

**Notice of Final Report**

Michael Williams  
Commissioner

**Date: November 6, 2015**

Abelardo Saavedra, Superintendent  
South San Antonio Independent School District  
5622 Ray Ellison Blvd  
San Antonio, TX 78242-2214

Connie Prado, Board President  
Members of the Board of Trustees  
South San Antonio Independent School District  
5622 Ray Ellison Blvd  
San Antonio, TX 78242-2214

Dear Dr. Saavedra, Ms. Prado and board members:

**Re: TEA Special Accreditation Investigation #2014-01-010  
Investigative Report**

The Texas Education Agency (TEA) Division of Financial Compliance, Investigation Section has concluded its special accreditation investigation (SAI) of the South San Antonio Independent School District (SSAISD). This letter serves to notify the SSAISD of the TEA's final **investigative report** and the conclusions resulting from our investigation.

This final investigative report includes the district's management responses to our preliminary investigative report findings, as well as the TEA's analysis of the district's response to each finding. All recommendations, corrective actions, and implementation deadlines detailed in this final investigative report represent TEA opinions and expectations for continuing improvement and change that must be immediately implemented by the district.

As previously indicated, the results in this final investigative report do not address all the concerns raised before, during, and after our investigation. The investigation was conducted as a desk review with a limited scope. Other TEA divisions may conduct additional investigative work in the future to address additional complaints or unresolved concerns. This report covers only those concerns investigated by the Division of Financial Compliance, Investigation Section to date.

In closing, SSAISD and any named educator(s) will be notified of any actions concerning accreditation, sanctions, and additional investigations under separate letters from the respective TEA offices, as determined necessary. The TEA's final investigative report is enclosed. If you have any questions concerning this report, please contact Mr. Richmond at (512) 475-3403.

Sincerely,



David Marx  
Director of Financial Compliance  
DM/sbs

Enclosure

# **TEA Special Accreditation Investigation Preliminary Investigative Report South San Antonio Independent School District**

## **Executive Summary**

The commissioner of education has authorized the Texas Education Agency (TEA) Division of Financial Compliance to conduct a special accreditation investigation of the South San Antonio Independent School District (SSAISD) in response to several complaints received from elected government officials, concerned citizens, parents, educators, and stakeholders. In general, the complaints raised serious issues regarding the governance of the district's finances and internal control structure.

Violations cited in this report stem from the board's inability to work collaboratively with its new executive administration. The district's response repeatedly conveys a strong resistance to uniformly adopting financial operating policies, procedures and internal controls created by its new executive administration that are implemented districtwide. The district has assured the TEA in its responses that it is improving, but the board's continued inability to collaborate with its new executive administration to ensure that financial oversight, transparency, and reformative action is carried out uniformly throughout the district remains a concern.

We expect the district to comply with the corrective actions set forth in this report without further resistance or unwillingness from the board to adopt effective financial operating policies, procedures, and internal controls uniformly districtwide. The district's current position dismisses the fact that hiring and losing five superintendents in the last five years is not the path the district should remain on any longer. The pattern of dysfunction may not change without a board that supports its executive administration by providing oversight to improve and safeguard district finances, operations, and resources as required by law. Therefore, the TEA will be closely monitoring the school's compliance and cooperation as the district implements its corrective actions. Non-compliance with the corrective actions in this report will warrant recommendations for additional interventions through the TEA Office of Complaints, Investigations and Enforcement.

## Introduction

The Texas Education Agency (TEA) Division of Financial Compliance has conducted a special accreditation investigation (SAI) of the South San Antonio Independent School District (SSAISD) to examine the district's internal control structure and investigate complaints and concerns received from elected officials and citizens that allege the following:

1. SSAISD violated competitive procurement laws of public works contracts and mismanaged capital project funds under its 2010 Bond Program.
2. SSAISD failed to establish internal controls through the creation and adoption of policies and procedures that protect the district's finances from fraud, waste and abuse.

The TEA investigation was handled as an offsite desk review in lieu of investigating the complaints and concerns above for the following reasons:

1. the TEA recognized that the district has taken actions to acquire a new superintendent with 12 years of superintendence experience and demonstrated skills;
2. the TEA was considerate of the fact that Dr. Saavedra was recently hired as the interim superintendent as of December 23, 2013, and recently appointed as the district's superintendent as of March 19, 2014;
3. as a part of Dr. Saavedra's employment conditions, Dr. Saavedra's requested exclusive hiring and firing authority for the district and requested that nepotism laws be strongly reinforced going forward under his leadership; and
4. the district acquired an additional external audit firm to assist in its efforts of self-examination and introspection for the purposes of improvement.

