



A REPORT  
TO THE  
ARIZONA LEGISLATURE

Special Investigative Unit

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Special Review

## **Maricopa County Community College District**

Improper Enrollment in the Arizona State  
Retirement System and Loan of Public Monies

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APRIL • 2009



**Debra K. Davenport**  
Auditor General

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DEBRA K. DAVENPORT, CPA  
AUDITOR GENERAL

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OFFICE OF THE  
AUDITOR GENERAL

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

April 20, 2009

Members of the Arizona Legislature

Maricopa County Community College District Governing Board

Dr. Rufus Glasper, Chancellor  
Maricopa County Community College District

In June 2008, the Office of the Auditor General became aware of certain allegations, such as noncompliance with laws, involving the Maricopa County Community College District. As a result, we have performed a special review of selected matters of the District. The review was conducted under the authority vested in the Auditor General by Arizona Revised Statutes §41-1279.03.

The review consisted primarily of inquiries and examination of selected financial records and other documentation. Therefore, the review was substantially less in scope than an audit conducted in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the adequacy of the financial records or the internal controls of the District. We also do not ensure that all deficiencies in internal controls or other conditions that may require correction or improvement have been disclosed.

The accompanying report describes the Office's findings and recommendations as a result of this special review. As outlined in its response, the District does not agree with the findings, but plans to implement most of the recommendations.

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

This report will be released to the public on April 21, 2009.

Sincerely,

Debbie Davenport  
Auditor General

# SUMMARY

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In June 2008, Auditor General staff began a review to determine whether the Maricopa County Community College District (District) had improperly enrolled employees of three nonprofit corporations (nonprofits) in the Arizona State Retirement System (ASRS). As a result of our review, we determined that the District misrepresented at least 26 nonprofit employees as district employees, improperly loaned the cost of their salaries to the nonprofits, and improperly allowed 22 of these nongovernmental employees to participate in state and district benefits.

One of the primary benefits these nonprofit employees received was participation in the state retirement system. Although these employees were not eligible to participate in the state retirement system as employees of the nonprofits, the District made them appear to be district employees. Over the past 21 years, the District's actions allowed 22 of the nonprofit employees to participate in the ASRS. The other 4 employees did not participate in the ASRS, although they were afforded other district employee benefits.

District administration determined in January 2008 that the District needed to correct the situation and discontinue the arrangements; however, the District did not notify the ASRS of potentially ineligible employees, and did not discontinue the arrangements with two of the nonprofits for another 7 to 9 months. Furthermore, the District had not yet discontinued the remaining arrangement as of February 2009. We submitted our report to the ASRS, which has the authority to determine whether the 22 employees should be removed from the ASRS.

The District's actions were unlawful when it loaned public monies by improperly placing all 26 nonprofit employees in its payroll system, paying their salaries and benefits, and later accepting reimbursement from those employees' nonprofit corporations. Detailed records were available only for the past 6 fiscal years, during which the loans totaled more than \$3 million. These actions violated the Arizona Constitution, Article IX, §7, which prohibits the gift or loan of public monies to corporations.



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# INTRODUCTION & BACKGROUND

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Maricopa County Community College District (District) is the largest system of community colleges in Arizona. The District includes ten colleges, two skill centers, and several education centers located throughout the metropolitan Phoenix area. Its mission is to “provide access to higher education for diverse students and communities,” and it serves more than 250,000 students annually. The District employs more than 13,000 faculty and staff.

In 1987, the District entered into an arrangement with the Arizona Community College Association (ACCA), a nonprofit corporation, to process payroll for ACCA’s employees and to allow them to receive district benefits, such as medical insurance, and participate in the state retirement system. ACCA agreed to reimburse the District for those costs. ACCA served as an avenue of communication for Arizona community college districts, and its staff compiled reports for the districts.

The District began similar arrangements with the Arizona Business and Education Coalition (ABEC) in 2002 and the East Valley Partnership (EVP) in 2003. According to a district administrator, the ABEC arrangement was proposed by ABEC when a prospective ABEC employee expressed interest in state retirement benefits as part of employment negotiations. The District first declined this proposal, but that decision was later reversed by high-ranking district officials. Another district official characterized these arrangements as a way of helping a community partner by providing an “administrative home” for the companies, which were small and thus had difficulty performing their own administrative tasks. District officials believed the District would benefit from the nonprofits’ activities; however, they could not quantify these benefits, other than potentially expanding the District’s involvement in teacher, workforce, and regional economic development. Furthermore, the District acknowledged that it could have partnered with the nonprofits and achieved these same benefits without adding the nonprofit employees to the District’s payroll.

Although all three nonprofit corporations are involved with some aspects of public education and government, they are not themselves governmental entities and are not eligible to receive loans from the District.

The District could have worked with the nonprofit corporations and achieved the same educational goals without adding nonprofit employees to the District’s payroll.

In July 2007, district staff became aware of a March 2006 Auditor General report that questioned a similar arrangement in Santa Cruz County. The District recognized that its arrangements with nonprofits were similar to Santa Cruz County's, and were therefore also problematic. However, it was not until January 2008 that the District decided the arrangements needed to end. The District did not remove the EVP employees from district payroll until August 2008 and the ABEC employees until October 2008. As of February 2009, the District had not yet removed two ACCA employees from its payroll system. According to the District, ACCA is in the process of dissolving. The District has been unable to provide a definitive answer on when the District will end the arrangement with ACCA.

# FINDING 1

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## District improperly included nondistrict employees in state retirement plan

From 1987 through at least June 2008, the District improperly paid salaries and employee-related benefits to the employees of three nonprofit corporations, and then received reimbursements from those nonprofits. Two of the arrangements were discontinued in 2008, but one was still in place in February 2009. Calculations in this report include amounts through June 2008, the most recent complete fiscal year that these arrangements were in place.

Benefits that the nonprofits' employees received as a result of these arrangements included participation in the Arizona State Retirement System (ASRS), which provides retirement benefits for employees of the State of Arizona and its political subdivisions (counties, community college districts, incorporated cities and towns, school districts, and certain other governmental entities). Nongovernment employees are not eligible for membership, although the ASRS may approve certain nonprofit corporations, such as councils of governments, to participate if their primary purpose is to perform a governmental service. As of February 2009, the ASRS had never been approached for, nor had it granted approval for, any of the three nonprofits in question to participate in its benefits plan.

