. Additionally, Arizona Administrative Code (A.A.C.) R4-7-902 defines 37 specific actions that constitute unprofessional conduct, such as knowingly making a false statement to the Board, failing to maintain adequate patient records (such as examination findings), and failing to properly supervise chiropractic assistants.

One of the initial steps in the complaint process is an investigation, which the Board's staff investigator generally conducts. A complaint investigation includes obtaining the licensee's response to the complaint. After some initial investigative steps, the Board subpoenas the licensee to appear before the Board for questioning. The complainant(s) also has the opportunity to address the Board. After the Board determines that adequate information has been obtained to determine if a violation has been committed, the Board adjudicates the complaint. According to statute, if

Board Fees As of June 2010

Licensing fees:

Initial license ¹	\$374
License renewal ²	\$170

Specialty certification fees:

Physiotherapy ³	\$200
Acupuncture ³	\$200

¹ The initial license cost includes a \$274 initial license application and fingerprint fee, and a \$100 issuance fee.

² If the licensee is late in renewing his/her license, his/her license is automatically suspended. The licensee can apply for reinstatement within 2 years of the suspension, but is subject to additional fees.

³ According to board staff, specialty certifications are not renewed, but are considered active as long as the associated license is active. Both certifications include a \$100 application fee and \$100 certification fee.

Source: Auditor General staff review of A.R.S. §§32-921, 32-922, 32-922.02, and 32-923, and interview with board staff.

¹ The number of licensees reported for fiscal year 2009 does not include licenses that the Board reinstated. An individual has to seek reinstatement when he/she does not renew his/her license within the specified time period or if his/her license was suspended as a result of a board sanction. According to board staff, the Board does not track the number of licenses it reinstates during each fiscal year.

² According to the Board, as of June 3, 2010, a total of 2,146 licensed chiropractors have a physiotherapy certificate and 391 have an acupuncture certificate.

the Board determines that the licensee has not violated statute or the violation is not of sufficient seriousness to merit disciplinary action, the Board may dismiss the complaint or issue a nondisciplinary advisory letter or order for continuing education. If the Board determines that a violation has occurred and discipline is warranted, according to statute, it may use one or more disciplinary options, including issuing a letter of concern, probation, or suspending or revoking the chiropractor's license. According to board data, it received 115 complaints during fiscal year 2009.

Organization and staffing

The Board consists of five governor-appointed members who serve staggered terms of 5 years each. Three of the members must be licensed chiropractors in good standing who have resided in the State and practiced chiropractic therapy full-time for at least 3 years preceding appointment.

The Board is authorized five full-time equivalent positions—an executive director, a deputy director/investigator, a licensing manager, and two support staff. As of April 19, 2010, all five positions were filled. Staff responsibilities include:

- Collecting application, renewal, and other fees;
- Issuing licenses after board approval;
- Investigating complaints; and
- Providing information to the public.

Budget

The Board's revenue comes primarily from licensing and examination fees, and its revenue is deposited in the Board of Chiropractic Examiners Fund (see Table 1, page 5). The Legislature grants the Board authority to spend prescribed amounts of monies from the Chiropractic Fund through appropriation bills. According to A.R.S. §32-906, the Board deposits 90 percent of its revenue, except civil penalties, into the Chiropractic Fund and remits all of its civil penalties and 10 percent of all other revenues to the State General Fund. As shown in Table 1, the Board's net revenues have ranged from approximately \$440,000 to \$480,000 for fiscal years 2004 through 2009. In fiscal year 2010, the Board received a \$148,000 State General Fund appropriation to help ensure it had sufficient operating revenues. This appropriation

represented a return of most of the monies transferred to the State General Fund in fiscal years 2008 and 2009, as required by Laws 2008, Ch. 53 and Ch. 285.¹ See the Other Pertinent Information section, pages 19 through 22, for additional information about the Board's revenues and expenditures.

Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balance
Fiscal Years 2004 through 2010
(Unaudited)

	2004 (Actual)	2005 (Actual)	2006 (Actual)	2007 (Actual)	2008 (Actual)	2009 (Actual)	2010 (Estimate)
Revenues:							
License fees	\$426,176	\$433,680	\$469,210	\$468,315	\$459,575	\$448,080	\$454,100
State General Fund appropriation ¹							148,000
Examination fees	55,249	50,015	52,637	39,150	44,540	33,270	47,100
Fines, forfeits, and penalties	8,006	5,825	15,723	10,008	14,320	5,475	9,100
Other	<u>7,152</u>	<u>9,381</u>	<u>9,566</u>	<u>8,395</u>	<u>7,934</u>	<u>5,764</u>	
Gross revenues	496,583	498,901	547,136	525,868	526,369	492,589	658,300
Remittances to the State General Fund ²	<u>(56,459)</u>	<u>(54,799)</u>	<u>(66,752)</u>	<u>(57,751)</u>	<u>(63,464)</u>	<u>(53,350)</u>	<u>(58,300)</u>
Net revenues	<u>440,124</u>	<u>444,102</u>	<u>480,384</u>	<u>468,117</u>	<u>462,905</u>	<u>439,239</u>	<u>600,000</u>
Expenditures and transfers out ³							
Personal services and employee-related	250,871	274,947	301,831	326,155	338,926	321,662	344,500
Professional and outside services	62,489	83,696	84,290	81,407	84,226	42,419	26,000
Travel	6,691	9,912	7,929	12,063	9,811	7,572	5,900
Other operating	69,185	79,567	63,704	74,894	73,283	72,969	73,000
Equipment	<u>69</u>	<u>31,202</u>	<u>3,572</u>	<u>230</u>	<u>1,489</u>	<u>11,589</u>	<u>500</u>
Total expenditures	389,305	479,324	461,326	494,749	507,735	456,211	449,900
Transfers to the State General Fund ⁴					104,800	71,600	
Operating transfers out	<u>920</u>	<u>3,916</u>	<u>2,437</u>	<u>3,252</u>	<u>4,419</u>	<u>2,467</u>	<u>200</u>
Total expenditures and transfers out	<u>390,225</u>	<u>483,240</u>	<u>463,763</u>	<u>498,001</u>	<u>616,954</u>	<u>530,278</u>	<u>450,100</u>
Net change in fund balance	49,899	(39,138)	16,621	(29,884)	(154,049)	(91,039)	149,900
Fund balance, beginning of year	<u>308,614</u>	<u>358,513</u>	<u>319,375</u>	<u>335,996</u>	<u>306,112</u>	<u>152,063</u>	<u>61,024</u>
Fund balance, end of year	<u>\$358,513</u>	<u>\$319,375</u>	<u>\$335,996</u>	<u>\$306,112</u>	<u>\$152,063</u>	<u>\$ 61,024</u>	<u>\$210,924</u>

¹ The Board received a State General Fund appropriation in fiscal year 2010 in accordance with Laws 2009, Ch. 11, §117, to restore most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund (see footnote 4).

² As required by A.R.S. §32-906, the Board remits all civil penalties and 10 percent of all other revenues to the State General Fund.

³ Administrative adjustments are included in the fiscal year paid.

⁴ Amounts were transferred to the State General Fund as required by Laws 2008, Ch. 53 and Ch. 285.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2004 through 2009; AFIS Management Information System *Status of General Ledger-Trial Balance* screen for fiscal years 2004 through 2009; and board estimates for fiscal year 2010 as of March 10, 2010.

¹ As required by Laws 2008, Ch. 53 and Ch. 285, during fiscal years 2008 and 2009, a total of \$176,400 was transferred from the Board of Chiropractic Examiners Fund to the State General Fund as a part of the State's budget deficit reduction efforts.

Audit scope and objectives

This performance audit and sunset review focused on assessing whether the Board's practices for opening, investigating, and adjudicating complaints are in compliance with its statutory authority; whether its disciplinary practices are in compliance with its statutory authority and are consistently applied; and whether the Board can take steps to improve its processes for opening, investigating, and adjudicating complaints and providing discipline. Additionally, auditors reviewed the Board's financial status. Finally, this report also includes responses to the 12 sunset factors specified in A.R.S. §41-2954.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Board of Chiropractic Examiners and its Executive Director and staff for their cooperation and assistance throughout the audit.

FINDING 1

Board should improve key complaint-handling processes

The Board of Chiropractic Examiners (Board) should improve four key areas of its complaint-handling processes:

- **Opening complaints**—The Board should ensure that board and staff decisions about whether to open a complaint are consistent with statutory authority by enhancing its complaint-opening policy to provide additional guidance.
- **Investigating complaints**—The Board should ensure that it limits the amount of information it subpoenas where possible during the complaint investigation process. The current process sometimes calls for obtaining a wide range of information and can create the appearance that the Board is searching for statute or rule violations that were not brought forward in the initial complaint.
- **Adjudicating complaints**—The Board should stop its current practice of considering a licensee's complaint and disciplinary history before adjudicating a complaint. Reviewing such information after substantiating the allegations in a complaint can help ensure the level of discipline is appropriate, but reviewing it beforehand can affect the objectivity with which a complaint is adjudicated.
- **Applying disciplinary measures**—The Board should consider establishing disciplinary guidelines to assist in issuing consistent discipline and should seek a statutory change to clarify how it can use nondisciplinary advisory letters.

Complaint-opening policy should be enhanced

The Board's complaint-opening policy should be enhanced. Statutory provisions suggest two areas to consider when determining whether to open complaints. To help ensure compliance with statutory direction, the Board should enhance its guidance related to opening complaints.

Statute provides guidance on what to consider when deciding whether to open complaint—Based on A.R.S. §§32-924, 32-926, and 32-928, a decision about opening a complaint should focus on whether the allegation involves: (1) the actions of a licensed chiropractor, and (2) a potential violation of law (see Table 2). The Board has statutory authority to open complaints and has also granted this authority to its Executive Director. Auditors' review of complaint files showed that, in some instances, the Executive Director or staff make the determination of whether to open a complaint, while in other instances, the Board itself does so.

Table 2: Statutory Guidance for Opening Complaints

Questions the Board should consider in deciding whether to open a complaint	Actions the Board has statutory authority to take
Question 1: Is the complaint about a licensed chiropractor?	No: The Board does not have authority to discipline an individual practicing without a license. However, the Board does have authority to investigate the issue and can seek injunctive relief. Yes: Move on to answering question 2.
Question 2: Does the complaint suggest that a licensed chiropractor may be in violation of statutes or rules, or may be mentally or physically unable to safely practice?	No: The Board does not have authority to open a complaint if the complaint does not suggest a potential violation or safe practice issue. Yes: The Board must open and investigate the complaint.

Source: Auditor General staff analysis of A.R.S. §§32-924, 32-926, and 32-928.

Board should modify guidance for opening complaints—The Board adopted a complaint-opening policy in February 2010, and while this policy is a step in the right direction, a few changes would help ensure that the Board and its staff have adequate guidance in deciding whether to open a complaint. The Board's policy addresses a number of issues, such as stating that complaints will be opened only if they fall within the Board's jurisdiction, stating that complaints will not be opened if there is insufficient information to proceed, and outlining some

exception procedures, such as referring the complaint-opening decision to the Board when the Executive Director is unsure whether it should be opened. However, to ensure that guidance is adequate, enhancements should be made in two areas:

- **Greater guidance on alternative actions**—The policy should provide guidance on actions to be taken if a complaint does not involve a licensed chiropractor. For example, the policy should establish what steps to take, such as what information staff should gather so that the Board can seek injunctive relief if appropriate, and how staff should distinguish that the complaint and associated investigation pertains to a nonjurisdictional issue.
- **Greater conformity with statute in not considering complainant's intent**—The policy grants the Executive Director authority to not open complaints based on the complainant's intent, such as the intent to intimidate or harass a public official. This direction is inconsistent with statute, which does not allow the Board to consider the complainant's intent.

To ensure its guidance conforms with statutory provisions, the Board should work with the Attorney General's Office to revise its policy.