Nonetheless, the TEA is still very mindful that the district has employed five superintendents within five years during the current board of trustees' leadership. To this end, the TEA strongly encourages the current board of trustees to demonstrate that it can work collaboratively with Dr. Saavedra to promote and facilitate policies that resolve all violations of the rules and regulations described in this report. In like manner, the TEA strongly encourages the superintendent to continue taking immediate actions to establish board-approved procedures districtwide that strengthen the district's internal control structure and create positive reform.

To reiterate, the findings presented in this SAI report **are not all-inclusive and do not address all of the complaints** received by the TEA at this time. For this reason, the TEA will conduct further investigations related to these complaints and allegations if the current board of trustees and new executive administrators do not resolve the concerns.

## Findings

In accordance with Texas Education Code (TEC) §11.1511(b)(9) and §11.201(d)(5), it is the responsibility of the board of trustees and the Superintendent to ensure that the school district has an internal control structure in place to provide reasonable assurance to the public that the school district's finances are safeguarded from unauthorized use or disposition.

Development of policies and procedures that include internal controls is critical in governing the financial operations of public schools. When a school district creates an internal control structure, it should consider including: (1) security measures to safeguard the school district's finances from internal or external misuse; (2) segregation of duties; (3) oversight of hardware and software access and management control; (4) internal audit, reconciliation and review functions; and (5) external audits in accordance with Section 1.5 of the Financial Accounting and Reporting to the Financial Accountability System Resource Guide (FASRG). To this end, the importance of internal controls is a key factor in the successful implementation of a district's internal control structure. During the investigation, the TEA identified several key internal control deficiencies that resulted in the findings below:

### Financial Control and Oversight

**Finding 1: The board of trustees failed to monitor the district's finances by not creating internal control policies in the district's electronic banking system that protect the district's finances from fraud, waste and abuse in violation of the TEC, §11.1511(b)(9).**

The board's failure is made evident individually and collectively by the following:

- a. The board failed to adopt local policies that enforce and ensure one electronic signatory list and physical signatory cards located at the bank are updated on a scheduled, periodic and routine basis to protect the district's resources from fraud, waste and abuse.
- b. The board failed to adopt local policies that enforce and ensure bank reconciliations are completed by the Superintendents or designee, in a reasonable time, such as before the issuance of the following months bank statements for all 43 district bank accounts.
- c. The board failed to adopt local policies that ensure district bank accounts are properly consolidated and streamlined in an efficient manner by the superintendents or designee to reduce the risk of fraud, waste and abuse.
- d. The board failed to adopt local policies that ensure unclaimed property within the district's possession is reported and escheated to the state in a timely manner.
- e. The board failed to adopt local policies that enforce and ensure district bank accounts are promptly reconciled and closed out after unclaimed property was escheated by the Superintendents or designee after being escheated to the state.

- f. The board failed to adopt local policies that establish payment authorization limits within the electronic banking system to protect district finances. This internal control requires a person to seek further reviews and authorizations prior to the bank releasing funds that exceed established payment limit thresholds set by the district.
- g. The board failed to adopt local policies that ensure all bank accounts have dual custody safeguards in place for high risk transactions such as intra-account money movement transfers, check payments and wire transfers. (Dual custody is an internal control that requires one person to create a check or wire transfer and another person to review and approve the transaction before issuance.)
- h. The board failed to adopt local policies that ensure district bank accounts are closely monitored by utilizing automated banking notifications within the electronic banking system. The use of automatic banking notifications is an internal control that allows the bank to send text or email alert messages to multiple district employees in real time during the processing of an unauthorized transaction. An example of this internal control is a message such as, "An unauthorized ACH transaction has been detected."
- i. The board failed to adopt local policies that ensure banking safeguards such as reverse pay controls are in place for all bank accounts (reverse pay is an internal control that allows the district to review all checks presented to the bank for payment to determine if they should be paid or returned).
- j. The board failed to adopt local policies that ensure banking control safeguards such as positive pay controls are in place for all bank accounts (positive pay is an internal control that verifies all checks issued from the district have serial numbers, dollar amounts and payee names that match the bank's issued check files).

A strong internal control structure relies on the adequate segregation of employee duties within the daily management control of the district financial transaction processes. The segregation of duties in a strong internal control structure requires that no one employee be assigned job duties in more than one segregated job duty category. The three types of financial job duty categories that are fundamentally segregated in business operations are: 1) asset handling and disposition; 2) booking or recording of transactions in the business's general ledger, sub-ledgers and journals; and 3) reviewing and comparing transactions or balances against independent source documents for the purposes of validation and reconciliation. By enforcing the segregation of these duties, the district mitigates the inherent risk of fraud, waste, and abuse within the organization's business operations.

