ARIZONA **Auditor General** *Making a Positive Difference*

Buckeye Elementary School District
18-month Follow-up Report on Report 2 of 2

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.