Board should limit subpoenas to records directly related to complaint allegations

During its investigations, the Board has sometimes subpoenaed unnecessary information. Steps can be taken to more appropriately limit the amount of information requested in its subpoenas where possible. However, the Board has appropriately addressed additional concerns identified during its investigation.

Board sometimes subpoenaed more information than needed—The Board's subpoenas are sometimes overly broad in their scope. The Board explained that it subpoenas full patient records for all complaints in an effort to treat each case in the same manner. The standardized initial subpoena generally sent to licensees when complaints are received requests, for a specified patient, "any and all patient records to include, but not limited to, health histories, treatment plans, daily notes, examinations, billing documents and x-rays and sign-in sheets." However, according to A.R.S. §32-929(B)(1), the Board should subpoena only records that are relevant to the subject matter of the investigation. Among the 42 complaints reviewed for this audit, auditors identified 3 complaints in which the Board subpoenaed more records or information than needed to address a complaint. For example, one complainant reported to the Board that on July 25, 2007, a licensee's receptionist tried to charge \$11 more than the required co-pay

Limiting subpoena requests could save the Board, staff, and licensees time and resources.

and that this was a standard office practice for all patients. The Board subpoenaed the full patient record, including health histories, treatment plans, and x-rays, but could perhaps have limited its subpoena to only the patient's billing records since the complaint did not cover the treatment received.

Requests for irrelevant information cost the Board, staff, and licensees time and resources; could lengthen complaint-processing times; and may create the appearance the Board is searching for additional statute or rule violations. For example, four individuals who contacted the Office of the Auditor General were concerned that the Board requests more information than needed to investigate complaints and inappropriately expands the scope of its investigation by looking for additional issues other than those identified in complaints.¹

According to A.R.S. §32-929(B)(1), licensees have the right to request within 5 days after the service of a subpoena that the Board revoke, limit, or modify a subpoena. However, the Board's subpoenas may be misleading in this regard because they include the following standardized language: "the information subject to the subpoena is the minimum information necessary for the Board to fulfill its statutory mandate in protecting the public and regulating its licensees." It is not clear that all chiropractors are aware of this right, although one licensee exercised this right in one of the complaints auditors reviewed. The licensee requested that the Board limit its request to a certain time period as he had been seeing the patient for 10 years and it would have caused a hardship to go through storage to find records that did not have any significance to the case.

Board should take steps to limit requests for evidence where possible—The Board should modify its complaint-handling policy and practices to appropriately limit its subpoena requests. Specifically, where possible, the Board should limit its subpoena to the minimum amount and type of records needed to address the complaint allegations. For example, the Board may not need to request billing information if a concern is specific to the standard of care provided. Conversely, the Board may sometimes need billing records only to assess whether or not a licensee charged a patient more than the required co-pay.

Some Arizona health regulatory boards limit subpoena requests.

Some boards that regulate health professions in Arizona limit the amount and type of records requested in subpoenas. Based on interviews with four other health regulatory boards, three (the Arizona Medical Board, Naturopathic Physicians Board, and Board of Podiatry Examiners) indicated they attempt to limit their records request. For example, Podiatry Board staff reported that complete medical records are not always necessary to conduct a complete investigation and substantially prove or disprove the allegations. Podiatry Board staff request the minimum information necessary and are sometimes able to limit records requests to records associated with a particular event or situation. Similarly, the Board

¹ During the audit, the Office of the Auditor General received several concerns from chiropractors and others related to the Board's complaint-handling processes. The Office of the Auditor General is not statutorily responsible for reviewing and resolving individual complaints about state agencies, but considers concerns raised by the Legislature and legislative staff, regulated professionals, and others, including the public, when conducting its work. To the extent that the concerns received fell within the objectives and scope of this audit, these concerns were included in the audit analysis.

should limit the amount and type of records requested in its subpoenas where possible. To help ensure that this change is made, the Board's Complaints, Investigations and Hearings policy should be modified to provide guidance to staff on how to subpoena appropriate information.

Board appropriately addresses additional statute violations identified during investigation process—According to A.R.S. §32-924(B), the Board has authority to address any additional concerns identified during its investigation. Auditors' review of 42 complaint files found that the Board regularly incorporates additional allegations found during its investigation.

Board should change two important aspects of adjudication process

The Board should change two important aspects of its adjudication process. First, the Board considers a licensee's complaint and disciplinary history too soon. Second, the Board and its staff inconsistently allow complainants to withdraw complaints alleging statute violations. However, the Board appears to handle other aspects of the adjudication process appropriately, such as recusing themselves in situations involving conflicts of interest and holding licensees accountable to professional record-keeping standards.

Board considers past complaint and disciplinary information too

soon—The Board's review of a complaint may be prejudiced because it reviews the licensee's complaint and disciplinary history prior to deliberations about the allegations in the complaint. In 13 of 15 complaint files assessed, auditors found that staff provided the Board with a licensee's complaint and disciplinary history before the Board had decided whether the allegations of the new complaint were substantiated.¹ Based on observations of board meetings, the file review, and a review of board policy, auditors determined that receiving and/or discussing this information before deciding whether the allegations of the new complaint are substantiated is a standard board practice.

A licensee's **complaint history** includes information on all complaints that the Board received against the licensee, including complaints that the Board dismissed without any disciplinary action.

A licensee's **disciplinary history** includes information about previous board disciplinary actions.

Because the complaint history and disciplinary history are irrelevant to whether the allegations in the new complaint may be true, such information may prejudice decisions by negatively affecting a board member's assessment of the new complaint. The Board should, however, be allowed to review a licensee's complaint and disciplinary history once the complaint has been adjudicated. Reviewing complaint and disciplinary history information after it has substantiated

¹ Auditors stopped reviewing complaint files for this problem at 15 complaints since 13 complaints had the same concern. The 2 complaints that did not have this concern were opened and adjudicated during the same board meeting, and therefore staff did not provide board members with an investigative report containing complaint and disciplinary history information.

the allegations in a new complaint can help ensure that the Board provides appropriate discipline. For example, if the licensee was previously disciplined for a similar violation, the Board may decide that a different disciplinary action is needed to ensure another similar violation does not recur. Therefore, the Board should also modify its Complaints, Investigations and Hearings policy to direct staff to provide complaint and disciplinary information only during the disciplinary phase.

Complainant requests to withdraw complaints inconsistently handled—Auditors identified 3 cases where the Board and its staff have inconsistently permitted complainants to withdraw complaints. In two cases, complainants were allowed to withdraw complaints even though the complaints alleged potential violations and board staff had conducted investigative work. For example, in one complaint, board staff allowed the complainant to withdraw a complaint involving billing and record-keeping concerns even though its investigation identified statute violations. Board staff presented information about the complaint at a board meeting, and the Board voted to table the complaint for 6 months. Despite the Board's vote, when the complainant decided to withdraw the complaint, a staff member sent a letter to the licensee stating that the complaint was being withdrawn. The staff member's letter to the licensee cited concerns about the licensee's documentation and stated that the licensee needed to correct issues that were not in compliance with law. The Board was unaware the complaint had been handled in this way, and the staff member's action without involving the Board makes this withdrawal inappropriate; the presence of statutory violations heightens the inappropriateness. In contrast, in another complaint file auditors reviewed, a complainant was not permitted to withdraw a complaint because it suggested a violation related to accessing patient records.

Although there is no law preventing complainants from requesting to withdraw their complaints, permitting complainants to withdraw complaints that allege violations impacts the Board's ability to fulfill its mission to protect the health, welfare, and safety of the public through adjudicating complaints concerning unprofessional conduct or other statutory violations. Therefore, the Board should modify its Complaints, Investigations and Hearings policy to establish that complainants are not permitted to withdraw complaints alleging statute or rule violations, and direct staff to send any complaints that have been investigated to the Board for adjudication.

Other concerns about adjudication process unfounded—Auditors received two other concerns about the Board's adjudication processes regarding whether board members were appropriately recusing themselves when they had a conflict of interest and whether the Board was holding licensees accountable to documentation standards not specified in statute or rule. Audit work did not substantiate either of these concerns. In both cases, the processes appear to be appropriate. Specifically:

Permitting complainants to withdraw complaints alleging violations impacts the Board's ability to protect the public.

- **Board appears to appropriately recuse themselves when conflicts of interest arise**—Two individuals raised concerns to auditors that board members did not appropriately recuse themselves when they had a conflict of interest. However, auditors reviewed board meeting minutes from six meetings that occurred during fiscal years 2008 and 2009, and found that board members recused themselves in three meetings. It appeared that board members recused themselves appropriately. For example, in one board meeting, a board member recused herself from adjudicating two complaints because she was treating the patient identified in those complaints.

Auditors also reviewed the Board's handling of multiple anonymous complaints. During August and September 2006, board staff received about 1,100 anonymously filed complaints alleging that three licensed chiropractors who were current or former board members had improperly disposed of confidential patient records.¹ According to the complaint letters, the records—which included patients' names, social security numbers, and treatment information that was allegedly redacted by the complainant—had been found in or around trash cans outside the licensees' offices. Board members were not required to recuse themselves in handling these complaints because the Executive Director decided not to open them, mainly because their anonymity meant the complainant could not be contacted for additional information. The Executive Director sent a letter to the Arizona Ombudsman explaining her decision. The Ombudsman indicated that the decision appeared appropriate based on Board's protocol for handling anonymous complaints described in the Executive Director's letter.

In October 2009, the Board received similar concerns against the same three licensees. However, this time the complainant was not anonymous and provided unredacted copies of confidential patient records that reportedly had been found out in the area behind the licensees' offices. Board staff referred the complaints to the Board at its November 2009 meeting to consider whether or not to open them. During the meeting, each licensee was provided an opportunity to address the concerns, including how he or she protects confidential information. The Board voted not to open a complaint against any of the three licensees. The one licensee who is an active board member recused herself and did not participate in these votes.

- **Board documentation standards are appropriate**—Three individuals reported to auditors that the Board held them accountable to documentation standards that are unclear or are not specified in board statute or rule. Statute does not define record-keeping standards, but A.A.C. R4-7-101(1) defines and R4-7-902(5) requires that licensees

¹ According to A.R.S. §32-924(A)(5) and A.A.C. R4-7-902(29), it is a violation to intentionally dispose of confidential patient information or records without redacting, incinerating, or shredding the information or record.

The Board's forms used to assess whether licensees have met record-keeping standards are based on rule, policy, and professional standards.

maintain adequate patient records, including information such as patients' health history, clinical impression, and examination findings. The Board has also developed documentation review forms to help board staff assess whether licensees have met record-keeping standards established in rule, a board substantive policy statement, and clinical competencies outlined by the Council on Chiropractic Education.¹ A.R.S. §32-924(A)(15) allows the Board to hold licensees accountable to recognized standards in the profession and does not require that these standards be specifically addressed in statute or an associated rule. According to the Board's Executive Director, the Board began posting guidelines for recordkeeping in 2004, and the forms and information about the forms was made available to the public and licensees on its Web site in March 2008.

Board could enhance disciplinary process

The Board could enhance its disciplinary process. Specifically, the Board should consider establishing disciplinary guidelines and should seek a statutory change clarifying its use of advisory letters.

Four Key Steps to Help Identify Appropriate Sanctions

1. Briefly summarize the conduct that constituted unprofessional conduct meriting action.
2. Identify the severity of the conduct.
3. Describe other factors. This includes aggravating or mitigating circumstances and prior disciplinary history.
4. Identify the recommended sanction and additional conditions.