The District submitted the necessary employment documents and retirement system application forms to enroll 22 nonprofit employees in the ASRS. The District failed to seek permission from ASRS officials or gain formal advice from its legal counsel on the propriety of adding these workers to the ASRS. To fund an employee's retirement benefit and long-term disability plan, both the employer and employee are required to pay the ASRS a percentage of the employee's salary, set at 9.45 percent each for fiscal year 2009. Since 1987, the District paid more than \$200,000 to the ASRS for the employer's portion of retirement contributions for these ineligible nongovernment employees and accepted reimbursement from the nonprofits for these costs.

The District improperly allowed 22 nondistrict employees to enroll in the state retirement program.

Although the District has asserted that these nonprofit employees are district employees, many factors demonstrate that the workers are not district employees, but are instead employed by their respective nonprofit corporations. Moreover, by improperly including ineligible participants in the ASRS, the District may have put these individuals' retirement options at risk.

## Nonprofit employees were not district employees according to district policy

The District has implemented the Specially Funded Program Policy to describe policies and benefits that apply to district employees whose positions are funded from external sources. For example, the District could pursue a grant from a federal government agency and use the grant monies to pay the salary of the district employee performing the research funded by the grant. Another example of external funding is when the District enters into an agreement to provide technical training for a local manufacturing company; district employees provide the training, and the company pays the District a negotiated fee. The district employees providing the services in these examples would be considered externally, specially funded employees. The District states that it treats specially funded employees much like all other district employees, that district employment policies apply to these workers, and that it developed the Specially Funded Program Policy to regulate these externally funded positions.

The District claims that Arizona Business and Education Coalition (ABEC), Arizona Community College Association (ACCA), and East Valley Partnership (EVP) employees are district employees who are a part of the District's Specially Funded Program. Although the District labels the nonprofit employees as specially funded district employees, the District routinely circumvented or ignored the Specially Funded Program Policy when processing the nonprofit employees. The District provided records for 21 of the 22 nonprofit employees who participated in the ASRS through the District, stating that the other employee had been either temporary or part-time and thus did not have a file. These files, other documents, and interview statements demonstrate numerous ways the District did not follow the Specially Funded Program Policy.

**Positions not established in accordance with policy**—According to the District's Specially Funded Program Policy, employee positions can be established through proposals that are funded through a grant, contracts, or restricted donations. However, the District was unable to provide contracts negotiated between the District and any of the three nonprofits, or any other documentation that outlined the terms of any grants or donations from these nonprofits.

Employees not hired in accordance with policy—The Specially Funded Program Policy provides that the District will determine the need for specially funded positions and then follow certain procedures to hire the employees to fill them. However, the nonprofit employees were generally hired by their respective nonprofits and later added to the District’s system. For example:

- The District could not provide job application forms for seven of the nonprofit employees. Additionally, for nine other nonprofit employees, the District provided job application forms that were dated after the District had already processed the nonprofit employee as a district new hire.
- The District’s Specially Funded Program Policy requires the District to advertise specially funded positions for a minimum of 5 working days. The District could not provide a valid district job posting for any of the 21 nonprofit employees. In fact, the District confirmed that it did not post job announcements for 18 of the 21 positions and stated that documentation was no longer available for the other 3.
- One file contained a job posting advertised by the nonprofit. This job posting states, “This position is with the Arizona Community College Association, a voluntary dues-paying non-profit organization,” and, “This position reports to the Executive Director of ACCA.”
- Three EVP employee files contained letters from the EVP Chairman to the District, requesting that the existing EVP employee be added to the District’s payroll system. Each letter states that the reason for the EVP’s request is so the individual can have a “competitive benefit package.”
- One ABEC employee file contains an e-mail in which a district administrator indicates that ABEC has hired an executive director who will “be part of our [the District’s] payroll and benefits.”
- District employees purported to be the supervisors of the nonprofit employees stated that the nonprofits hired the employees, and the District’s role was limited to processing the administrative paperwork generated by the nonprofits’ actions.
- 15 of the 21 files contained employment agreements negotiated between the nonprofit employees and their respective nonprofit corporations; the District did not sign these agreements.

The District’s role was limited to processing administrative paperwork generated by the nonprofits’ decisions.

Employment not terminated in accordance with policy—The Specially Funded Program Policy states that the District and the employee have the right to terminate employment. The policy does not provide that employment may be

terminated by an external entity. Seven employees submitted their resignations to the nonprofits, not the District. Additionally, a nonprofit notified one employee that she was being terminated because the nonprofit's Board of Directors had eliminated her position. Furthermore, several of the district employees purported to be the supervisors of the nonprofit employees stated that the nonprofits terminate their employees and indicated that the District did not have the ability to terminate nonprofit employees. Although one district official described her involvement in the discipline and termination of one of the nonprofit employees, the District did not provide any documentation of these events; in fact, the employee's file contained his resignation letter to the nonprofit.

Although 14 of the 41 employment agreements between the nonprofits and their employees contain language providing that the employee, the nonprofit, or the District may terminate employment, other sections of those same agreements have contradictory language suggesting that the District does not have the ability to terminate the nonprofit employee. This contradictory language, the district employees' statements, and the way the nonprofits actually handled terminations demonstrate that the District did not, in practice, have the ability to terminate the nonprofit employees.

**Benefits not administered in accordance with policy**—The Specially Funded Program Policy defines the benefits that specially funded employees may receive. Although the District claimed that the nonprofit employees were required to follow district policy, at least 13 employees received benefits greater than those allowed by the policy in effect at the time. For example:

- At least 8 nonprofit employees were granted 20 or 25 vacation days annually, although the policy allowed a maximum of 12 days.
- At least 7 nonprofit employees were allowed to carry their unused vacation time into the next year, although the policy stated unused time could not be carried over.
- At least 3 nonprofit employees were approved to receive payouts of unused vacation time upon termination, although the policy required that unused vacation time be forfeited upon termination.
- At least 1 nonprofit employee was allowed to accrue personal days, although the policy did not allow personal days to accrue.

One of these employees was a former ACCA Executive Director who directed the District to continue to issue paychecks to her for nearly 3 months after her last day worked so that she would receive pay for about 39 accrued vacation days, 4 accrued personal days, and two holidays that had not yet occurred. The former Executive Director's letter to the District stated in part:

“This letter is to inform you that I have submitted my resignation as Executive Director of the Arizona Community College Association . . . As a reminder, I was never an employee of the Maricopa Community College District, which allowed me to negotiate an exit strategy (as noted above) directly with the chair of ACCA.”