A well supported internal control structure relies also on strong monitoring capability and management oversight of financial transactions processed in each electronic financial system. To provide strong oversight and management control in an electronic financial system, a minimum of three employees with the same authority and access capability increases the chances that at least one of the three individuals will be able to detect, identify, and/or prevent a transaction processing error, misappropriation of funds, or fraudulent activity from going undetected or from occurring within the financial system.

In an instance where a district does not have the staffing levels to assign a minimum of three district employees' signatory or company administrator access within the district's business office, the internal control can still be instituted by allowing read-only access by other district administrators such as principals and bookkeepers at the campus levels.

The agency identified significant internal control deficiencies regarding the segregation of duties within two of the district's financial electronic systems (the banking system and the purchasing and procurement system), as well as a high internal control deficiency in the monitoring and management oversight capability of both financial electronic systems.

### **Summary and Analysis of the District's Response to Finding 1:**

The district indicates it had a districtwide reorganization and has hired new business office staff including new executive leaders such as the superintendent and chief financial officer. The district asserts that because it hired new executive officers and business office staff, it has now established internal controls and addressed deficiencies identified by the TEA. The district emphasizes its current superintendent has the sole responsibility for hiring and firing staff. The district claims it realigned the roles and responsibilities of the district's business personnel and established new formal departments for Accounts Payable, Payroll, Fixed Assets, and Federal programs. The district indicates it reduced the number of district bank accounts from 43 to 24 and updated its Certificate of Authority with Wells Fargo Bank. The district indicates it has established a new oversight department called the Financial Accountability Department (FAD) that is responsible for conducting bank reconciliations for only four of the 24 district bank accounts. The district's board of trustees refuses to approve and adopt new financial operating policies and procedures promulgated by its new administration. For example, the board refuses to approve and adopt local policies that ensure electronic and physical banking signatory cards are updated on a periodic basis. The board refuses to approve and adopt escheatment policies and procedures. Instead, the board maintains that local and legal policies such as Accounting Financial Reports and Statements CFA (LEGAL), Fiscal Management Goals and Objectives Financial Ethics CAA (LOCAL), and Other Revenues Investments CDA (LOCAL), already address the significant financial weaknesses and violations described in this report. The board maintains that its current financial operating policies that focus on individuals acting with integrity are sufficient to safeguard the district's resources and assets against fraud, waste, and abuse. The district concludes that financial policies are strong and refuses to adopt and approve new financial operating policies promulgated by its new executive administration to strengthen the effectiveness of its internal controls.

### **Response to District's Response to Finding 1:**

The district's assertion that new leadership means internal controls have been established is not true in itself. In fact, the district has had five superintendents within five years. Each new administrator has implemented sets of different financial and operating policies and procedures without adoption by the board. This has resulted in a pattern of dysfunction and confusion for employees throughout the district. Furthermore, the district's local policies that have been in place as early as August of 2005 have resulted in the significant financial weaknesses and violations described in this report.

The district's response to violations d. and e. asserts that abandoned payroll checks are school property and that it is unnecessary to create procedures to ensure proper escheatment of these funds to the state. Abandoned payroll checks are not school property under law.

The district's refusal to establish adequate board approved policies and internal controls that ensure proper accounting of and relinquishment of these type of funds are concerning. Therefore, a referral has been sent to the Texas Comptroller's Office, Division of Unclaimed Property, to investigate the district's compliance with the law.

The district has not provided sufficient evidence to conclude that the findings identified by the TEA have been resolved. The district's response reiterates a continued general unwillingness and inability by the board to work collaboratively to approve and adopt a uniform set of financial and operating policies and procedures. The board's lack of oversight and leadership continues to undermine the district's responsibility to implement sufficient control over its finances, operations, and resources. Finding 1 is sustained.