Source: Auditor General staff review of Washington State Department of Health.(2007). *Disciplinary guidelines manual*. Olympia, WA: Author. Retrieved April 22, 2010, http://www.doh.wa.gov/hsqa/professions/documents/Sanction_Guidelines.pdf

Disciplinary guidelines may help further ensure Board issues consistent sanctions—Auditors received concerns from eight individuals that the Board was issuing inappropriate discipline. However, auditors' review of 42 complaints identified no inappropriate discipline and only 1 complaint where the Board appeared to issue inconsistent discipline to a licensed chiropractor. Specifically, in June 2008, the Board issued a \$250 civil penalty to a licensee who ignored a board order to attend a board meeting. Auditors reviewed four other complaints from the same time period where licensees also ignored a board order to attend a board meeting and found that none received a civil penalty. Although auditors identified only 1 case, the Board's risk for issuing inconsistent discipline may be heightened because the Board is operating without disciplinary guidelines. To reduce the risk, the Board should consider establishing such guidelines.

Guidelines have been developed elsewhere that may serve as a starting point for the Board. Specifically, the Federation of Chiropractic Licensing Board's Web site has reference to guidelines that Washington's State Department of Health developed. These guidelines define four key steps to help identify appropriate sanctions (see textbox). Further, the guidelines outline how to handle seven significant and/or common types of violations, and provide advice on the type of discipline to issue based on severity level as well as mitigating and aggravating factors (see Figure 1, page 15). Similar guidelines and sanction schedules subsequently adopted into administrative code also cover how to handle complaints that do not fall within sanction guidelines.

¹ The Council is the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree.

[illegible]

Board should seek statutory change to clarify how advisory letters can be used—A.R.S. §32-924(E) appears to imply that the Board may issue a nondisciplinary advisory letter only when it finds that a licensee violated statute but also determines that that the violation was not of sufficient seriousness to merit discipline. However, auditors found that the Board also uses advisory letters in instances when it has not established that a statutory violation occurred. Specifically, 11 of the 42 complaints auditors reviewed resulted

The Board's use of advisory letters is consistent with the authority granted to some Arizona health regulatory boards.

in advisory letters, and in 3 of the 11 advisory letters, the Board did not indicate that the licensee violated statute. For example, 1 advisory letter reported that a licensee "may" have violated sexual boundaries.

The Board's practice of issuing advisory letters when it has not found a statutory violation, but only has a concern, appears consistent with the authority granted to some Arizona health regulatory boards. Specifically, the Arizona Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, Naturopathic Physicians Medical Board, and Board of Podiatry Examiners statutes permit them to use advisory letters or letters of concern, and also further clarify how these letters can be used.¹

For example, the Osteopathic Board's statutes, A.R.S. §32-1800(15), permit it to use a letter of concern to "notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern." If the Chiropractic Board intends to use advisory letters when it has not found a statutory violation, but only has a concern, the Board should seek a statutory change to add a definition clarifying, like other boards, how the Board can use these letters. Such a change would also help ensure that the Board's use of advisory letters is understood among the profession and the public. The Board can also enhance its advisory letters by ensuring the letters clearly indicate the statutes violated, and/or the licensee practices that caused the Board concern.

Recommendations:

- 1.1. To improve its process for opening complaints, the Board should work with the Attorney General's Office to revise its complaint-opening policy to: guide staff on what actions should be taken if a complaint involves an unlicensed chiropractor, including what information staff should gather so that the Board can seek injunctive relief if appropriate and how staff should distinguish that the complaint and associated investigation pertains to a nonjurisdictional issue; and eliminate the authority to not open complaints based on the complainant's intent, such as the intent to intimidate or harass a public official.
- 1.2. To improve its investigation process, the Board should limit the amount and type of records requested in its subpoenas where possible. To help ensure that this change is made, the Board's Complaints, Investigations and Hearings policy should be modified to provide guidance to staff on how to subpoena appropriate information.

¹ The Naturopathic Physicians Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, and Board of Podiatry Examiners statutes assign the term "letter of concern" to the document that the Arizona Medical Board's and the Board of Chiropractic Examiners' statutes call an advisory letter.

1.3. To improve its adjudication process, the Board should:

- a. Review a licensee's complaint and disciplinary history information only after it has substantiated the allegations in a new complaint.
- b. Modify its Complaints, Investigations and Hearings policy to direct staff to provide complaint and disciplinary information only during the disciplinary phase, establish that complainants are not permitted to withdraw complaints alleging statute or rule violations, and instruct staff to send any complaints that have been investigated to the Board for adjudication.

1.4. To improve its disciplinary process, the Board should:

- a. Consider developing guidelines to help it ensure that it provides consistent discipline.
- b. Request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters.
- c. Ensure that its advisory letters clearly communicate the statutes violated and/or licensee practices that caused the Board concern.

♦

OTHER PERTINENT INFORMATION

During this audit, auditors collected other pertinent information related to the Board of Chiropractic Examiners' (Board) financial status, including an explanation of how the Board's financial status has changed since fiscal year 2004 and what actions the Board has taken to address increasing expenditures.

Board's financial status

As shown in Table 1 (see Introduction and Background, page 5), the Board's fund balance in fiscal year 2010 is projected to be approximately \$148,000 less than it was in fiscal year 2004. The Board's decreasing fund balance mainly occurred because of increases in expenditures without any sustained increases in net revenues.

The Board's fund balance has decreased.

- **Board expenditures have increased in three areas**—Board expenditures have increased in three main areas since fiscal year 2004: salaries and employee-related expenditures, professional and outside services, and other operating expenditures. Some expenditure increases were required, while others were optional. Salary and employee-related expenditures have increased gradually, and are about \$94,000, or approximately 37 percent, higher than in fiscal year 2004.¹ Mandated increases included statutorily required salary adjustments and performance pay increases. Other salary increases were not statutorily required and occurred for other reasons. For example, the Board increased the Executive Director's salary at the beginning of fiscal year 2005 by \$16,331. At the end of fiscal year 2004, the Board's expenditures were almost \$50,000 less than net revenues. Additionally, the Executive Director restructured staff positions at the end of fiscal year 2005, causing some positions to be reclassified and resulting in a salary increase of \$2,500 each for two of five staff members. In fiscal year 2005, the Board's expenditures exceeded net revenues, but it had sufficient monies in its fund balance to cover the salary increase.

In the second area of increase—professional and outside services—expenditures increased about \$20,000 in fiscal year 2005 compared to fiscal year 2004 and remained elevated through fiscal year 2008. This increase was

¹ The Board's overall employee-related and salary expenditures increased by \$94,000. However, the Board's 2009 employee-related expenditures were not as high as 2008 because of a vacancy that lasted approximately 4 months.

Increased professional and outside services expenditures are due to various factors, including changes to the complaint-handling process and efforts to reduce a complaint backlog.

due to various factors such as changes in the complaint-handling process, efforts to reduce a complaint backlog, and efforts to seek fee increases. Specifically, in response to recommendations in the Office of the Auditor General's 2001 performance audit (see Report No. 01-12), the Board began using outside investigators and court reporters. The Board chose to separate its investigative and adjudicative functions by using contracted investigators on cases that required more professional expertise or knowledge than the Board's investigator has.¹ According to the Executive Director, the Board does not track how often it uses contracted investigators, but reported that costs vary depending on the size and complexity of files contractors review. Additionally, the Board increased its use of contracted investigators in fiscal year 2005 to reduce a backlog of complaints. The Board also received authority to resolve more cases on its own instead of having to go to the Office of Administrative Hearings. According to the Executive Director, the Board uses court reporters to record its hearings should a licensee appeal a board decision. The Board needs transcripts to handle appealed decisions and uses those created by court reporters because its recording equipment is unreliable. Finally, the Board spent about \$40,000 during fiscal years 2006 and 2007 on a lobbyist contract in unsuccessful efforts to obtain statutory fee increases. The Board had sufficient monies in its fund balance to cover these expenditures for the lobbyist.

In the third area of increase—other operating expenditures—higher expenditures were related primarily to telecommunication and postage cost increases. For example, the Board's external telecommunication costs increased by about \$5,000 when it was required to switch to the State's telecommunication network known as AZNet.

Finally, in addition to expenditure increases in three main areas, the Board's equipment expenditures notably increased in fiscal years 2005 and 2009. According to the Executive Director, increases occurred when the Board: (1) purchased laptops for board members so that they could receive board materials electronically, (2) replaced a photocopy machine, and (3) replaced a broken computer and two laptops. Some other Arizona health regulatory boards also use laptops for board members to save on costs such as photocopying and shipping board materials and labor involved in making the copies.

- **Net revenues have decreased since 2006**—As shown in Table 1 (see Introduction and Background, page 5), after peaking in fiscal year 2006 at \$480,000, net revenues through fiscal year 2009 steadily declined to fiscal year 2004 levels. Net revenues are projected to be significantly higher in fiscal year 2010, mainly because the Board received a one-time State General Fund appropriation of \$148,000 to restore most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund. The decline in

¹ The Board also could have chosen to use board members to investigate complaints, which would have required the board member to recuse him/herself from the adjudication process. According to the Executive Director, due to the large number of complaints and limited number of board members, the Board would have trouble maintaining a quorum if board members were used to investigate complaints.

net revenue since fiscal year 2006 is primarily due to decreases in the Board's licensing revenue, which represents the Board's largest revenue source. As shown in Table 3, the decrease may be due to fluctuations in the number of initial licenses along with a steady decrease in the number of individuals renewing their licenses since fiscal year 2006. The Executive Director reported that various factors could have influenced licensure revenue, including the economy and decreasing nation-wide chiropractic school enrollment numbers. However, the National Board of Chiropractic Examiners reported that the number of individuals taking their national prelicensure exams has remained stable since 2004.

Table 3: Number of Initial and Renewal Chiropractic Licenses
Fiscal Years 2004 through 2009
(Unaudited)

	2004	2005	2006	2007	2008	2009
Initial licenses	111	137	114	96	110	79
Renewal licenses	<u>2,349</u>	<u>2,460</u>	<u>2,521</u>	<u>2,502</u>	<u>2,463</u>	<u>2,393</u>
Total	<u>2,460</u>	<u>2,597</u>	<u>2,635</u>	<u>2,598</u>	<u>2,573</u>	<u>2,472</u>

Source: Auditor General staff analysis of initial licensing data from board spreadsheets and renewal data reported by board staff based on receipt logs and deposit information for fiscal years 2004 through 2009.

As shown in Table 1 (see Introduction and Background, page 5), during fiscal years 2008 and 2009, \$176,400 was transferred to the State General Fund as required by Laws 2008, Ch. 53, and Laws 2008, Ch. 285, to help reduce the State's budget deficit. The one-time State General Fund appropriation of \$148,000 made in fiscal year 2010 restored most of the monies transferred from the Board of Chiropractic Examiners Fund to the State General Fund. Although this will improve the Board's ending fund balance, it will remain below fiscal year 2004 levels. As a result of increased expenditures, decreased revenues, and net legislative transfers of money, the Board's fund balance has decreased in 4 of the past 7 years.

Board efforts to address financial problems

The Board has attempted to address its financial problems by seeking fee increases and by reducing operating expenditures. Specifically:

- **Board reduced some expenditures and unsuccessfully sought statutory fee increases**—The Board reported that it took steps to reduce expenditures between fiscal years 2004 through 2008, such as reducing newsletter publications, having the Executive Director review completed investigative reports rather than a consultant, and borrowing the Board of Dental Examiners' meeting facility and recording equipment rather than paying for expanded meeting space and purchasing recording equipment. However, according to the Executive Director, the Board felt that further reducing its expenditures would impact the Board's ability to fulfill its responsibilities, so it decided to seek a

The Board took various steps to reduce expenditures, including reducing publications and borrowing equipment.

statutory fee increase. The Board subsequently sought statutory fee increases in 2007 and again in 2008 to address its financial problems, but both efforts failed.