“As a reminder, I was never an employee of the Maricopa Community College District . . .” - Former Executive Director of ACCA

Each of the three nonprofit corporations is governed by a board of directors. Many district officials interviewed stated that, as part of their district job duties, they currently or had formerly held a position on one of these boards. These district officials indicated it was their duty to represent the District’s interests while serving as a member of the nonprofit board. Some of these district officials believe that the District fulfills employer responsibilities because they are also members of the nonprofit boards. However, the documents in the nonprofit employees’ files indicate that the nonprofits, not the District, control the major facets of the nonprofit employees’ employment, and district officials only generate the administrative paperwork necessary to implement the nonprofits’ decisions.

## Nonprofit employees were not district employees according to ASRS and IRS guidelines

In addition to not being compliant with the District’s Specially Funded Program Policy, the nonprofit employees were not district employees according to ASRS or Internal Revenue Service guidelines.

ASRS officials state that to participate in the state retirement system, a person must work at least 20 hours per week for 20 weeks in a fiscal year, and must truly be an employee of an approved, participating employer. When there is a question about whether a person is truly an employee, the ASRS examines each case on its own facts and looks at evidence other than merely whether the entity qualifies a person as an eligible employee. ASRS officials also consider factors such as whether the employer sets the hours of work, provides the location and tools for performing the work, and has direct supervision over the employees.

The Internal Revenue Service provides guidance on how to determine whether someone is an employee. An employer/employee relationship is defined by the degrees of behavioral and financial control that the employer exerts. Supervision is a key aspect of the employer/employee relationship. For example, according to IRS guidelines, an employer would instruct an employee when, where, and how to work, and would control the business aspects of the employee’s job, such as how much pay the employee will receive. ASRS rules have similar definitions of an employment relationship, stating that the employer has the right to control and direct an employee, and that the right to terminate employment “strongly implies” the right to control.

The District's own policy defines "supervision" as follows: "'Supervise' means to make day-to-day decisions regarding the employment of a person employed by the Maricopa County Community College District, such as work assignments, change in responsibilities, work schedule, and other decisions in direction of such person." However, district supervisors did not make day-to-day decisions regarding the nonprofit employees. The following statements were made to auditors by purported district supervisors of the nonprofit employees:

- ACCA:
  - The ACCA Board (not the District) is the body that hires, contracts with, directs, and terminates the ACCA Executive Director, who in turn performs these functions for the other ACCA employees.
  - The ACCA Executive Director does not answer to the District's Chancellor or the District's Governing Board.
- EVP:
  - The EVP Board (not the District) decided on and implemented actions related to its employees such as hiring, directing, approving time-off requests, evaluating, setting pay rates, and terminating.
  - The District's role was to perform any administrative tasks necessitated by those actions.
- ABEC:
  - One former supervisor stated that ABEC used its own processes to hire the ABEC Executive Director, who in turn hired the other ABEC employees. This supervisor stated she delegated supervision of the other ABEC employees to the Executive Director and met with the Executive Director regularly to advise her on various issues; however, ABEC handled the Executive Director's performance reviews. Another former supervisor stated that the ABEC Board directed the ABEC Executive Director on how to perform her job, while the district supervisor would advise her on any administrative issues such as forms that ABEC employees needed to fill out.
  - A different former supervisor stated that ABEC employees were hired, directed, managed, and terminated by the ABEC Board (not the District), and that no supervisory duties were performed for the ABEC employees. This supervisor described the District's role as that of a fiscal agent for ABEC, limited to managing the paperwork needed to get the ABEC employees through the District's payroll system. This former supervisor explained that because ABEC is a prestigious coalition of business and

education groups, it is very important that ABEC be an independent, autonomous entity and not represented as a small department under the direction of the District. It would have been inappropriate for the District to create an appearance that it was directing the actions of ABEC or ABEC's Executive Director.

In addition to statements that district employees made, documents on file with the District also illustrate the nature of the employment relationship between the nonprofit employees and the nonprofit corporations.

**Employment agreements**—The District provided 41 annual employment agreements for the three nonprofits' current and former employees. The agreements typically state that the employee will report to and be evaluated by the nonprofit, not the District. The District does not define the expected work result, much less how, when, or where it is to be achieved. Furthermore, the nonprofits dictate the wages, benefits, and pay increases the workers will receive, with the nonprofit informing the District after these decisions have been made. For example:

- All 41 agreements provided that the employee's job duties would be determined solely by the nonprofit.
- Thirty-seven of the 41 agreements state that the employment agreement may be terminated by the employee or by the nonprofit. Thirty-one of these refer to the agreement between the employee and the nonprofit as an "employment relationship."
- Thirty-three of the 41 agreements indicated that the employee's annual salary would be determined solely by the nonprofit. The remaining 8 agreements did not address who would review and adjust the annual salary.

**Other communications**—In addition to the employment agreements, other communications illustrate the nature of the relationship between the nonprofit corporations and the nonprofit employees:

- A letter from the Executive Director of ACCA to the District states, "The attached minutes of the Arizona Community College Association reflect the Board's decision on staff salary changes. They also reflect the decision to change the amount of vacation time allotted for the Executive Director and the provision to carry over current unused vacation time into the next fiscal year . . ."
- When a former Executive Director of ACCA applied for a position with the District, she listed ACCA as her current employer and stated, "I want to work for the Maricopa District," as one reason for leaving her job with ACCA.

"MCCD has graciously allowed two East Valley Partnership employees [to be] employees of MCCD for the purpose of providing them with group insurance and retirement benefits."

- Letter from East Valley Partnership to the District

- A letter from the EVP Board to the District states, “For the past year, this revenue-neutral funding process has allowed our staff to accomplish the goals and objectives of the East Valley Partnership while enjoying the benefits of being employees of MCCD . . . We have continued to autonomously operate the affairs of the East Valley Partnership as a separate and distinct entity, while at the same time receive guidance and direction on policy and procedural matters . . .”
- A letter from the EVP Board to the District states, “For the past year MCCD has graciously allowed two East Valley Partnership employees, [President and CEO] and [Vice President], to be externally funded employees of MCCD for the purpose of providing them with group insurance and retirement benefits. We greatly appreciate MCCD helping us this way.” The letter further states that the EVP Board of Directors had approved salary increases for the two employees about 6 months previously, and states, “We have been paying the difference between their old salaries and the new utilizing a third-party payroll service . . .”

As shown in Figure 1, auditors determined that the District does not recruit, hire, direct, supervise, evaluate, or terminate the nonprofit employees, and furthermore does not consistently perform any typical employer actions except for issuing paychecks and providing benefits. Therefore, the ACCA, ABEC, and EVP employees were not district employees.