**Finding 2: The former superintendents failed to create internal control procedures in the banking system for adoption by the board that protect the district's finances from fraud, waste and abuse, in violation of the Texas Education Code (TEC), §11.201(d)(7).**

The former Superintendents or designee's failure is made evident individually and collectively by the following:

- a. The former Superintendents or designee did not prepare or implement procedures to be adopted by the board that ensured physical signatory cards located at the bank were updated on a scheduled, periodic and routine basis to protect the district's finances from fraud, waste and abuse.
- b. The former Superintendents or designee did not prepare or implement procedures to be adopted by the board that ensure one board approved electronic banking signatory list exist that is updated on a scheduled, periodic and routine basis to protect the district's finances from fraud, waste and abuse.
- c. The former Superintendents or designee did not prepare or implement procedures to be adopted by the board that ensure bank reconciliations are completed in a reasonable time frame, such as before the issuance of the following month's bank statements for all district bank accounts.
- d. The former Superintendents or designee failed to manage and monitor the district's finances and assets by not properly reviewing and approving finalized bank reconciliations on all 43 district bank accounts.
- e. The former Superintendents or designee did not implement policies and procedures to be adopted and approved by the board that ensure payment authorization limits and thresholds are established within the electronic banking system.
- f. The former Superintendents or designee did not prepare and implement electronic banking system policies and procedures to be adopted by the board that ensure high risk banking transactions such as ACH debits, money transfers, withdrawals and wire transfers are closely monitored by a minimum of three people within each financially segregated job duty category.
- g. The former Superintendents or designee did not prepare and implement procedures to be adopted by the board that ensure all bank accounts have dual custody controls in place for high risk transactions such as intra-account money movement transfers, check payments and wire transfers.

- h. The former Superintendents and designee did not prepare and implement procedures to be adopted by the board that ensure district bank accounts are closely monitored by activating automated banking notifications within the electronic banking system. Automatic banking notifications such as, "An unauthorized ACH transaction has been detected", allows the bank to send alert messages to multiple district employees real time.
- i. The former Superintendents and designee did not prepare and implement procedures to be adopted by the board that ensure all banking control safeguards available are utilized, such as reverse pay controls for all bank accounts. Reverse pay allows the district to review all checks presented to the bank for payment to determine if they should be paid or returned.
- j. The board failed to create and adopt policies that ensure all banking control safeguards available are utilized, such as positive pay controls for all district accounts. Positive pay verifies all checks issued from the district have serial numbers, dollar amounts and payee names that match the bank's issued check files.

## **Summary and Analysis of the District's Response to Finding 2:**

The district reiterated that it has taken self-correcting actions such as updating its Wells Fargo Certificate of Authority and ensuring four of its 24 bank accounts are now being reconciled by the district's new FAD. The district's response emphasizes that the CFO created and implemented several new financial operating policies and procedures that have been implemented.

## **Response to District's Response to Finding 2:**

The district has redirected and dedicated financial resources to operate a financial accountability department that ensures only four of its 24 bank accounts are reconciled on a monthly basis. Again, the board of trustees has not taken immediate and effective action to collaborate with its new administration to adopt and approve a uniform set of financial operating policies and procedures districtwide as a whole. Finding 2 is sustained.

**Finding 3: The former superintendents failed to manage and protect district finances by not segregating the duties of employees with signatory access and administrator control in the district's electronic banking system, in violation of the Texas Education Code (TEC), §11.201(d)(5).**

The former superintendents or designee's failure is made evident individually and collectively by the following:

- a. The former superintendents or designee did not segregate the duties of employees with signatory access and company administrator control within the district's electronic banking system. The Agency identified an SSAISD management employee that had signatory access and administrator control in both the district's purchasing and procurement system and the district's electronic banking system since 2012. This employee had unfettered capability as a company administrator online to add or close bank accounts, add users to the online banking system and make automatic clearing house (ACH) intra-account bank transfers, check payments and wire transfer payments



to district vendors. The employee's daily job duties encompassed controlling and reconciling procurement information in the district's procurement system that included adding vendors, procuring contracts, authorizing purchases, approving purchase orders and disposing of district assets.

This internal control deficiency in the segregation of employee duties would make it possible for the employee to make district purchases and issue wire transfer payments to cover those purchases from all or any of the district's 43 bank accounts. This internal control deficiency exposes the district to a high risk of fraud, waste and abuse.

- b. The former superintendents or designee failed to ensure that each financial system had a minimum of three district employees with signatories and company administrator access. The agency found that in each financial system examined, only one or two employees had signatory and company administrator access. In another instance, the agency identified four employees with signatory or administrative access in the district financial system. However, three of the four employees were no longer employed with the district leaving only one employee assigned with total oversight and monitoring control of the entire financial system. Again, the district's finances were left highly susceptible to fraud, waste, or abuse by possible collusion or insufficient oversight and management control of the district's financial systems.