- **Board further reduced expenditures after efforts to seek fee increases failed—**
As it became apparent that the Board's efforts to obtain a statutory fee increase were not likely to succeed, according to the Executive Director, the Board began looking for additional ways to further reduce expenditures, such as using volunteer investigators instead of contracted investigators. In addition, Board expenditures were significantly reduced in fiscal year 2009, in part because the Board did not pay for Attorney General services and had a staff position that was temporarily vacant. The Board has made additional cuts in expenditures for fiscal year 2010. Specifically, for fiscal year 2010, the Board did not enter into an interagency service agreement with the Attorney General's Office for a designated representative. Staff from the Attorney General's Office still provide services to the Board as required by law. However, the Board may receive services from various representatives instead of a designated representative. The Executive Director reported that the Board also plans to maintain reductions from prior years. For example, the Board plans to continue to have reduced supply and postage costs and plans to conservatively use contractors. Although these reductions have improved the Board's situation, board staff indicated the reductions may also negatively impact board operations. Specifically, the Executive Director reported that, prior to using a designated Assistant Attorney General representative, complaints that required hearings were delayed for up to 4 years.

The Board plans to maintain prior expenditure reductions during fiscal year 2010.

SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Chiropractic Examiners (Board) should be continued or terminated.

1. The objective and purpose in establishing the Board.

The Board was established in 1921 to protect the public's health, safety, and welfare by licensing and regulating chiropractors. The Board's statutes also provide for certification of chiropractors in physiotherapy and acupuncture. In addition, the Board registers chiropractic assistants and approves preceptorship training programs through which a chiropractic student may practice under the supervision of a licensed chiropractor.

The Board's mission is *"protecting the health, welfare and safety of the public through the enforcement of the laws governing the practice of chiropractic."* To accomplish this mission, the Board licenses individuals according to licensing statutes and rules; investigates and adjudicates complaints concerning unprofessional conduct or other violations of statutes or rules; disciplines licensees who have violated statutes; monitors licensees for compliance with board orders; and provides information to licensees and the public through various avenues, including its Web site and over the phone.

2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated.

The Board has met some of its prescribed purposes and objectives, but should improve in some other areas. For example, the Board approves continuing education programs and ensures that licensees meet the required amount of continuing education prior to renewing licenses. In addition:

- **Overall licensing time frame met**—Auditors reviewed 10 of the 285 initial license applications received between fiscal years 2007 and 2009 that resulted in licensure, and found the Board processed these 10 applications within the required 145 business days. According to A.A.C. R4-7-502, the Board must conduct an administrative completeness review of a license application within 25 business days of receipt to verify the application is

complete, and a substantive review and disposition of the application within 120 business days, resulting in an overall time frame of 145 days for both reviews.

- **Adequate licensing examination procedures**—According to A.R.S. §32-922, the Board must conduct a licensing examination at least semiannually, and the Board offers licensing examinations once a month. Auditors found that the Board's licensing-examination content and administrative procedures were in accordance with statutory mandates. For example, a review of ten initial licensing files received between fiscal years 2007 and 2009 found that the Board's licensing process ensures applicants meet statutory requirements such as obtaining a minimum score of 75 percent on the jurisprudence exam. In addition, auditors' review of six license renewal files received between fiscal years 2007 and 2009 found that the Board's renewal procedures were in accordance with statutory mandates such as sending renewal application notices to licensees at least 30 days before the applications are due.

However, the Board can more effectively meet its objectives and purpose by improving the following four key areas of its complaint-handling processes:

- **Opening complaints**—The Board should enhance its guidance to ensure complaint-opening decisions are consistent with statute. A decision about opening a complaint should focus on whether the allegation involves (1) the actions of a licensed chiropractor, and (2) a potential violation of law. The Board should work with the Attorney General's Office to revise its complaint-opening policy to provide greater guidance on what should be considered when deciding whether to open complaints (see Finding 1, pages 7 through 17).
- **Investigating complaints**—The Board has sometimes subpoenaed unnecessary information. Steps can be taken to more appropriately limit the amount of information requested in its subpoenas where possible (see Finding 1, pages 7 through 17).
- **Adjudicating complaints**—The Board's review of a complaint may be prejudiced because it reviews the licensee's complaint and disciplinary history prior to deliberations about the allegations in the complaint. The Board should review a licensee's complaint and disciplinary history information only after it has substantiated the allegations in a new complaint. In addition, the Board has inconsistently allowed complainants to withdraw complaints, even though the complaints alleged potential statute violations. The Board should modify its Complaints, Investigations and Hearings policy to establish that complainants are not permitted to withdraw complaints alleging violations, and direct staff to send any

complaints that have been investigated to the Board for adjudication (see Finding 1, pages 7 through 17).

- **Disciplining licensees**—The Board should consider establishing disciplinary guidelines to assist in issuing consistent discipline and should seek a statutory change to clarify how the Board can use nondisciplinary advisory letters (see Finding 1, pages 7 through 17).

Auditors also found that the Board is not processing complaints in a timely manner. The Office of the Auditor General has found that Arizona health regulatory boards should generally process complaints within 180 days. However, auditors found that for the 235 complaints received during fiscal years 2007 and 2008, only about 21 percent were processed within 183 days (see textbox). According to the Board, it has identified some issues impacting timely resolution, including the time it takes to investigate complaints as well as establish consent agreements. In addition, the Board has taken steps to resolve these issues, such as establishing time frames for investigations and the various aspects of consent agreements.

3. The extent to which the Board has operated within the public interest.

The Board generally operates in the public interest. For example, the Board has a Web site that provides information to the public on licensees and board activities. This includes information regarding licensing procedures and licensed chiropractors. In addition, the Board's Web site provides information regarding the complaint-handling process and how to file a complaint. Further, auditors placed four phone calls to the Board between June 17, 2009 and July 1, 2009, requesting public information about licensees' complaint and disciplinary history, and found that board staff provided complete and accurate information.

4. The extent to which rules adopted by the Board are consistent with the legislative mandate.

General counsel for the Auditor General has reviewed an analysis of the Board's rulemaking statutes by the Governor's Regulatory Review Council staff, performed at auditors' request, and believes that the Board has fully established rules required by statute.

**Complaint-Handling Timeliness
Fiscal Years 2007 and 2008¹**

- 21% processed within 183 days
- 29% processed from 184 to 252 days
- 25% processed from 253 to 349 days
- 25% processed from 350 to 658 days

¹ The timeliness information is for all complaints received during fiscal years 2007 and 2008. The Office of Administrative Hearings conducted formal hearings for some of the complaints, which the Executive Director indicated can add up to 4 months or longer to the processing time.

Source: Auditor General staff analysis of the Board's complaint-tracking system data for 235 complaints received during fiscal years 2007 and 2008.

5. **The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Board last amended its rules in fiscal year 2007. In the process of revising its rules, the Board took steps to inform and involve the public and stakeholders. For example, the Board filed a notice of proposed rulemaking with the Arizona Secretary of State and provided for a period of public review and comment. Further, the Board's Executive Director reported that the Board made proposed rule-making information available on its Web site. In addition, the audit found that the Board generally complied with open meeting law. Specifically, during the May and June 2009 board meetings, the Board followed published meeting agendas in accordance with A.R.S. §38-431.02(H). Further, the Board appropriately entered into executive sessions in accordance with A.R.S. §38-431.03, which permits the Board to hold executive sessions for reasons such as discussion or consultation for legal advice, or receipt and discussion for information or testimony specifically required to be maintained as confidential by state or federal law. In addition, the Board has recordings of board meetings available to the public within 3 business days of the board meeting. Finally, in accordance with A.R.S. §38-431.02(A)(1), the Board filed a statement with the Office of the Secretary of State identifying where it posts meeting notices. Although the Board did not post the notice and agenda in all places as required in May 2009, the Board revised the statement in June 2009 to match its posting locations.

6. **The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has sufficient statutory authority to investigate and adjudicate complaints within its jurisdiction and has various disciplinary options. As recommended in the Office of the Auditor General's 2001 performance audit and sunset review of the Board (see Report No. 01-12), the Board sought and received authority to conduct investigative hearings, which are called formal interviews, which has allowed it to take action against licensees without sending all complaints to formal hearing. However, this audit recommends improvements that will help ensure that the Board appropriately investigates and resolves complaints. For example, this audit recommends that the Board limit the amount and type of records requested in its subpoenas where possible, and that the Board consider developing guidelines to help ensure it provides consistent discipline (see Finding 1, pages 7 through 17).

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

A.R.S. §41-192 authorizes the Attorney General's Office to prosecute actions and represent state agencies, including the Board. The Board determined not to enter into an intergovernmental agreement for an assigned Attorney General representative in fiscal year 2010 (see Other Pertinent Information, pages 19 through 22). Staff from the Attorney General's Office still provide services to the Board as required by law. However, the Board may receive services from various representatives instead of a designated representative.

8. The extent to which the Board has addressed deficiencies in its enabling statutes, which prevent it from fulfilling its statutory mandate.

The Board has sought a number of statutory changes to address deficiencies in its statutes. Specifically:

- In 2002, changes to A.R.S. §32-924 increased the complaint-handling options available to the Board. Specifically, these changes allowed the Board to issue nondisciplinary advisory letters, forward complaints to formal interview, and issue disciplinary letters of concern. Previous to these statutory changes, the Board was required to forward any complaint that merited discipline to formal hearing, and any violation resulted in at least an order of censure.
- In addition, further changes to A.R.S. §32-924 in 2007 granted the Board authority to issue both nondisciplinary and disciplinary orders for continuing education.

These changes have allowed the Board to issue less severe sanctions for less severe infractions of the Board's regulatory statutes that are not of sufficient seriousness to merit discipline. For example, the Board issued a nondisciplinary advisory letter to a licensee who failed to place the words "chiropractic," "chiropractor," "chiropractic doctor," or "chiropractic physician" on his letterhead.

9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors in the sunset law.

This audit identified one change that is needed to the Board's statutes. Specifically, the Board should request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters (see Finding 1, pages 7 through 17).

10. The extent to which the termination of the Board would significantly harm the public's health, safety, or welfare.

Terminating the Board without assigning its responsibilities to another state agency would harm the public's health, safety, and welfare because the Board is responsible for licensing chiropractors, and investigating and adjudicating complaints against licensed chiropractors. Without state laws establishing educational and competency standards, the public could be subject to unskilled chiropractic practices. Further, the Board has addressed chiropractor actions that harm the public's health, safety, and welfare by taking action against licensees who practice below the standard of care or commit other inappropriate actions such as suggesting or having sexual contact with a patient in the course of treatment. Currently, all 50 states regulate chiropractors.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.

The audit found that the current level of regulation the Board exercises is generally appropriate.

12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

The Board has relied on private contractors to perform activities beyond its staff resources or abilities. For example, the Board contracts for information technology support. Additionally, the Office of the Auditor General's 2001 performance audit and sunset review of the Board (see Report No. 01-12) suggested that the Board could better separate its investigative and adjudicative functions by contracting with chiropractic medical consultants to assist in complaint investigations that require technical expertise. The Board has contracted with medical consultants for these types of investigations since the 2001 audit. According to the Board, it stopped using these contracts in fiscal year 2009 and decided to limit its use of these contracts during fiscal year 2010 because of budget constraints. The current audit did not identify any changes that were needed related to the Board's use of private contractors.

APPENDIX A

Methodology

Auditors used various methods to study the issues addressed in this report. These methods included interviewing Board of Chiropractic Examiners (Board) members, management, and staff; reviewing board statutes and rules; reviewing board policies and procedures; observing three board meetings during fiscal years 2009 and 2010; and reviewing board meeting minutes for various board meetings that occurred during fiscal years 2006 through 2009.

In addition, auditors assessed the Board's internal control structure that supports the collection and management review of complaint-handling data to determine completeness and reliability. Auditors' work on the controls over the Board's data included interviewing various staff and management knowledgeable about and responsible for data input accuracy to assess supervisory controls over data input.