Figure 1: Typical Employer Actions Performed by District and Nonprofit Corporations

	District	Nonprofits
Recruit and hire		✓
Negotiate salary		✓
Set work hours		✓
Assign job duties		✓
Provide work space		✓
Provide equipment		✓
Supervise work		✓
Issue paychecks	✓	
Provide benefits	✓	
Evaluate performance		✓
Award raises		✓
Extend contract		✓
Terminate employment		✓

Source: Auditor General staff analysis of IRS Publication 15-A, “Employer’s Supplemental Tax Guide,” for use in 2008, Arizona Administrative Code R2-8-104, effective 4/12/1984, and district files.

## Contributors’ retirement unresolved

The District’s actions may put the employees’ retirement benefits at risk since the ASRS may choose to remove the employees from the system and refund the retirement contributions made while they were inappropriately enrolled. Thirteen of the nonprofit employees participated in ASRS only through the District, for time periods ranging from less than a year to over 11 years. Some of those 13 employees may now need to make other retirement plans; for example, 1 employee has contributed over \$30,000 that could have been invested in a different retirement plan. The other 9 employees have participated in the ASRS through other eligible government entities prior or subsequent to their employment with the nonprofits and have legitimately earned years of service toward their retirement through the ASRS. For these 9

employees, the time they worked for the nonprofits and had their paychecks processed through the District was improperly added to their years of service. If the ASRS allows the improperly added time to remain in the employees’ accounts, these

9 employees may be able to retire prematurely and receive a higher monthly benefit than they would otherwise have been entitled to. Some of these 9 employees may also need to make other retirement plans, as they could lose approximately 1 to 7 years of credited service earned under these arrangements. Furthermore, the District's arrangement allowed 1 employee to improperly receive several years of long-term disability benefits and then retire in 2004 with more than 20 years of service.



# FINDING 2

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## District unlawfully loaned public monies to nonprofit corporations

To allow the nonprofit employees to receive district benefits, including ASRS participation, the District agreed to pay their salaries and benefits with district monies and then receive reimbursement from the employees' nonprofit corporations. This practice constituted a loan of district monies, which is prohibited by the Arizona Constitution, Article IX, §7, which states that a political subdivision shall not give or loan its credit to any individual, association, or corporation. The District began making these loans in 1987, but detailed records were only available for the past 6 fiscal years, during which the loans totaled more than \$3 million.

The District unlawfully loaned more than \$3 million during a 6-year period.

For all three nonprofits, the District's loan arrangements generally functioned as follows:

- The nonprofit informed the District how much the employees should be paid.
- The District processed the nonprofit employees' paychecks biweekly, including salary and other employment-related costs such as benefits and payroll taxes.
- The District submitted monthly invoices to the nonprofit for these payroll costs.
- The nonprofit paid the District, in full and generally within 1 month of the invoice date. Figure 2 illustrates the accumulated loan amounts for fiscal years 2003 through 2008 (amounts for earlier years were unavailable). During those years, the monthly invoices (loan) for each nonprofit ranged from about \$6,000 to over \$44,000. From the payment of salary, payroll taxes, and ASRS contributions for the first paycheck of the month, it generally took between 44 and 70 days for the District to receive reimbursement from the nonprofits.

As illustrated in Figure 2, these arrangements started as early as 1987 and continued through at least June 2008. Even though the nonprofits reimbursed the District for all payroll costs, including the employer portion of benefit costs, the District never should have made the loans, according to the Arizona Constitution, Article IX, §7. The Arizona Attorney General has issued opinions stating that to comply with the Arizona Constitution, distributions of public monies that may be considered gifts must be for a public purpose, and the value of the benefit received by the public must not be far exceeded by the consideration paid by the public. No public purpose for these loan arrangements was documented in district files. The District's loans to the three nonprofit corporations do not appear to meet this test because these loan arrangements were designed primarily to benefit the nonprofit employees, not to serve a public purpose. The District did not need to make loans to the nonprofits in order to benefit from the nonprofits' activities, and the nonprofits could have processed their own payroll.

Figure 2: Unlawful Loans to Nonprofit Corporations

Nonprofit	Year Incorporated	Years of Improper Loans	Number of Employees Involved		Accumulated Loan Amounts <sup>1</sup>
			Current	Current and Former	
Arizona Community College Association	1987	1987-2008	3	13	\$1,175,487
Arizona Business and Education Coalition	2002	2002-2008	3	8	983,553
East Valley Partnership	1987	2003-2008	4	5	1,063,161
<b>Total</b>			<b>10</b>	<b>26</b>	<b>\$3,222,201</b>

<sup>1</sup> Amounts represent accumulations for fiscal years 2003 through 2008. Documentation of amounts loaned before fiscal year 2003 was unavailable.

Source: Auditor General staff analysis of district files and detailed accounting data.

The arrangements described in Findings 1 and 2 where the District improperly enrolled nonprofit employees in the ASRS and unlawfully loaned public monies to private organizations have been found before at other public entities. For example, in March 2006, the Auditor General found that Santa Cruz County improperly made loans to a nonprofit corporation to cover that nonprofit's payroll costs and inappropriately allowed employees of the nonprofit to participate in the County's benefits program, including ASRS membership. Additionally, in September 2007, the Auditor General reported that the Maricopa County Regional School District No. 509 misused public monies when it paid a nonprofit corporation's employees' salaries and also provided employee benefits to these ineligible employees.

# RECOMMENDATIONS

Although district management began questioning the propriety of the arrangements in July 2007, some of the loan and benefit arrangements have continued up to the date of this review. To help ensure the proper use of public monies and district resources, the District should spend monies in accordance with district policies and state law. Specifically, district officials should ensure that the following actions are taken:

1. The District should immediately take steps to cease its improper and unlawful loaning of public money by terminating the remaining reimbursement arrangement with ACCA.
2. The District should contact the ASRS to determine what actions need to be taken regarding the 22 nongovernmental employees that it allowed to participate in the ASRS.
3. The District should ensure that it provides employee benefits, including ASRS membership, only to qualified employees.



# AUDITOR GENERAL REPLY TO DISTRICT RESPONSE

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Rather than responding directly to the facts stated in the report, the District's administration has taken the highly unusual tactic of employing outside legal counsel to prepare its response. This response appears to have been written to divert attention from the evidence by attacking and attempting to discredit the Office of the Auditor General. This Office has nothing to be gained or lost in determining whether the employees of the nonprofit organizations actually were district employees and entitled to participate in the Arizona State Retirement System (ASRS). The Office of the Auditor General is an independent agency of the State Legislature and made its determinations after substantial and impartial examination of all relevant facts.