### **Summary and Analysis of the District's Response to Finding 3:**

The district's response reiterates that segregation of duty controls has been instituted during the reorganization of the business office. The district emphasizes that new standards and procedures for financial reporting, internal controls, and accounting were created by the new CFO and implemented in the district. The board has not approved or adopted any new standard operating policies or procedures prior to implementation in the district.

### **Response to District's Response to Finding 3:**

The culture at SSAISD remains the same. New executive management has created new policies and procedures in the areas of finance and operations to help strengthen internal controls. However, the board has refused to collaborate with its new administrators to approve and adopt these new standards and policies districtwide. Finding 3 is sustained.

**Finding 4: The former superintendents failed to manage day-to-day operations of the district by not establishing board approved internal control processes and procedures in all financial areas of district operations, in violation of the TEC, §11.201(d)(5).**

The former superintendent's failure is made evident individually and collectively by the following:

- a. The former superintendents or designees implemented multiple draft policy and procedure manuals throughout the district that were not adopted by the board. During interviews with business office staff, several staff members conveyed they were unsure of their specific responsibilities and job roles. Business staff were unable to easily identify business procedures or refer to clear policy guidelines about how or when a specific job task was completed in connection with the staff member's daily duties. In many instances, staff directed investigators to several different working versions of work

around procedures kept on their desk tops to conduct routine job functions. These work around procedures were not management approved and were not in compliance with any of the district's policy and procedure draft versions circulated around the district.

- b. The former superintendents or designee have not established and implemented policies and procedures to maintain one active vendor list that makes it clear to all employees which vendors the board had authorized the district to use, in violation of Financial Accountability System Resource Guide (FASRG) Modules 1 and 3, as adopted by reference in 19 TAC §109.41(a). As of now, the district is still operating without a board-approved vendor list.
- c. During the investigation, the Superintendent provided copies of updated 2014 and 2015 district policy and procedure manuals pertaining to procurement, purchasing, budget, fiscal and payroll management. However, none of these policies and procedures manuals have been presented to the board for their review and final adoption. Thus, the internal controls in business areas of operation remain unstable and weak throughout key business areas of the district, leaving the district's finances highly susceptible to possible activities of fraud, waste and abuse.

### **Summary and Analysis of the District's Response to Finding 4:**

The district argues that the Wells Fargo Commercial Electronic Office system prevents unauthorized access by using security measures such as user IDs, user passwords, and tokens issued by Wells Fargo to the district that have a unique six-digit security code. The district also contends that user IDs and passwords of the terminated employees who were identified during the investigation as company administrators were disabled during the investigation.

The district maintains that its existing local policies that emphasize employee integrity are more than sufficient and adequate to address the significant weaknesses. Again, the district argues its new financial operating policies and procedures and internal control procedures promulgated by the district's new executive administration do not require or need board approval.

### **Response to District's Response to Finding 4:**

The Wells Fargo Commercial Electronic Office online banking system relies on having accurate, up-to-date user information. Online users with unfettered access, such as those with company administrator access, can log on to the system from any internet location at any time of day. Our discussion with the Wells Fargo corporate office indicates that these types of users can simply place a phone call to request that new tokens be sent out to any location as long as the company administrator is still on the district's authorized online banking access list. Employees designated as company administrators in the electronic banking system can also request to reset their expired passwords by a phone call in order to continue conducting business activity. Local policies that direct employees to carry on their duties ethically do not constitute true internal controls. The district's response does not include internal controls that have been approved and adopted by the board and put into practice by the executive management. Finding 4 is sustained.

## **Purchasing and Procurement Management**

**Finding 5: The board of trustees failed to manage and control the district's finances to ensure the district's financial statements accurately reflect the value of the district's assets on hand, in violation of the TEC, §11.1511(b)(9) and §44.031, and FASRG Modules 3 and 6, as adopted by reference in 19 TAC §109.41(a).**

The board's failure is made evident individually and collectively by the following:

- a. The district was unable to support asset balances valued at approximately \$4,046,525 during FY2013 Comprehensive Annual Financial Compliance Report. Therefore, \$4,046,525 was written off as a prior period adjustment in the August 31, 2013 financial statements. As of this date, the agency verified the district is still not depreciating assets on hand in accordance with Generally Accepted Accounting Principles (GAAP). The district was unable to provide the agency a detailed cost-basis asset listing for all assets carried by the district as of July 2014.
- b. The district's vendor files have not been updated and reconciled to ensure vendor information is complete, accurate, and reliable. The district had vendors receiving payments with outdated or missing information within its files. Alternatively, some vendors were active within the purchasing and procurement system that had no vendor activity for multiple consecutive years. The district had no evidence of any operating policies or procedures for adding, updating, or deleting inactive vendors within the purchasing and procurement system. The agency determined that at this time, vendor files are not being closely monitored and reconciled on a routine and periodic basis.
- c. The district had no evidence of district operating policies and procedures for handling and safeguarding district capital assets and high risk assets. At this time, the district's assets are not being closely monitored, inventoried and accounted for on a routine and periodic basis.