Auditors also assessed data reliability as follows:

- **Complaint-handling data**—Auditors assessed the reliability of complaint-handling data in the Board's complaint-tracking system by (1) assessing completeness and accuracy of complaint-handling data (dates, allegations, outcomes, and other identifying information) using ACCESS queries, and (2) reviewing related documentation for a random sample of ten complaints opened between fiscal years 2007 and 2009 that were chosen using a random number generator, and ten files randomly selected from file drawers. Auditors found the Board's complaint-tracking system data to be generally complete and accurate for the purposes of determining overall timeliness.
- **Licensing data**—Auditors did not evaluate the accuracy of the data sources used to track the number of licenses issued and renewed, and so limited the use of this information to background purposes. Auditors noted that the Board does not track the number of licenses reinstated each year. A license must be reinstated if it is suspended or if the licensee does not renew his/her license on

time. However, the Board indicated that a minimal number of licenses are reinstated each year.

Auditors also used the following methods:

- To determine whether the Board's opening, investigation, adjudication, and disciplinary practices are in compliance with its statutory authority, and whether discipline appeared to be consistently applied, auditors reviewed a total of 42 complaints that were opened and/or resolved during fiscal years 2006 through 2009. The 42 complaints reviewed involved 39 licensees, and included 27 complaints selected randomly and 15 selected judgmentally, including some that were added to ensure that the file review included board-opened complaints or the most serious sanctions the Board employed. Table 4 illustrates the results of the file review by each sampling technique.

Table 4: File Review Results by Selection Method
Fiscal Years 2006 through 2009

	Selection Method	
	Random (27 total)	Judgmental (15 total)
Subpoena too broad	3	0
Board considered prior complaint and disciplinary information too soon	6	7
Advisory letters used inconsistent with statute	3	0
Inconsistent discipline issued	1	0

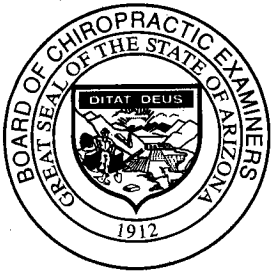
Source: Auditor General staff analysis of 42 complaint files selected from fiscal years 2006 through 2009.

In addition, auditors selected four other Arizona health regulatory boards—the Arizona Medical Board, Naturopathic Physicians Medical Board, Board of Osteopathic Examiners in Medicine and Surgery, and Board of Podiatry Examiners—based on their experience handling complaints, size, auditors' familiarity with board processes, and/or because their professionals provided some of the same services as chiropractors, and interviewed these boards' executive directors regarding their complaint-handling practices. Auditors also reviewed the four boards' complaint-handling statutes. Additionally, auditors reviewed the Washington State Department of Health's *Disciplinary guidelines manual*.

- To assess the Board's financial status, auditors obtained and reviewed information on the Board's budget process and various expenditures; compiled and analyzed unaudited information about the Board from the Arizona Financial Information System (AFIS) for fiscal years 2004 through 2009 and the AFIS Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2004 through 2009, and board estimates for fiscal year 2010 as of March 2010; and reviewed agency documentation including a board document explaining the Board's financial situation. Auditors also reviewed the Office of the Auditor General's 2001 performance audit and sunset review of the Arizona State Board of Chiropractic Examiners (see Report No. 01-12), and changes that occurred to the Board's statutes after 2001 to determine whether such changes may have impacted the Board's financial situation. Finally, auditors requested national information about the profession from the National Board of Chiropractic Examiners.

- To develop information for the Introduction and Background section, auditors compiled and analyzed unaudited information about the Board from the Arizona Financial Information System (AFIS) for fiscal years 2004 through 2009 and the AFIS Management Information System *Status of General Ledger—Trial Balance* screen for fiscal years 2004 through 2009, and board estimates for fiscal year 2010 as of March 2010; reviewed information about the Board in the Joint Legislative Budget Committee appropriations report for fiscal year 2009; and reviewed the Board's organizational chart and other agency-provided documents. Auditors also reviewed the National Board of Chiropractic Examiners Web site for national exam information and other chiropractic information; the Council on Chiropractic Education's Web site for information on national chiropractic colleges accredited by the Council; and the Master List of State Government Programs.
- To gather information for the Sunset Factors, auditors relied on work conducted to complete the audit report's Introduction and Background section, Finding, and Other Pertinent Information section. Additionally, auditors placed four anonymous public information request phone calls to board staff and reviewed the Board's records-retention schedule filed with the Arizona State Library, Archives and Public Records. Auditors also reviewed a sample of ten licensing files for initial licenses issued between fiscal years 2007 and 2009, including renewal information for six licenses. Additionally, auditors reviewed an analysis of the Board's administrative rules performed by the Governor's Regulatory Review Council staff and a board notice of proposed rulemaking filed with the Secretary of State's Office. Auditors also assessed the Board's compliance with open meeting laws, including reviewing its statement of disclosure filed with the Secretary of State's Office as of June 19, 2009, and two board meeting notices and agendas from May and June 2009. Auditors also reviewed board interagency service agreements with other state agencies such as the Attorney General's Office and board contracts such as those for contracted investigators.

AGENCY RESPONSE



State of Arizona Board of Chiropractic Examiners

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• • •
Patrice A. Pritzl
Executive Director

June 23, 2010

Debra Davenport
Auditor General
2910 N. 44th St., #410
Phoenix, AZ 85018

Dear Ms. Davenport,

Please find attached the Board's response to the agency sunset audit. The Board appreciates the dialogue with your staff during this process. The Board hopes that any additional comments or opportunity taken to clarify the Board's position or provide explanation is accepted in the same spirit as the explanation and clarification noted in the Audit Report.

Response to recommendations:

- 1.1 (A) The Board should revise its complaint opening policy to guide staff on what actions should be taken if a complaint involves an unlicensed chiropractor.

The finding of the Auditor General is not agreed to, but a different method of dealing with the recommendation will be implemented.

This recommendation appears to be a simple matter of semantics. The audit staff has agreed that the Board must investigate the unlicensed practice of chiropractic in order to establish a cause to seek an injunction. The Board believes that it is consistent in law and action with other Board's in this matter. The investigation of the unlicensed practice of chiropractic is the same as that of an investigation of a licensed chiropractor. The party is informed of the allegation of unlicensed practice and given the opportunity to respond. Board staff identifies the information required in order to determine if the allegation is true. Upon completion of the investigation, the matter is forwarded to the Board for its review. The Board will accommodate the recommendation of the Auditor General by designating the investigation of an unlicensed person who is not an applicant as a "non-jurisdictional" complaint. The investigation process will remain the same as that of a jurisdictional complaint.

In addition, the Board will include actions related to unlicensed practice in its adverse actions report and direct staff to provide that information to the Board after the Board determines whether the allegation either has or has not been substantiated by the investigation.

(B) The Board should eliminate the authority to not open a complaint based on the complainant's intent, such as the intent to intimidate or harass a public official.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- 1.2 To improve its investigation process, the Board should limit the amount and type of records requested in its subpoenas where possible. The Board policy should be modified to provide guidance to staff on how to subpoena appropriate information.

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

The Board's policy for subpoenas has been structured to prevent perceptions or allegations of inconsistency in the investigation process. However, the Board will, when possible, limit the request for documents to the current period of treatment, unless the complaint indicates a broader spectrum of concern. The Board will also limit requests for x-rays and sign-in sheets when applicable. The Board will authorize the executive director to use her judgment when issuing subpoenas. If the executive director encounters situations in which she requires additional guidance, she will submit that request to the Board. In addition, the Board views all subpoenas with the complaint during its initial review. If the Board becomes concerned that additional instruction is required, it will respond at that time. To date, Board staff has developed templates of subpoenas for the levels of investigation indicated above.

Clarification:

Board staff has also researched this matter by speaking with staff of eight other boards and obtaining copies of their subpoenas. We found that the structure and scope of Chiropractic Board subpoenas are consistent with those Boards, except in one case in which it is typical for a patient to see the doctor for one day only. Such short periods of treatment are not common to most health professions, and certainly not common to the chiropractic profession. We have found that the audit staff's lack of familiarity with chiropractic and chiropractic record keeping, as well as their lack of understanding of the relationship between the treatment record and the billing record makes it difficult to successfully arrive at a consensus on this matter.

The audit report expresses the opinion that limitations on subpoenas save time and money. Actually, the delay caused by insufficient collection of documents requires both the doctor and the Board to expend additional resources for staff time, equipment, supplies and postage to issue and comply with multiple subpoenas. In addition to cost, insufficient collection of documentation requiring that additional subpoenas be issued is contrary to the Auditor's expectation that the Board conclude cases within 180 days. The investigation is delayed

each time that the Board is required to issue an additional subpoena in order to give the doctor sufficient time to respond.

Finally, the Board would like to refer to Pima County Superior Court Case No. 2 CA-CV 2009-0083. The licensee petitioned the Court to revoke or modify a Board subpoena based on his assertion that the complaint did not allege a violation of the Chiropractic Practice Act. The Court noted that the Board is permitted on its own motion or on receipt of a complaint....[to] "investigate any information that appears to show that a doctor of chiropractic is or may be in violation of this chapter or board rules." § 32-924(B). Courts must therefore give "wide berth" when reviewing the validity of an investigation conducted by the Board. *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, paragraph 8, 18 P. 3d 97, 99 (App.2000), *quoting Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n*, 133 Ariz. 500, 506, 652, P.2d 1023, 1029 (1982). Based on the allegations in C.F.'s complaint ----the Board became concerned that the licensee had engaged in a number of actions that could be grounds for disciplinary action and initiated this investigation. The Boards concern was neither arbitrary nor capricious, and we cannot say its initiation of an investigation based on the information presented to it was an abuse of discretion. *See Lathrop*, 182 Ariz. At 177, 894 P. 2d at 720. The court therefore did not err in refusing to revoke or modify the subpoena". This is offered as a demonstration that the intent of the law regarding the scope of a subpoena is not intended to narrow the reasonable scope of an investigation.

- 1.3 (A) The Board should review a licensee's complaint and disciplinary history information only after it has substantiated the allegations in a new complaint.

The finding of the Auditor General is agreed to and will be implemented.

The Board will establish a policy as recommended. The policy will direct staff to provide information to the Board on a licensee's history of complaints, advisory letters, non-disciplinary orders and disciplinary orders only at the time that the Board finds that allegations are true but before the Board determines what action it will take.

Clarification:

There are some cases in which the Board believes a review of history would be appropriate. The Board believes these cases would be appropriate because the Board is not reviewing the history to determine whether or not a new complaint is true. First, an assistant attorney general for the Office of the Auditor General has confirmed that if the licensee or the licensee's legal representative introduces the subject of any complaint or disciplinary history, the Board may then review the complaint or order at that time to confirm that the statements are based in fact. Additionally, the Board feels that it should be able to take into account a licensee's history of remediation when considering a new complaint, because the history of remediation may adequately address any concerns. Finally, the Board may need to consider whether the allegations in a new complaint have already been adjudicated in a prior matter.

Because the report appears to indicate that the Board discusses a licensee's complaint and disciplinary history as a normal course of action, it appears appropriate for the Board to clarify the actual practice. The Board members are provided a brief when they review a complaint investigation. The brief provides a summary of the complaint, the doctor's response, the investigative findings and the doctor's public record profile. The public record includes the doctor's history of dismissed complaints, advisory letters and/or orders. The Board does not discuss the public record for each case, it is simply provided as part of the summary. The purpose of including the doctor's public record is not intended to influence the determination as to whether the current allegations are true. The recent passage of HB2545 A.R.S. § 32-3213, which states that a licensee's record of complaints, advisory letters and disciplinary or non-disciplinary orders is available to the regulatory board at all times supports that the inclusion of the public record in the summary has been appropriate. That being said, the Board understands that while its practice has been appropriate, the audit recommendation is a best practice option that the Board will adopt.

(B) The Board should establish a policy that complainants are not permitted to withdraw complaints alleging statute or rule violations, and instruct staff to send any complaints that have been investigated to the Board for adjudication.

The finding of the Auditor General is agreed to and will be implemented. The policy will prohibit withdrawal of a complaint once it has been submitted to the office, regardless of whether a file had been opened.