Further, despite the inflammatory rhetoric and numerous misstatements and misrepresentations in the District's response, the fact remains that although the District sought to create an appearance that these persons were district employees, it was the nonprofits that performed such actions as: recruiting and hiring these persons, negotiating with them on their salaries, assigning their job duties, evaluating their performance, and terminating employment. The District, despite being given multiple opportunities, could not present physical evidence to support its many claims about the District's role in these arrangements. Further, as described in the report, although the District is now emphatic that it legitimately hired these persons as district employees, it has already terminated its arrangements with two of the three nonprofits.

It is unfortunate that the District did not consult with the ASRS or the District's legal counsel when the issue of enrolling these persons in the ASRS first arose, and that neither the District nor the nonprofits sought to determine whether the nonprofits could qualify for membership in the ASRS on their own merits. Finally, as noted in our report, the District's actions have ultimately put the affected employees' retirement benefits at risk since the ASRS may now choose to remove them from the system and refund their contributions.

Most of the points raised in the District's response are already addressed in our report. However, we have addressed some of the most egregious misstatements directly within the District's response.



# DISTRICT RESPONSE



www.maricopa.edu

**VIA U.S. MAIL**

April 10, 2009

**Rufus Glasper  
Chancellor**

Debbie K. Davenport  
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*Re: Maricopa Community College District / Arizona State Retirement System*

Dear Ms. Davenport:

This letter responds to the Auditor General's Final Report issued to the Maricopa County Community College District (the "District") on March 10, 2009. Please see attached document.

Respectfully,

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The Maricopa County Community College District is an EEO/AA institution.

Maricopa County Community College District  
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**Maricopa Community Colleges Response to ASRS Special Review: April 2009**

Despite an opportunity to rectify the litany of errors in the Auditor General's first draft report issued on October 17, 2008,<sup>1</sup> your office once again has engaged in result-oriented auditing by drawing conclusions based on incomplete and erroneous information. By collecting evidence to support only one side of the issue, the Auditor General has violated its fundamental duty to provide a fair and balanced audit. Once again, the Auditor General has reached the wrong result.

Despite its expansive fifteen page attack on the District, the Auditor General initially directed the District to limit any response to just three pages. This effort to gag open discussion on important issues that affect many taxpayers is inappropriate and without basis. Further, your office has given the District just days to respond despite taking more than ten months to conduct the two audits. Our analysis of some of the numerous flaws in the March 10, 2009 Report is set forth below.

**Summary of the District's Position**

The audit addressed a simple issue: did the District employ the individuals who served the nonprofit organizations? The answer is clearly "yes." Under these facts, any competent court would find that the workers in question are employees of the District. Here, the District Governing Board hired these employees and provided them retirement benefits consistent with the Board's statutory powers. The District recruited and interviewed the employees. All hiring procedures such as employment paperwork was processed through the District. The District's policies applied to the employees and set forth their terms and conditions of work. Additionally, the District was engaged in setting salaries, awarding raises, and extending contracts for these employees.

District administrators informed your office that they considered the workers in question to be employees of the District. Moreover, the employees themselves looked to the District as their employer. They received benefits and pay from the District. They relied on the District's policies. They had supervisors who were District employees. The obvious conclusion is that the workers in question were employees of the District.

Yet, your Report again reaches the wrong result. Although the Auditor General is tasked with "investigat[ing] both sides of competing claims *rather than collecting only the evidence that supports*

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<sup>1</sup> The Auditor General withdrew its October 17, 2008 Report. The Report was so fatally flawed that the Auditor General was required to interview additional witnesses, review new evidence, and take other affirmative actions. This Report suffers from similar fatal flaws.

**AUDITOR GENERAL REPLY:** *The Auditor General did not withdraw the preliminary draft report. The October 17 draft report was provided to the District as a courtesy so the District could communicate any questions or concerns about the review's findings prior to publication. To ensure that the District's many concerns were adequately addressed, auditors collected and examined additional evidence, although not required to do so. This additional investigation did not contradict or negate the findings of the preliminary draft. Rather, it provided additional supporting evidence, which was added to the report in order to address the District's concerns.*

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*or refutes one side of an issue,*<sup>2</sup> the Report subverts its duties to be impartial. Impartiality is crucial because:

Drawing conclusions with incomplete or erroneous information not only weakens credibility, but can actually harm the State, if the Legislature or an entity takes action based on flawed conclusions and recommendations.<sup>3</sup>

Despite its own principles, the Report repeatedly advances only one side of the issue – the side advocated by your office. The Report ignores crucial facts (*e.g.*, the Board *authorized* the hirings), overlooks relevant laws (*e.g.*, the Board’s statutory authority to hire employees and provide benefits), and omits crucial testimony (*e.g.*, the witnesses all stated the individuals were employees of the District). These omissions have the objectionable effect of misleading those readers who were deprived of the true facts.

As set forth below, the conclusions in the Report are the result of “incomplete and erroneous” information.

#### **BACKGROUND**<sup>4</sup>

The District serves more than 250,000 students annually and has more than 13,000 employees. Of those 13,000 employees, approximately two hundred are “externally funded” from outside sources such as private companies and local, state, and federal government.

The District is governed by the District Governing Board (the “Board”). Importantly, the Board has broad statutory authority to hire employees “it deems necessary” and to implement policies. *See* A.R.S. § 15-1444(A)(6) and 15-1444(B)(4). The Board also can provide retirement benefits to its employees. *See* A.R.S. § 15-1444(B)(7).

Under this statutory authority, the Board implemented the Specially Funded Program Policy (the “Policy”) regarding the employment of “externally funded” employees. Since the enactment of this Policy in 1982, the District has hired hundreds of employees and properly provided them with benefits. Other higher education institutions in Arizona engage in the same well-known practice.

Under the Policy, the Board *publicly* approved the employment of individuals who served three nonprofit organizations: Arizona Community College Association (ACCA), Arizona Business and Education Coalition (ABEC), and East Valley Partnership (EVP). Each of these organizations provides services to the public. For instance, ACCA, which serves the community college districts, responds to requests from the legislature for information regarding the community colleges. ABEC, an organization advocating education, promotes teacher preparation. EVP supports economic, governmental, and educational development.

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<sup>2</sup> *See* Auditor General Performance Manual.

<sup>3</sup> *Id.*

<sup>4</sup> A complete recitation of the facts is provided in the District’s response to the October 17, 2008 Report and are incorporated herein by this reference.

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The missions of the organizations were closely aligned with those of the District and the organizations worked together closely. The District employed twenty-six individuals assigned to these non-profit organizations; each of the organizations fully reimbursed the District for the employees' salaries and all benefit costs.