The district's failure to implement immediate controls to remedy these monitoring deficiencies expose the district to a high risk of internal and external fraud, waste, and abuse.

### **Summary and Analysis of the District's Response to Finding 5:**

The district argues that its inability to manage its assets and vendor files are not due to a lack of official districtwide financial operating policies and procedures but instead are due to infrequent and inconsistent training of district staff. The district maintains that its executive administrators have created new policies and procedures to manage and safeguard the district's assets. However, the board has not approved and adopted these new policies or procedures and implemented them uniformly districtwide.

### **Response to District's Response to Finding 5:**

The district's response compounds the same root issue. Effective internal controls, such as uniform districtwide financial operating policies and procedures have not been approved and adopted by the board and put into practice by new executive management. The district has not submitted evidence that demonstrates its vendor list, with approximately 6,392 vendors, has been updated and board approved. The district has not provided a cost-basis asset listing for all assets carried on the books as of July 2014.

The district had no evidence that demonstrates it instituted effective measures to safeguard district assets so that asset balances such as the \$4,046,525 written off in the prior year, would not occur again. The district has not implemented sufficient control over its procurement processes. The TEA will ensure the district gains control over its procurement deficiencies through the means of a forensic audit required of the district within its corrective action plan.

Finding 5 is sustained.

## **Compliance with Conflict of Interest and Disclosure Laws**

The TLGC, Chapter 171, requires local public officials, who exercise powers that are more than advisory in nature to file conflict of interest affidavits with the district records management officer (RMO) that disclose the local public official's substantial interest in a business or a real property. Additionally, after it is determined a conflict of interest arises that concerns the business or real property the local public official must abstain from participating in a vote, discussion or action that would have a special economic effect on the business entity that is distinguishable from its effect on the general public. During the investigation, the agency verified board of trustee members had substantial interest in businesses or real property which they failed to adequately disclose through a conflict of interest affidavit with the district's RMO.

**Finding 6: SSAISD board members failed to disclose their substantial interest in business entities or real property during the exercise of their official powers by not filing conflict of interest affidavits, in violation of the TLGC, §171.001, §171.002, §171.004.**

The board's failure is made evident individually and collectively by the following:

- a. District records indicate board member, Mr. Manuel Lopez complied with the conflict of interest requirements of TLGC, §176.003 and §176.009, by filing a conflict of interest disclosure statement for certain business or real property. However, the district had no evidence that the board member filed a conflict of interest affidavit disclosing the board member's substantial interest in the company SEI Electronics with the district's RMO, in violation of the TLGC, §171.002.
- b. The district had no conflict of interest affidavit on file for the board president, Ms. Helen Madla. However, public records indicate Ms. Madla has substantial interest in the business; Loop 107 Burgers, Bakery and More in San Antonio, Texas; that she co-owns and has failed to disclose her interest during the exercise of her official powers, in violation of the TLGC, §171.002.

The TEA strongly encourages the board of trustees to immediately disclose any substantial interest they may have in business entities or real property and to make the proper disclosures to the district's RMO to ensure compliance with conflict of interest laws going forward.

## **Summary and Analysis of the District's Response to Finding 6:**

The district's response focuses on Mr. Manuel Lopez's compliance with the conflict of interest requirements of TLGC, §176.003 and §176.009. However, the district's response does not contain new evidence that demonstrates either of the board members in Finding 6 complied with the substantial interest disclosure reporting requirements defined under TLGC, §171.002.

## **Response to District's Response to Finding 6:**

For government officials, the district must have affidavit statements that meet more stringent substantial interest reporting requirements defined under TLGC, Chapter 171. Public officials are mandated to disclose substantial interests they have in an individual who is related to them in the first degree by consanguinity or affinity and that is conducting business with the district. The board member complied with Chapter 176, but had no evidence to support that the board members complied with the substantial interest disclosure reporting requirements defined under TLGC, §171.002. Therefore, Finding 6 is sustained.

**Finding 7: SSAISD failed to provide public access to the district's conflict of interest disclosure documents on file by failing to post the documents on the district's website, in violation of the TLGC, §176.009.**

The board and former superintendents or designee's failure is made evident individually and collectively by the following:

As of January 1, 2014, the district's conflict of interest disclosure statements, affidavits and questionnaires on file were not disclosed and posted on the district's website, in violation of the TLGC, §176.009.