Clarification:

Although the Board will adopt the auditor's recommendation, it is not in agreement that the Board's practice for allowing withdrawals has been inappropriate or inconsistent. The practice has been that staff would honor a complainant's request to withdraw a complaint if the investigation had not established a probable violation of law at the time the request was made. If staff had become aware of evidence of a violation, the investigation would proceed. Staff is not aware of any law that prevents a person from withdrawing a complaint. In one case, the investigation had progressed enough to establish evidence of a possible violation of law. The request for withdrawal was declined. The investigation in the matter was concluded, and had found only minor record keeping errors. The matter went before the Board, but was pended at the request of the licensee's attorney. The reason given was that the complainant was filing a malpractice suit and it was requested that the Board delay its review until the civil matter was concluded. Shortly after, the complainant withdrew her complaint. Because there were no substantive findings from the investigation, the request was honored. The third case is consistent with the second. The investigation found no violation of law. The complainant withdrew the complaint, and with no evidence of violations, the request was honored. Although the Board believes that the requests for withdrawals were consistently addressed, it also recognizes that a best practice may be to remove the option to allow a complainant to withdraw a complaint.

- 1.4 (A) The Board should consider developing guidelines to help it ensure that it provides consistent and appropriate discipline.

The finding of the Auditor General is not agreed to, but a different method of dealing with the recommendation will be implemented.

The audit admittedly did not establish that the Board has been inconsistent in imposing disciplinary action. It noted one matter in which the Board issued a fine that was not consistent with other cases. In all other cases, action was consistent and appropriate. In addition, in 2008, the Office of the Ombudsman also conducted an investigation in which a sample of 20 files were reviewed for disciplinary actions taken between June 1, 2006 and June 1, 2007. The investigation found that the Board's actions were consistent. The Board also communicated with the Medical Board on this matter because it has disciplinary guidelines in law. The information received was that the guidelines are not useful.

Past Board members have informally looked to guidelines published by the Federation of Chiropractic Licensing Boards and those guidelines may be used as advisory by integrating them into orientation materials for new Board members. The guidelines indicated in the audit report will also be used to assist with orientation. The fact remains, however, that all cases before the Board must be considered on the specific facts at hand.

In most cases, the Board imposes discipline when multiple violations have occurred; making the application of preconceived actions cumbersome and impractical. The Board, however, has been successful in meeting consistency expectations by referring to its past actions and by establishing standard language that applies to all disciplinary orders when applicable. The Board has accomplished this by referring to staff for guidance with consistency concerning past actions. The Board will accommodate the Auditor's recommendation by formalizing that process as an "adverse action report" that will be available to Board members at the time they consider what action to take following a finding that violation(s) of law have occurred. Staff will also have language from past orders for similar violations available for the Board's consideration at that time.

- (B) The Board should request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters.

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- (C) The Board should ensure its advisory letters clearly communicate the statutes violated, and/or licensee practices that caused the Board concern.

The finding of the Auditor is agreed to and the audit recommendations will be implemented.

When making a motion for an advisory letter, the Board will be clear as to whether the advisory letter is issued due to a violation of the Chiropractic Practice Act, and what statute or rule has been violated, or whether the advisory letter is merely issued to express a concern.

Sunset Factors

Time to complete investigations.

The Board is very concerned about the delay in completing investigations. Although the Board has implemented a number of practices to improve timeliness, the fact remains that the Board has insufficient staff (one investigator) to handle all investigations and to monitor licensees on suspension or probation for compliance. This will continue to be a challenge due to insufficient revenues. In addition, the Board no longer has sufficient funds to maintain a contract with the Office of the Attorney General. It can be anticipated that hearings will be delayed as a result. Given the above, the Board will continue to work toward improving timeliness, but the auditor's goal of 180 days for concluding cases is not feasible without legislative authority to increase fees to meet that expectation.

Please find listed below some of the steps taken to address timeframe concerns.

Formal Hearings: The timeframe to complete Formal Hearings from FY03 to FY08 range from 4.8 months to 24 months. The 24 months applied to FY05. The timeframe in FY04 had been 4.8 months. The Board has no control over how quickly the Office of the Attorney General prepares a case for hearing, but some resolutions can be instituted. A concern with timeliness in concluding Formal Hearings was raised during the last Sunset Audit. As a result, the Board was able to obtain statutory authority to increase fees to contract for dedicated time from the Office of the Attorney General. The average time to conclude a hearing improved somewhat before the poor performance in concluding hearings again came to the executive director's attention in FY05. The executive director found that the assistant attorney general assigned to the Board was not preparing for hearings because he reported he was putting all of his time toward negotiating consent agreements. As a result, negotiating and writing of consent agreements was assigned to the executive director, and the assistant attorney general's time was to be dedicated to timely conclusion of hearings. When hearings still fell outside of an acceptable timeframe, the Board requested a new assistant attorney general. The Board was then able to improve timeframes for hearings. It is the Board's goal to hold Formal Hearings within 3 months. The Board's current assistant attorney general's effort to accommodate this policy has been appreciated; however, the lack of financial resources combined with the Board's work load is anticipated to impact timeliness in the future.

Consent Agreements: The executive director's review of delays in concluding matters with consent agreements identified two primary causes. The first was that the licensee's defense

would wait until receipt of notice of the date of a Formal Hearing or Formal Interview before consideration of a consent agreement was requested. The result was that the Formal Hearing or Formal Interview would be delayed, and negotiations for a consent agreement would not even begin until the third month or longer. The second was that no timeframe was placed on the negotiation process, with some cases taking up to a year before an agreement was reached. To solve this problem, the Board instituted three policies. A licensee has twenty days following a matter being voted to Formal Hearing or Formal Interview in which to request consideration of a consent agreement. As per Board policy, a request for a consent agreement submitted after the Complaint and Notice of Hearing or the Invitation to Formal Interview has been served is not accommodated. The licensee is notified of these policies in writing at the time the matter is voted to Formal Interview or Formal Hearing. Finally, the Board will not delay a Formal Hearing or Formal Interview for a consent agreement. The current challenge to concluding a matter with a consent agreement within the three month target date is a lack of human resources to write the consent agreement. The executive director writes the consent agreements in addition to her other duties.

Investigations: In FY03, FY04 and FY06, staff was able to conclude the average investigation within four months. In FY05, staffing was insufficient to maintain that performance. Contract investigators were engaged to assist, and both the deputy director and the executive director worked nights and weekends to improve timelines, which was achieved in FY06. However, the board also received a record high of 178 new complaints filed in FY06. The high number of complaints exceeded the Board's resource of one person to timely conclude investigations, and therefore, the timeframe went up. The executive director reviewed possible causes for the substantial increase in complaints. One of the explanations had to do with complaints coming from the insurance industry. Insurance complaints were submitted to the Department of Insurance, which then forwarded the complaint to the Board. In order to file a complaint with the Department of Insurance, the insurance company was required to file each patient file separately for the same doctor. As a result, the Board was getting multiple complaints filed against the same doctor with the same allegations in each complaint. The Board's resolution was to arrange a different structure for submission of complaints from participating insurance companies that compressed multiple patient files into one complaint, and limited the files reviewed to the minimum number needed to complete the investigation. Although this effort resulted in fewer complaints filed in following years, the backlog from the 178 FY06 complaints continued to impact timeliness for completion of investigations into FY08 and FY09. While the Board had used the resources of contracted chiropractors to conduct investigations requiring technical expertise to alleviate a work load exceeding the capacity of one person in the past, the Board no longer has sufficient funds to use that resource.

The executive director placed the requirement that timeframes to complete investigations be improved in performance expectations. A new structure was introduced as a result. The Board agenda had had a mix combining Board review of investigation files and Board review of Formal Interviews at each meeting. It takes one to two weeks to prepare files for a Board meeting. As a result, there were only two weeks a month to work on investigations. The new structure dictated that investigative files be reviewed by the Board every other month, rather than monthly, to

provided more time to work on investigations. The plan was successful and staff was able to improve timeframes for investigations. That plan was interrupted when the deputy director/investigator left his position, and the current hiring freeze caused a delay in hiring a replacement. The current deputy director reports that she believes she is now on target to achieve the goal to reduce timeframes.

Formal Interviews: The timeliness of Formal Interviews was impacted by some of the same circumstances that influenced timeliness for Formal Hearings and Investigations. Resolutions are also the same. Formal Interviews are generally held every other month, when the Board is not reviewing investigations. This allows for more Formal Interviews to be placed on the agenda, with great success. The backlog of Formal Interviews resulting from the FY06 filing of 178 complaints has been completely eliminated. The majority of Formal Interviews are now considered by the Board within three months, as per policy.

The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.

The Board agrees that the current level of regulation exercised by the Board is appropriate for regulation of the chiropractic profession. However, the Board has observed a need to establish authority to regulate business entities offering chiropractic services that are not owned by and/or operated by a licensed health care professional. Traditionally, chiropractic practices were owned and operated by chiropractors. However, that trend is reversing. It is becoming common for unlicensed individuals to own and/or operate businesses offering chiropractic services. It is also becoming common for those businesses to establish practices that violate the Chiropractic Practice Act, and place the health, welfare and safety of the consumer at risk. Without the authority to regulate such businesses, the Board's only option is to address the violations through the chiropractic employees. It is not a sufficient measure. The employee leaves the business, sometimes with discipline on their record, only to be replaced by another chiropractor who is put into the same position by the business owner to violate laws, or lose employment. In one case, the Board found that the unlicensed operator of a clinic has been receiving notices of complaints and subpoenas sent to licensees in her employ, keeping the information from the licensees, and submitting a reply to the subpoena with a forged signature of the licensees. In other cases, patient records are left in the possession of the unlicensed business owner when the licensee leaves employment. The patients are then unable to obtain their records to seek care from another provider.

Additional Comment

The recommendations of the Office of the Auditor General are established based on the explanation and clarification provided in the body of the report. The Board feels it is appropriate for it to comment on those observations that may have influenced the recommendations, and that

may not be consistent with the data or records of the Board. The comments are not intended as criticism of the report or audit staff. They are offered for purposes of clarification only.

As an initial observation, the Board finds that identification of an error during the audit has been extrapolated into an overall structural weakness of agency functions. An error may occasionally occur, which is true of any entity. However, occasional errors do not reflect an overall dysfunction. While this Board may strive for perfection, it is logical that some errors will occur.

On page 10, the report states that in three complaint investigations, the subpoenas were overly broad. Two of these cases have been responded to in the past, although on further review, it appears additional analysis of one of the cases is appropriate. In terms of the third complaint investigation, the Board has expressed its intention to limit subpoenas to the current period of treatment unless otherwise indicated. The Board is not in agreement on the audit analysis of the other two matters for the following reasons:

There appears to be some level of misperception that the purpose of an investigation is to prove that a doctor has violated a law. That is perhaps understandable if one is not experienced in and familiar with conducting health regulatory board investigations. In reality, it is never assumed that the allegations in a complaint are or are not true. Obtaining the investigative record is as important to disproving allegations as it is to proving allegations. A patient record is a large picture. Each part of the record, whether it is a day or section, is a piece of the puzzle that makes up the whole picture. Looking only at a limited piece of a record may inaccurately reflect that a doctor has violated a law, when another part of the record may demonstrate the opposite. Doctors generally follow a similar outline in creating records, but the law does not require any particular outline be used. It is not unusual to find the answer to a question scattered about in the record. When we conduct an investigation, we want it to be fair and impartial. The Board issues its subpoenas to that end. The subpoenas in the two cases in question were issued with the following analysis.

Case 1. The complainant alleged that he was told his co-pay was \$36.00, but he learned from his insurance provider that the co-pay was actually \$25.00. The allegation would fall under the Board's jurisdiction under A.R.S. 32-924(A)(5) and (23) and A.A.C. R4-7-902 (2). If the doctor billed the patient \$11.00 more than the actual co-pay, it would substantiate a violation of law. However, a review of the patient treatment record may actually reflect that the additional \$11.00 was for a separate service that was appropriately billed. Therefore, billing and treatment records were obtained.