The District plainly employed the workers in question. The District hired the employees and maintained employment files which contained applications, copies of identification cards, and acknowledgments of loyalty to the District. The District's employment policies, including benefits, applied to the employees. The District also managed contract renewals, salary increases, and absences – all consistent with its published, public policies.

Additionally, the District assigned supervisors who were District employees. Significantly, the employees who served the nonprofit agreements have employment agreements which specify that the District itself is the employer. The employment agreements state that the employees were hired “at-will” and, as such, the employee, the non-profit organization, or the District may terminate the employment relationship at any time.

### **ANALYSIS**

**A. Finding 1 Erroneously Concludes that the District Did Not Employ the Individuals Who Served the Nonprofits.**

**1. The Auditors Overlook Controlling Laws Relating to the Employment Relationships and, Thus, the Finding Is Incorrect.**

In conducting an audit, the auditors were tasked with considering “key laws, regulations, and provisions or contracts.” (Auditor General Performance Manual) The rationale for this is clear: laws and contracts provide clarity to and govern relationships. As referenced above, the Board has broad authority to hire “employees it deems necessary.” See A.R.S. § 15-1444(A)(6). The Board also has broad authority to “adopt such policies as are deemed necessary” and can authorize benefits for District employees. See A.R.S. § 15-1444(B)(4), (7).

The Report, however, utterly disregards controlling “laws, regulations, and provisions or contracts.” These are crucial omissions because the laws and regulations *determine* the relationship between the District and the employees. The Board, under its statutory authority, approved the hirings of each of these employees in public meetings. The Report does not even mention that the Board approved the hirings.

The failure to provide any weight to this key law defies standard principles of auditing and is emblematic of the Auditor General's bias.

The failure to reference the Board's actions is curious. The Auditor General, which conducts ongoing, annual audits of the District, never before questioned or raised concerns with these Board-approved employees. For years, the auditors have reviewed the District's files and have had access to the Board's meeting minutes. Each year, a team from the Auditor General's office spends countless hours at the District combing through the District's files and records. The obvious

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conclusion is that the auditors always considered these individuals to be employees of the District. The Auditor General does not explain why it is now blowing hot and cold on this issue.

Another law which the auditors conveniently overlook is the Arizona State Retirement System's definition of employee. ASRS's administrative code explains that "individuals performing services under contract in the exercise of a government function" are employees for the purpose of ASRS benefits. See A.A.C. R-2-8-14. Here, the auditors have had access for many years to all of the employees' files and plainly know that they were "performing services under contract." These contracts specify that the individuals are employees of the District and will receive the District's benefits.

As for "exercise of a government function," the Report ignores this issue too. In fact, the Report shockingly concludes that the highly-regarded non-profits – despite exemplary records of service to the community colleges, teacher preparation, and workforce development – served "no public purpose." (Report at 14) To reach this ridiculous conclusion, the auditors have rejected the testimony of a number of well-respected District officials who testified as to the public purpose served by the non-profits. Ignoring this testimony is yet a further example of the auditors' desire to reach a specific outcome without regard to the truth.

**AUDITOR GENERAL REPLY: *This is a mischaracterization of the report's statement that no public purpose of the loan arrangements was documented. The District has previously acknowledged that any benefits it received from the nonprofits' activities still would have been received had the District not made the loans, and the report thus concludes that the loan arrangements were designed primarily to benefit the nonprofit employees, not to serve a public purpose. The nonprofit employees' activities were defined by and performed on behalf of their respective nonprofits, which are not governmental entities.***

Another set of laws ignored by the auditors are the dual employer and loaned employee doctrines. It is well-settled that an employee may have two employers when, for example, the employee works in furtherance of both employers. See *Graziano v. 110 Sand Co.*, 855 N.Y.S.2d 203, 205 (N.Y. App. Div. 2008). Similarly, an organization may loan an employee to another organization. See 35 Am. Jur. (Master and Servant) § 541. When that happens, the worker is an employee of both the organization to which she is lent, as well as the organization who loaned the worker. The Report fails to address these well-known doctrines because they contradict the auditors' preordained conclusions.

The Report asserts that the District never sought permission from ASRS to enroll these employees for retirement benefits. (Report at 3) This assertion fails for several reasons. First, ASRS itself directed the District to enroll all employees who were Board-approved. Specifically, in 2002, ASRS audited the District and concluded that the District could qualify more employees for retirement benefits. ASRS then directed the District to be more inclusive in enrolling employees in ASRS. Without question, all of these employees were Board-approved and, thus, were properly enrolled in ASRS. Second, the District accepted applications, processed eligibility paperwork, and maintained these employees on the membership rolls for years. It would be plainly inconsistent for ASRS to argue that the employees were not members when ASRS has been providing the employees with membership benefits forms for years. It is incomprehensible that the auditors bypass these facts.

**2. The District Hired the Employees in Accordance with the Policy.**

The Report makes the cavalier assertion that the employees were “not hired in accordance with the [Specially Funded Program Policy].” (Report at 5) However, the Report only considers one side of the issue – namely, the side that supports the prejudged result. For example, the auditors ignore that the District only hired the nonprofit employees for one-year terms – as required by the Policy. The auditors also ignore that the District initiated the paperwork for annual increases and extensions of assignments. Moreover, the District also hired all individuals as “at-will” employees. The District’s actions on these points are all fully consistent with the Policy.

The Report asserts that the District did not comply with the Policy because it could not provide job applications for just seven of the twenty-six nonprofit employees. (Report at 5) Yet, the auditors acknowledge that a significant number of the employees who served the nonprofits had completed applications. Further, the auditors do not allow for the possibility that, over the course of many years, applications may have been lost or misplaced. Similarly, the audit fails to account for possible changes in practices over the twenty-seven years of the Policy (such that applications may not have been required at all times). It is incorrect to broadly conclude that the District did not comply with the Policy on employment applications when the auditors found so many in the employees’ files. Nitpicking some minor omissions does not support the Auditor General’s sweeping generalizations. An audit of any state agency would likely reflect similar findings.

The auditors also point to a single isolated instance where a job posting stated that a position reported to the Director of ACCA (rather than the District). Although this may be true, the auditors disregarded the testimony of a District Governing Board member who explained that she was a member of the board that directly supervised the Director of ACCA. Plainly, the District was involved in the supervision of ACCA and it is incorrect to conclude the District somehow sidestepped the Policy. Thus, the auditors, after combing through hundreds of documents, take language out of context to discredit the District’s position.