## **Summary and Analysis of the District's Response to Finding 7:**

The district contends that it will implement procedures to come into compliance with TLGC, §176.009.

## **Response to District's Response to Finding 7:**

Finding 7 is uncontested and sustained.

## **Documentation Retention and Management**

**Finding 8: The board of trustees and former superintendents failed to manage the day-to-day operations of the district, which included ensuring that SSAISD record retention policies, procedures, schedules and named record retention manager were in compliance with Texas State Library and Archives Commission requirements, in violation of the TEC, §11.201(d)(5) and §44.003, and the TLGC §203.041 and §203.025.**

The board and former superintendents or designee's failure is made evident individually and collectively by the following:

- a. The district's most current records retention policy, schedules, and records retention manager (RMO) is in non-compliance with the Texas State Library and Archives Commission (TSLAC), which is the state agency that monitors compliance with state records management laws. The TEA acknowledges there have been multiple filing requests attempts made to amend or update the official certified records at TSLAC. However, since the multiple filing request made with TSLAC were not completed and authorized by the elected county officials of the district (which are the board of trustees), the filings were deemed unacceptable to meet the requirements of law. Therefore, the last official recording of the district's certified records retention policy, schedules, and

RMO approved by the SSAISD board of trustees with the TSLAC is dated June 20, 1991. Currently, the district is still in non-compliance with TSLAC record retention laws.

- b. The district failed to obtain and maintain all records that supported the district's past or present financial activities. During the investigation, the agency observed that the district relied heavily on multiple external private contractors to provide courtesy copies of information upon request to the TEA regarding the management and administration of the district 2010 bond projects. Furthermore, several documents requested from the district related to the 2010 Bond projects were missing or incomplete, in violation of TEC, §44.003, and FASRG, Module 6, as adopted by reference in 19 TAC §109.41(a).

The district must by law, implement sufficient control over the documents that substantiate the district's financial activities, management of operations, and use of financial resources. The TEA expects the district to comply with state record retention laws immediately and to correct its repeated failure so it may assure state regulators and the public that the district can provide transparency and accountability regarding the financial resources it is entrusted to manage. The TEA cautions that compliance in this area is not achieved until all three steps of the TSLAC filing processes are completed and until the TSLAC provides the district with an official certified copy of SSAISD's board approved record retention policy, procedures, schedules and RMO documents.

### **Summary and Analysis of the District's Response to Finding 8:**

The district disputes Finding 8 stating that the current superintendent contacted a records management analyst by email at the TSLAC and requested Ms. Linda Zeigler be designated the district's RMO. The district states that the TSLAC analyst advised the superintendent that Ms. Linda Zeigler was already the district's RMO. The district also referred to section 5-2 of the district's 1991 local record's management policy included in Appendix 34A of the district's management response that gives the superintendent authority to designate an RMO. The district explicitly asserts that it is in compliance with the rules and requirements of the TSLAC for designating a new RMO due to this filing submission.

### **Response to District's Response to Finding 8:**

The TEA followed up with TSLAC and requested that a second more comprehensive examination of the district's records on file with TSLAC to be conducted. TSLAC completed their examination and notified the TEA that the district is still in non-compliance with several sections of the Texas Local Government Records Act. Unfortunately, due to the numerous requests over multiple years made by various district employees, quickly discerning the district's compliance is very complicated and perplexing without a significant examination. The TSLAC verified and concluded that the filing in 1991 district's record retention policies, schedules, RMO was never certified by TSLAC because the district did not provide a copy of the board's minutes showing approval and adoption of the records filed. Therefore, the district does not have a board approved copy of its record retention policies, schedules, and board designated record management officer on file with TSLAC. The district must submit a copy of its board minutes approving and adopting its record retention policies, schedules, and designated RMO to the TSLAC. By law, the RMO cannot be designated by the superintendent. Only the district's governing body may designate the district's RMO. Again, compliance will not be achieved until all three steps are completed, and the TSLAC provides SAISD with a certified copy of SAISD's board-approved records retention policy, schedules, and board designated RMO. Finding 8 is sustained.