Case 2. The complainant alleged that she was told her co-pay was \$25 but it was actually only \$10. She also alleged that the Doctor billed her for \$1,300 before billing the insurance company and that the doctor stated it was because the insurance company does not always pay when billed. This raised the allegation of double billing. The complaint does allege violations of the Chiropractic Practice Act. The allegation that the patient was told her co-pay was \$25 when it was actually \$10 would fall under the Board's jurisdiction under A.R.S. 32-924(A)(5) and (23)

and A.A.C. R4-7-902 (2). The additional allegation that the patient and the insurance company were billed for the same services would fall under the above as well as ARS 32-924(5) and AAC R4-7- 902 (13). The billing and treatment records were obtained to determine what amount was actually billed and collected. The investigator would not assume the allegation to be true. The billing record was needed to determine the amount actually billed and collected. The rest of the record was needed to determine whether or not the patient was improperly billed for services also billed to the insurance company. Both billing and treatment records are needed to determine if both the patient and the insurance company were billed for the same services, or if the charges were for different services.

Page 10 also comments on the subpoena's being misleading. The Board contends that the subpoenas are not misleading. The Board's subpoenas are consistent with other health regulatory boards in providing legal reference for the board's authority to issue a subpoena and the licensee's rights. In general, Boards give the appropriate statutory reference, as does the Chiropractic Board. Licensees, as a regulated party, have the responsibility to be familiar with the Chiropractic Practice Act. They are provided with the laws with their application, and required to pass the jurisprudence examination. They are provided with any updates in laws by mail. Finally, the laws are available on the Board's web site. Subpoenas are consistent in providing statutory reference because a professional person who is provided with a statutory reference would reasonably be expected to look at the law. It has been the Board's experience that this is true. The audit report itself notes a doctor requested an amendment of a subpoena. The executive director regularly receives requests to amend or waive a subpoena, and an example given on page 3 of this response reflects a licensee challenging a subpoena in court.

Page 13, the audit report refers to complaints that were filed against one current Board member and two former Board members. The Board recognizes that the audit found that the matter was handled appropriate by the Board, and appreciates the considerable amount of time audit staff spent in their research. The Board did note that because the audit report dedicates a fairly substantial portion of that section describing the allegations, it may also be advisable to explain the conclusion as well. The complaints were not opened because the license who submitted them declined to provide the name or contact information for a witness to the complaint, and his complaint clarified he was not a witness himself. In addition, the licensee, although present, declined to speak to the Board to support his allegations.

Page 19 of the report indicates that expenses for professional and outside services increased about \$20,000 in FY 2005 and remained elevated. While the report identifies some of the basis for increased expenses, it fails to identify two interagency contracts which comprised a significant portion of the costs. The Board had a contract with the Office of the Attorney General and with the Department of Administration for accounting services. Those represent significant costs, as well as costs that tend to increase each year as those agencies experience increases to their own expenses.

Page 20 of the report states that the Board authorized an increase in personnel expenses in 2005 and that the agencies expenses exceeded revenues those years, although the funds were available to cover the cost. The Board would like to clarify that in FY2005, the Board's expenses did not exceed revenues. Expenses were \$444.8 and revenues were \$441.9. The Auditors table reflects a different expense because it does not factor in administrative adjustments from bi-annual appropriations. In addition, the Board cut other expenses so that the increase did not increase the overall budget request, and the fees for license renewals were still \$35.00 below the cap.

In closing, the Board appreciates this opportunity to respond to the audit report. The Board also expresses its appreciation for the observations and recommendations of the audit staff, and will most certainly apply them as we do any constructive criticism, as a goal toward continued improvement.

Sincerely,

Patrice Pritzl
Executive Director

AUDITOR GENERAL REPLY TO AGENCY RESPONSE

The following auditor comments are provided to address certain statements the Board of Chiropractic Examiners made related to Finding 1:

1. The Board refers to a Court of Appeals (Division 2) case, but according to the Court, this case does not create legal precedent. The Board's response indicates that the case demonstrates that the intent of the law regarding the scope of a subpoena is not to narrow the reasonable scope of an investigation. However, our report does not recommend narrowing the reasonable scope of an investigation, but rather that the Board limit where possible the amount and type of records requested in its subpoenas. (See page 3 of the Board's response.)
2. The Board's response refers to a statement made by an Assistant Attorney General for the Office of the Auditor General. However, as allowed by A.R.S. §41-192(E)(5), our Office has its own General Counsel, and does not make use of an Assistant Attorney General. (See page 3 of the Board's response.)
3. The Board's response suggests that staff are allowed to dispose of complaints based on the results of investigations. However, only the Board has authority to conclude on the results of investigations and resolve complaints. Therefore, regardless of whether staff investigations identify no or minor violations, according to A.R.S. §32-924(E) and (F), the Board is responsible for determining what actions to take such as dismissing a complaint, or issuing nondisciplinary or disciplinary action. (See page 4 of the Board's response.)

Performance Audit Division reports issued within the last 24 months

08-03	Arizona's Universities—Capital Project Financing	09-08	Arizona Department of Liquor Licenses and Control
08-04	Arizona's Universities—Information Technology Security	09-09	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts
08-05	Arizona Biomedical Research Commission	09-10	Arizona Department of Juvenile Corrections—Sunset Factors
08-06	Board of Podiatry Examiners	09-11	Department of Health Services—Sunset Factors
09-01	Department of Health Services, Division of Licensing Services—Healthcare and Child Care Facility Licensing Fees	10-01	Office of Pest Management—Restructuring
09-02	Arizona Department of Juvenile Corrections—Rehabilitation and Community Re-entry Programs	10-02	Department of Public Safety—Photo Enforcement Program
09-03	Maricopa County Special Health Care District	10-03	Arizona State Lottery Commission and Arizona State Lottery
09-04	Arizona Sports and Tourism Authority	10-04	Department of Agriculture—Food Safety and Quality Assurance Inspection Programs
09-05	State Compensation Fund	10-05	Arizona Department of Housing
09-06	Gila County Transportation Excise Tax		
09-07	Department of Health Services, Division of Behavioral Health Services—Substance Abuse Treatment Programs		

Future Performance Audit Division reports

Department of Agriculture—Sunset Factors

Attachment B

Followup

Board of Chiropractic Examiners



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

December 5, 2011

The Honorable Rick Murphy, Chair
Joint Legislative Audit Committee

The Honorable Carl Seel, Vice Chair
Joint Legislative Audit Committee

Dear Senator Murphy and Representative Seel:

Our Office has recently completed an 18-month followup of the Board of Chiropractic Examiners regarding the implementation status of the 7 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in June 2010 (Auditor General Report No. 10-06). As the attached grid indicates:

- All 7 recommendations have been implemented.

Unless otherwise directed by the Joint Legislative Audit Committee, this concludes our follow-up work on the Board's efforts to implement the recommendations from the June 2010 performance audit report.

Sincerely,

Dale Chapman, Director
Performance Audit Division

DC:sjs
Attachment

cc: Patrice Pritzl, Executive Director
Board of Chiropractic Examiners

P. Dianne Haydon, D.C., Chairperson
Board of Chiropractic Examiners

Board of Chiropractic Examiners

Auditor General Report No. 10-06

18-Month Follow-Up Report

Recommendation

Status/Additional Explanation

Finding 1: Board should improve key complaint-handling processes

- | | | |
|-----|--|-------------------------|
| 1.1 | To improve its process for opening complaints, the Board should work with the Attorney General's Office to revise its complaint-opening policy to: guide staff on what actions should be taken if a complaint involves an unlicensed chiropractor, including what information staff should gather so that the Board can seek injunctive relief if appropriate and how staff should distinguish that the complaint and associated investigations pertains to a nonjurisdictional issue; and eliminate the authority to not open complaints based on the complainant's intent, such as the intent to intimidate or harass a public official. | Implemented at 6 months |
| 1.2 | To improve its investigation process, the Board should limit the amount and type of records requested in its subpoenas where possible. To help ensure that this change is made, the Board's Complaints, Investigations and Hearings policy should be modified to provide guidance to staff on how to subpoena appropriate information. | Implemented at 6 months |
| 1.3 | To improve its adjudication process, the Board should: | |
| a. | Review a licensee's complaint and disciplinary history information only after it has substantiated the allegations in a new complaint. | Implemented at 6 months |
| b. | Modify its Complaints, Investigations and Hearings policy to direct staff to provide complaint and disciplinary information only during the disciplinary phase, establish that complainants are not permitted to withdraw complaints alleging statute or rule violations, and instruct staff to send any complaints that have been investigated to the Board for adjudication. | Implemented at 6 months |

Recommendation

Status/Additional Explanation

1.4 To improve its disciplinary process, the Board should:

- a. Consider developing guidelines to help ensure that it provides consistent discipline.

Implemented at 18 months

Instead of establishing disciplinary guidelines, the Board reviews historical disciplinary information from the prior 3 years to help ensure consistent disciplinary actions. This historical information is generally provided verbally to the Board after it has determined that a violation has occurred and before it determines the specific disciplinary action it will take.

- b. Request the Legislature to amend its statutes to add a definition clarifying how it can use advisory letters.

Implemented at 18 months

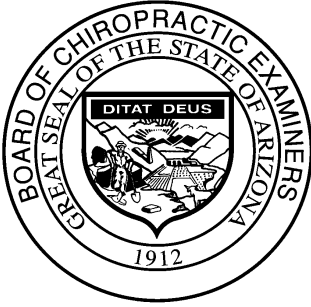
- c. Ensure that its advisory letters clearly communicate the statutes violated and/or licensee practices that caused the Board concern.

Implemented at 6 months

Attachment C

Self-Review Report

Board of Chiropractic Examiners



State of Arizona

Board of Chiropractic Examiners

Governor
Douglas A. Ducey

Executive Director
Dr. B. Michael Nayeri, FABFM, FABMP

1740 West Adams Street, Suite 2430 | Phoenix, Arizona 85007
Office: 602-864-5088 | TTY: 800-367-8939
www.chiroboard.az.gov

October 21, 2021

The Honorable Joanne Osborne
Chairwoman of the Health and Human Services Committee
josborne@azleg.gov
House of Representatives
1700 W Washington St
Phoenix, AZ 85007

RE: Sunset Review Report

Dear Chairwoman Osborne:

The Board of Chiropractic Examiners is pleased to share its sunset review summary report with you to consider.

Thank you for your time, consideration and support. If you have any questions, please do not hesitate to contact me via email at mnayeri@chiroboard.az.gov or via telephone (602) 542-9109 *direct*.

Respectfully submitted,

B. Michael Nayeri
Executive Director

Enclosure: 01
Cc: file.

Ms. Emily Bonner
Arizona House of Representatives
1700 West Washington
Phoenix, AZ 85007

6/2021 Engagement Letter

2020 Sunset Review Handbook

1.The objective and purpose in establishing the agency and the extent to which the objective and purpose are met by private enterprises in other states.

The Arizona Board of Chiropractic Examiners handles the licensing and regulations for the chiropractic profession within the state. In the State of Arizona, the statute provides for the Board of Chiropractic Examiners to manage the licensing and regulation for the chiropractic profession. In the US, all 50 states require Chiropractors to obtain a license to practice. In the state of Arizona, we accept multiple application types for licensure.

The objective of the agency is to protect the publics' health, safety, and welfare by regulating the profession, in accordance with State statute. To accomplish this, the agency conducts the following operations:

- Investigates complaints against Chiropractic Physicians
- Oversees the general application of the laws governing the practice of chiropractic
- Carries out the legislature's mandate by enforcing existing regulation that is the least burdensome upon the profession as possible
- Address scope of practice issues and better define both appropriate conduct by professionals and consumer expectations
- Continually review required credentials for doctors to practice safely, effectively, and ethically
- Apply appropriate disciplinary and remediation actions to chiropractors that break the public trust through a violation of law
- Function in the national regulatory community to assist other professions or jurisdictions affected by chiropractic.