The auditors’ other flimsy conclusions are nonsensical. For instance, the Report claims that the District was limited to merely processing paperwork. (Report at 5) To reach this dubious conclusion, the auditors fail to mention that District supervisors met with the employees to set goals and strategy. The District and the employees who served the nonprofits worked collaboratively to pursue the District’s missions. District employees served on the boards of the nonprofits and supervised the employees’ work. The District also recruited and interviewed the employees and was actively engaged in extending employment contracts and awarding raises. These facts, like many others, are omitted from the Report.

The Report also complains that a district administrator stated that an individual who served the nonprofits would receive benefits through the District. (Report at 5) Again, the Report ignores the Board’s clear statutory authority. The Specially Funded Program Policy, as enacted by the Board, makes it perfectly appropriate for the District to provide benefits to its employees.

Finally, the Report asserts that the District did not sign some employment agreements for the employees who served the nonprofits. (Report at 5) Yet, the Policy does not require this. Moreover, the auditors ignored testimony that the agreements were reviewed and approved by the District’s legal counsel. The agreements plainly indicated that the individuals, who are subject to the District’s

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policies, received the District's benefits. The District also retained the right to terminate the employees' employment. The auditors have failed to consider all the evidence on the issue, rendering the conclusions erroneous.

**3. The District Had the Authority to Terminate Employment.**

Next, the Report concludes that the District did not "have the ability to terminate the nonprofit employees' employment." (Report at 5) This conclusion exemplifies the absurdity and one-sided nature of the Report.

Here, the employees who served the nonprofit organizations were all hired under the Specially Funded Program Policy which clearly states that "Maricopa Community Colleges may terminate employment without cause upon two (2) weeks notice." Furthermore, the employment agreements, which cite to the Policy, also state that the District had the right to terminate the workers' employment. The audit team's conclusion on this point is plainly incorrect and reflects the absurd lengths to which the auditors went to defy reality.

An alarming omission on this point is the auditors' conscious decision to ignore several witnesses' testimony that the District had the authority to terminate the employees' employment. Two highly-respected District administrators personally told auditors that they were involved in a termination of an employee from ABEC. One of those administrators specifically supervised the termination. The Report disregards this testimony.

But there is more. A long-time (but as of December 2008 former) District Governing Board member told the auditors that she personally was aware that the Board terminated one employee's employment. Another District administrator told auditors that the District had the authority to terminate employment. Thus, no less than four District witnesses corroborated that the District could and did terminate employees' employment. None of these witnesses have any reason to misstate the facts. The auditors' blatant disregard of this crucial evidence reflects a prejudged outcome.

In conclusion, the Report is plainly wrong regarding the District's ability to terminate employment. The inexcusable disregard of these policies and this testimony renders this finding erroneous.

**4. The District Issued Benefits in Accordance with the Policy.**

Next, the Report incorrectly concludes that the District did not administer benefits consistent with the Policy. (Report at 6) However, the audit team reaches conclusions without addressing all of the evidence on the issue. Importantly, the Report offers no evidence whatsoever that the workers in question received different medical benefits, workers' compensation, sick leave, bereavement leave, holidays, or leaves of absence compared to other District employees. Plainly, the employees who served the nonprofits were treated the same as other District employees with respect to nearly all benefits.

Although there are many forms of benefits provided by the District, the Report focuses on the limited issue of whether several workers in question received vacation benefits inconsistent with the Policy. (Report at 6) Because the Report does not specify the years in which these alleged inconsistencies occurred, it is difficult to ascertain whether employees received additional vacation time. An initial

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review suggests that the auditors have misinterpreted the Policy. In any event, even if the nonprofits had occasionally allowed extra vacation time, it was perfectly appropriate for them to do so because they were fully reimbursing the District for those vacation days and these were minor deviations from the Policy.

As usual, the auditors strain to find any minor inconsistency among the hundreds or thousands of actions taken under the Policy in order to condemn the entire process. The Report fails to consider all the evidence on the issue, rendering the conclusion erroneous.

**5. The Workers in Question Are Employees of the District.**

Next, the Report concludes that the workers in question are not employees under the “ASRS and IRS guidelines.” (Report at 7) As an initial matter, the Report only makes a passing reference to the ASRS test and does not offer any analysis or explanation for why the individuals are not employees under the ASRS test. This conclusory statement, while typical, is insufficient to support a finding that the District did not employ the employees who served the nonprofit organizations. Moreover, as presented above, the individuals are employees under the ASRS test. (*See* Page 4, above)

Similarly, the Report sets forth a limited analysis under the IRS test. (Report at 7-8) In cursory fashion, the Report incorrectly asserts that the “District does not recruit, hire, direct, supervise, evaluate, or terminate the nonprofit employees....” (Report at 10) Consistent with its practices, the auditors present a one-sided review of the facts.

If the auditors addressed all the evidence, the Report would reflect that the District was actively engaged in all aspects of the employment process. The Board hired the workers in question. The District recruited, reviewed resumes, and processed hiring paperwork. A number of District employees served on search committees. The Report overlooks all of these facts.

The Report also erroneously concludes that the District was not involved in the negotiation of salaries or awarding raises. District employees did evaluate whether funding existed for positions and worked with the nonprofit boards to extend contracts. Because District employees were on the boards of the nonprofits, they were aware of funding availability and reviewed raises and decided whether to implement them. It is incorrect to conclude that the District had no involvement in salaries, raises, and extensions of contract, when the evidence strongly suggests otherwise.

Notably, the Report ignores numerous other indicia of an employment relationship. For example, the Report fails to address that the employees received District handbooks. They used District electronic mail addresses. Employees had official District employee identification badges to enter the buildings. The Report addresses none of these indicia of employment, all of which were known to the auditors.

Rather than fairly consider this evidence, the Report blithely concludes that the workers in question were not employees because the District did not supervise them. The Report argues that “supervision” means authority over “day-to-day decisions.” (Report at 8) Yet, the auditors ignore the nature of externally funded employees who do not work directly at the District and, thus, are not subject to “day-to-day” supervision. Externally funded workers are individuals who work at external businesses and agencies. Day-to-day supervision is not required in the Policy nor would it be

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feasible given the nature of these employees' work. Thus, the Report's lack of sophistication on this point is fatal.

**AUDITOR GENERAL REPLY:** *This new definition of "externally funded workers" does not match the District's specially funded program policy, which defines "externally funded workers" as "those that are funded through a grant, contracts, or restricted donations." This new definition is offered in this district response without any documentation or explanation.*

Plainly, the auditors' narrow interpretation of supervision seeks to reach their prejudged results. In this matter, the District served on the boards of the nonprofits and directed the employees' work through those boards. Further, District employees testified that they met with the employees regarding goals of the organizations and how to meet those goals. The District was intimately involved in monitoring and approving the employees' absences, vacation, and sick leave. Yet, the Report ignores or discounts all of this evidence.

On a final note, the Report argues that the District could not "quantify" the benefits of the nonprofit employees. (Page 1) This is wrong. The missions of the nonprofits and the District were closely aligned. The District provided direction to the nonprofits so that the District's missions were met. Further, the nonprofits provided service to the District such as work for the Legislature and workforce development and teacher education.

In sum, the Report presents a one-sided, biased analysis of the IRS factors and wholly ignores the ASRS test. Because the Auditor General has disregarded scores of evidence, this conclusion is incomplete and erroneous.

**B. Finding 2 Is Incorrect: The District Did Not Improperly Loan Public Monies Because the Money Served a Public Purpose and the District and State Received Consideration.**

Finding 2 in the Report incorrectly concludes that the District made loans of public monies to the nonprofit organizations.

As with numerous other laws, the Report again ignores applicable legal standards. In Arizona, a loan or gift is not improper if it has an appropriate public purpose and consideration is received. *See Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 350, 687 P.2d 354, 358 (App. 1984). The auditors contend that the loans were only for the benefit of the employees who served the nonprofit organizations. (Report at 14) This ignores the testimony of credible witnesses including a former Board member and several District administrators who explained that the nonprofit organizations provided significant benefits to Maricopa County and the District through workforce development, services to the community college districts, and teacher education. The non-profits clearly pursue public purposes which are closely intertwined with the mission of the District.

Moreover, the District received proper consideration as required by the law. Again, witnesses testified as to the benefit of the services provided by the employees who served the nonprofits. Curiously, the Report acknowledges that the District was fully reimbursed by the nonprofits, but discounts this fact. (Report at 13) In other words, the State of Arizona bore absolutely no cost and, thus, the taxpayers paid nothing for this public benefit. The Report ignores the legal significance of all of these points. This finding is erroneous and must be reversed.

**C. References to Other Audits and Delay Are Misplaced.**

The Report reiterates the false allegation in the October 17, 2008 report that the District delayed in taking action. These issues have been refuted previously. Moreover, this claim is entirely without basis, especially considering that the Auditor General's own audit took ten months.

One baffling charge is that the District has not dissolved its relationship with ACCA, and has not provided "a definitive answer on when the District will end the arrangement with ACCA." (Report at 2). Yet, the Report, in its one-sided nature, fails to account for the fact that ACCA continues to provide services for the District and other community college districts in the State of Arizona. The District cannot simply shut off this relationship because of the void that would be created. Nevertheless, ACCA is in the process of winding down, as the Auditor General well knows. The District advised the auditors of this point and continuously apprised them of the wind down, yet it has been ignored. Further, the District previously terminated its relationships with ABEC and EVP.

Like the draft reports, the Report again refers to the findings of the March 2006 Auditor General report regarding Santa Cruz County and, for the first time, refers to the Maricopa County Regional School District No. 509 audit. (Report at 2, 14) These references improperly presume that the District had an obligation to review these audits or knew of and ignored the audits. It is indisputable that the Auditor General did not alert the District of these audits or ever suggest that there was any problem and yet now relies on the audits to imply wrongdoing. This is patently unfair.

Again, the Report neglects to mention that the District took action on its own regarding the nonprofit organizations. The Santa Cruz audit amounted to four cryptic paragraphs on several issues and offered no value in terms of guidance. Yet, the District – on its own – began to investigate, met with officials of the nonprofits, and initiated action to wind down the relationships with the nonprofits. Although the Board and District were within their legal authority to employ the employees, the District nonetheless began an orderly wind up of the relationships without any prodding by the Auditor General.

**D. Use of Self-Serving Quotations Are Inappropriate.**

The Auditor General's Performance Manual states that, "[i]t is expected that auditors use professional judgment." The Auditor General "serves as an independent source of impartial information." Consistent with these principles, it is expected that audits demonstrate professionalism and courtesy to the entities and subjects of the audit. Yet, the Report is riddled with self-serving quotations taken out of context to support the Report's result-oriented conclusions. (Report at 9-10)

For example, the Report quotes from a letter from one nonprofit that thanks the District for providing employees with insurance and retirement benefits. (Report at 9). Yet, the quote downplays language that shows the same nonprofit considered the individuals to be employees of the District. Without question, these quotations present an inaccurate and one-sided view of the issues. For those who are unaware of the facts, these cherry-picked quotes from letters and e-mails – with no context – are misleading and unfair. The quotations mischaracterize the employment relationships and the District's open and honest efforts to engage individuals who were serving a public purpose consistent with the District's mission.

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Like the flawed draft reports, the auditors are again implying that individuals intentionally bypassed rules and regulations for personal gain. However, the auditors themselves have belatedly acknowledged that no laws were broken and no intentional wrongdoing occurred. The record plainly reflects that the Board had the authority to hire the individuals at issue.

**AUDITOR GENERAL REPLY:** *While auditors have acknowledged from the beginning of this review that there is no evidence of criminal law violations, auditors have not addressed the issue of intentional wrongdoing.*

**E. Conclusion**

Like the draft reports, the Final Report presents incomplete and erroneous information on every issue, rendering the conclusions fatally flawed. As a result of the continuous one-sided, prejudged results, the issues that are the subject of the Report must be examined by independent, outside auditors without an agenda. The auditors cannot casually disregard applicable laws and relevant evidence. If the Auditor General submits the conclusions in the Report, there is a substantial risk that the Legislature or ASRS could act on flawed conclusions and recommendations and jeopardize the retirements of many innocent Arizonans.

**AUDITOR GENERAL REPLY:** *During a special review, the Auditor General's function is not merely to compile a list of data, but to analyze and interpret data and make sound determinations about the facts, and to present those results in a synopsis format that is useful to interested parties. As such, the public report does not detail all of the evidence examined by auditors. Rather, the public report's purpose is to summarize the most significant findings determined by auditors at the conclusion of their review. The Auditor General's quality control process ensures that the reported findings, conclusions, and recommendations are unbiased, adequately supported, and logical.*

Plainly, the conclusions in the Report must be re-examined. Until the Auditor General presents an impartial analysis of the laws, evidence, and testimony, the findings of the Auditor General are not agreed to by the District. Nevertheless, as the auditors are well aware, the District is in the process of winding down its relationship with ACCA, as it has previously done with ABEC and EVP. Further, the District intends to continue to work in good faith with ASRS to address the issues relating to those employees enrolled in the Arizona State Retirement System.