Additionally, the agency establishes and oversees education and training standards for Arizona Chiropractors to ensure the health, safety, and welfare of patients.

2. The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.

Over the last ten years, the Arizona Board of Chiropractic Examiners has met its objectives and exceeded overall efficiency.

The Agency continues to reduce licensing time-frames by increasing and generating new pathways to licensure. The agency has implemented the following processes:

Ms. Emily Bonner
Arizona House of Representatives
1700 West Washington
Phoenix, AZ 85007

- In 2015, the Agency added a third licensing pathway of Endorsement, which allows qualified and licensed professionals in other states that had not taken the later parts of the national exam to apply for licensure in Arizona.
- The Agency also worked to secure Reciprocity agreements with other states to increase options for licensure.
- In 2019, the Agency implemented the Universal Licensing pathway, which requires that the applicant hold a license to practice Chiropractic in another State for a minimum of one year and be in good standing in that state. Universal Recognition also requires that the applicant be a resident of the State of Arizona.

The Agency has worked to reduce pending complaints and adequately adjudicate complaints in a reasonable and timely manner.

The Agency has continued to do more with less, especially following the economic downturn in 2009. More online services are now available, including but not limited to:

- Licensing renewals
- Complaint intake process
- Online credit card payments

During the COVID-19 pandemic, the Agency began hosting meetings virtually, expanded access, and provided a new avenue for the public to interact with the Agency.

3. The extent to which the agency serves the entire state rather than specific interests.

The Arizona Board of Chiropractic Examiners serves the entire state rather than specific interests by fulfilling its mission to protect the Arizona public through the enforcement of laws governing the practice of Chiropractic. This is evident in the manner that the Agency accepts and investigates complaints against licensed and unlicensed individuals.

The agency continues to facilitate licensing for qualified Chiropractic Physicians to ensure that all Arizona's citizens have access to competent providers in all corners of the state.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

The Arizona Board of Chiropractic Examiners maintains high standards as it relates to adopting legislative mandates. In the recent past, the following rules were reviewed and adopted:

- GRRC approved the Agency's 2015 5 year rule review. The Agency adopted the council's recommendations in 2017 when the Agency conducted a rule-making process.

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Arizona House of Representatives
1700 West Washington
Phoenix, AZ 85007

- The 2015 5-year rule review with GRRC and the Agency received a favorable response at the review's conclusion. The Agency is currently undergoing another 5-year review due to be completed in October.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

Possible rule changes are always discussed in open meetings and in calls to the public. The virtual Board meetings, which began in 2020, provide a more efficient way for public input to be presented.

Specifically in 2015, the Arizona Board of Chiropractic Examiners invited the Arizona Association of Chiropractic to participate in discussions about rules changes. The Agency posts all proposed rules on the official website (www.chiroboard.az.gov), which is available for member and public viewing.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the agency to timely investigate and resolve complaints within its jurisdiction.

The Arizona Board of Chiropractic Examiners diligently addresses complaints in an effective and timely manner.

Complaints are thoroughly investigated with proper jurisdiction providing an avenue for patients to resolve potential care disputes with their Chiropractor directly to the Agency.

Based on the specified measure that were in place from 2010 to 2015, the percentage by which the complaints were resolved within 180 days, averaged at 54%. Complaints were administratively resolved in an average of 3.5 months. Additionally, as reflected on (table A), over 119 investigations were conducted for the reporting period of 2010 to 2015 of which about 20% resulted in disciplinary action.

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Complaints Data (Table A)

	NUMBER OF COMPLAINTS FILED	% OF COMPLAINTS RESOLVED WITHIN 180 DAYS WITH NO HEARING REQUIRED	AVG. # OF MONTHS TO RESOLVE COMPLAINT BY ADMINISTRATIVE HEARING	INVESTIGATIONS CONDUCTED	% OF INVESTIGATIONS RESULTING IN DISCIPLINARY ACTION
2010	85	54	0	76	22
2011	128	41	3	190	16
2012	115	80	0	165	22
2013	81	40	6	105	
2014	95	58	4	114	
2015	98	51	8	65	
Average	100.3	54.0	3.5	119.2	20

7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

ARS § 32-928 provides the Arizona Board of Chiropractic Examiners, the Arizona attorney general, or the county attorney with injunctive relief to act if a person engages in chiropractic practice without first obtaining a license.

8. The extent to which agencies have addressed deficiencies in their enabling statutes that prevent them from fulfilling their statutory mandate.

The Arizona Board of Chiropractic Examiners conducts continuous reviews of the enabling statute, ensuring that the Agency fulfills the statutory mandate.

In an effort to further verify the accuracy of the statutory mandate, in 2015, the Agency conducted a large-scale legislative review of the Agencies statute, which allowed for updating and clarifying the law.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in [A.R.S. § 41-2954](#).

As it pertains to A.R.S. § 41-2954, the Arizona Board of Chiropractic Examiners operates with the least burdensome and most stringent regulations and statutes possible. At this time, the Agency does not believe that substantive changes are necessary.

As we look ahead at ways to improve, the Agency may look into Animal Chiropractic and consider adding a specialty like Nutrition, Occupational Health, Radiology and Sports Medicine.

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Furthermore, the agency is exploring the possibility of adding the ability to accept Fingerprint Clearance Cards in place of the background check.

10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

The termination of the Arizona Board of Chiropractic Examiners would cause an immediate and severe detriment to the health, safety, and welfare of the public in Arizona.

The termination of the Agency would remove the only avenue available in which the public can be assured providers are licensed and working within the industry-standard as set by the Agency. Without the services provided by the Agency, the public is not protected by a trustworthy authority that ensures the Chiropractic Physicians are:

- Appropriately trained
- Adequately supervised
- Required to provide safe and competent services

Additionally, there would be no means to report grievances, injuries, or concerns about a chiropractors other than costly civil and criminal litigation.

11. The extent to which the level of regulation exercised by the agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

The Arizona Board of Chiropractic Examiners regularly works to maintain the highest standard of regulations. In doing so, we monitor and communicate with Chiropractic agencies in other states to compare our level of regulations and protocols to exercise best practices in Arizona.

The Agency believes that it continues to operate with the least burdensome and most stringent regulations and statutes as possible.

In 2015, the Agency reviewed the national average cost per license for Chiropractic Physicians; The Arizona Board of Chiropractic Examiners was below the national average for licensing fees.

12. The extent to which the agency has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Arizona Board of Chiropractic Examiners has used experts for case reviews during investigations, when necessary. The Agency has found that the majority of work can successfully be managed internally and that the use of private contractors is costly and could ultimately result in licensing fee increases to address the increased cost of investigations. Seeking outside consultants proved to be cost prohibitive, and the Agency began seeking industry experts that were willing to volunteer to aid us in keep Agency expenses at the reduced cost.

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The Agency has kept the licensing fees low to impose the least financial burden upon the licensees for the regulation and protection of the public.

In 2015, the Agency reviewed the national average cost per license for Chiropractic Physicians; The Arizona Board of Chiropractic Examiners was below the national average for licensing fees.

13. The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.

The Agency has kept the licensing fees low to impose the least financial burden upon our licensees for the regulation and protection of the public.

The cost of regulation from licensing fees is minimal and is not an undue burden for the licensees. Additionally, any cost or negative consequences created by the Agency are significantly outweighed by the benefits to the protection of the public's health, safety, and welfare.

Additionally, please provide written responses to the following:

1. Identify the problem or the needs that the agency is intended to address.

Regulations exist to protect the public's health, safety, and welfare. The Arizona Board of Chiropractic Examiners oversees the licensing and regulations for the Chiropractic Profession. We achieve this by utilizing subject matter experts and through self-regulation by the Chiropractic Profession. The Agency obtains member involvement and is the governing authority over which we regulate the profession.

2. State, to the extent practicable, in quantitative and qualitative terms, the objectives of the agency and its anticipated accomplishments.

The objective of the Arizona Board of Chiropractic Examiners is to license incoming qualified Chiropractic professionals within 120 days. The agency meets this objective 100% of the time. The agency is also responsible for investigating complaints against Chiropractic Physicians. The agency works quickly and efficiently to adjudicate claims 180 days from the date filed.

3. Identify any other agencies having similar, conflicting or duplicative objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

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The Arizona Board of Chiropractic Examiners is the sole Agency for licensing and regulating Chiropractic professionals in Arizona. No other state holds jurisdiction for Chiropractic professionals in the state of Arizona. No Federal agency exists for the licensing of Chiropractic professionals.

4. Assess the consequences of eliminating the agency or of consolidating it with another agency.

In 2017, DHS conducted an evaluation review of the Arizona Board of Chiropractic Examiners. The objective was to identify possible efficiencies the Agency could undergo to improve overall organization structure and budget modifications to most efficiently and economically serve the people of Arizona.

Due to the already efficient structure of the Agency and its day-to-day operations, the final report indicated that the Arizona Board of Chiropractic Examiners is engaged in the cost-effective operating strategy.

The report recommended that cost savings would be achieved by creating a shared work environment. As a result of this recommendation, the Agency transitioned to a new location in December of 2017. This location is shared with 28 other state agencies and helped reduce overhead and administrative costs to the Agency.

Finally, Laws 2021, Chapter 176 requires the committees of reference to consider certain factors for each agency that administers an occupational regulation, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An occupational regulation does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502, as amended, transferred and renumbered by Laws. 2021, Chapter 176.

The regulation of the Chiropractic profession is imperative to protect the health, safety, and welfare of the public. Without regulation, the public would be at serious risk to unregulated individuals practicing in a manner that can cause patient injuries and potentially patient deaths. The Agency operates by establishing the least burdensome of regulation as practicable. The Agency's secondary goal is to increase the number of licensed chiropractic physicians in the state to allow increased access by patients to qualified and necessary care. The Agency has continually worked to create pathways to licensure here in Arizona for qualified Chiropractic Physicians, most recently implementing pathways like Licensure by Endorsement, Universal Recognition, and Telehealth Registration.

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2. The extent to which the failure to regulate a profession or occupation will result in:
- a. the loss of insurance. If unlicensed, practitioners would not be eligible to obtain malpractice insurance for practice in the State of Arizona.
 - b. an impact to the ability to practice in other states or as required by federal law. Any licensees that have current licenses but do not necessarily meet current testing standards as all parts the examination were not created prior to their licensure would not be eligible for licensing in other states. This would affect a large number of chiropractors who were licensed before the early 1980s. Additionally, Chiropractic is licensed in all 50 states and the Board has reciprocal agreements for licensure with 8 states as well as licensure by Endorsement to accept applications from qualified practitioners from all 50 states, and the territories of Canada, Australia and New Zealand. Licensees without Arizona licenses would not be able to practice in other states without meeting requirements for licensure in each state. Many states do require a state of principal licensure to move or obtain licensure in new states.
 - c. an impact to the required licensure or registration with the federal government. Currently, there is no federal license or registration for Chiropractic. Licensees without Arizona licenses would not be able to practice in other states without meeting requirements for licensure in each state. Many states do require a state of principal licensure to move or obtain licensure in new states.
 - d. the loss of constitutionally afforded practices.

Unregulated Chiropractic Physicians are not eligible to receive malpractice insurance and cannot go to other states to apply for a license. Additionally, the Federal Government does not offer licensing services. If unregulated, Chiropractic Physicians would not be recognized by insurance and therefore would not qualify to accept patient insurance or receive insurance payments.

The public would be at risk of malpractice as they could be receiving treatment from unqualified Chiropractic Professionals. Unregulated could lead to Chiropractic Professionals working in a way that poses a danger to the public's health, safety, and welfare.

If the Arizona Board of Chiropractic Examiners disbanded, the public would have no avenue to seek protection or adjudication of their complaints. The court cannot opine on the treatment and care appropriate by a Chiropractic Physician. The courts rely on the Agency as the industry expert for care and treatment in the Chiropractic Profession and defer to the Agency to inform them of the industry standard. The industry standard is established and maintained by the Agency through regulations.