## **Competitive Procurement of Public Works Contracts**

**Finding 9: The board of trustees failed to ensure the construction manager-at-risk (CMAR) procured public works subcontracts competitively, in violation of TLGC; §§2269.151, 2269.153, 2269.154, and 2269.155.**

The board failed to monitor the CMARs competitive procurement procedures and processes to ensure the CMAR's actions were in compliance with competitive procurement laws and requirements for public works contracts. The agency verified that the CMAR advertised for competitive sealed proposals. However, the CMAR applied the evaluation and scoring procedures contingent with the competitive bid processes. The CMAR's procurement process indicated that the CMAR did not distinguish a difference between competitive sealed proposals versus competitive bids. This led to a substantially flawed procurement process which was not managed or overseen by the district. Since several major procedures prescribed by law were not complied with, the board had a duty to stop the procurement process and rebid for contracts accordingly using one of the approved method under TLGC, Chapter 2269 from start to finish of the process.

### **Summary and Analysis of the District's Response to Finding 9:**

The district did not respond to Finding 9 of this report.

### **Response to District's Response to Finding 9:**

Finding 9 is uncontested and is, therefore, sustained.

**Finding 10: The board of trustees failed to demonstrate that the contracts awarded to professional service contractors (architects and material testing engineers) were based on demonstrated competencies and qualifications, in violation of TLGC §2254.04.**

- a. The district had no evidence that demonstrated that the board obtained information from architectural service providers before awarding a professional service contract to the architect firm Garza, Bomberger and Associates. The Agency reviewed the June 09, 2010 board meeting minutes and determined the architect firm selected was not based on the most highly qualified provider of those services among other providers of the same services prior to the award.
- b. The district had no evidence that demonstrated that the board obtained information from material testing service engineer providers before awarding a professional service contract to the engineering firm Terracon. The board had no documentation that demonstrated the engineering firm selected was the most highly qualified provider of material testing services among other providers of the same services prior to the award.

### **Summary and Analysis of the District's Response to Finding 10:**

The district contends that it did not follow competitive procurement laws for public works contracts specified under Texas Government Code (TGC), Chapter 2269. Instead, the district chose to follow TEC, §11.1511(b)(15). The district argues under TEC, §11.1511(b)(15), the

board is authorized by their own discretion to enter contracts and delegate contractual authority to the superintendent as appropriate. Furthermore, the district argues that it provided the agency with information during its initial request that proved the board selected Garza/Bomberger & Associates based on the most highly competent and qualified provider among other providers offering the same services. However, the district did not provide any new evidence to support their new position.

### **Response to District's Response to Finding 10:**

The district's response demonstrates the board of trustees willfully circumvented competitive procurement laws for public works contracts through a legally unsound interpretation of TEC, §11.1511(b)(15). TEC, §11.1511(b)(15), allows the board of trustees for a school district to "carry out other powers and duties as provided by this code or other law." This provision does not exempt the district from compliance with TGC, Chapter 2269. The TEA seeks drastic change and compliance within this area from the SSAISD board and executive administration. The review of the evidence initially provided by the district to the TEA is conclusive. The TEA will ensure the district provides full financial transparency of the bond funds used in these projects through the means a forensic audit required within the district's corrective action plan. Finding 10 is sustained.

**Finding 11: The board of trustees failed to ensure the selection and evaluation of the construction manager-at-risk (CMAR) was conducted in accordance with approved construction contracting methodology and delivery procedures, in violation of TLGC §2269.253, §2269.254 and §2269.256.**

The board's failure is made evident individually and collectively by the following:

- a. The board failed to ensure the selection criteria published in the architect's Request for Proposals (RFP) for the construction manager at risk were the same selection criteria used by the architect during the ranking and evaluation process of the proposals received by the district. The Agency determined after reviewing the criteria published in the RFP against the criteria outlined in the bid tabulation sheet, the architect included additional selection criteria that was not announced in the RFP to all the perspective offerors. Due to the overall impact of this error on the fairness and transparency of the evaluation process, the procurement of these contracts should have been stopped and rebid through a new RFP.
- b. The board failed to ensure the actual weighted values published in the RFP were the same weighted values used by the architect to numerically score and rank the received proposals. The Agency determined from the review of the bid tabulation sheet that additional weighted values connected to criteria were not published within the RFP. Due to the overall impact of this error on the fairness of the scoring process, the procurement of these contracts should have been cancelled and rebid through a new RFP.
- c. The board failed to ensure the bids received from all offerors by district were accurately recorded and accounted for at the time the open bidding process was closed to the public. The Agency reviewed the district's bid log and determined the bid log information was inaccurate, vague and unreliable. The Agency found that one company's bid was recorded as received by the district, however another company's bid was not recorded as received at all. However, the district still evaluated, ranked and scored the bid that



was not present on the bid log. Again, due to the overall impact of the errors within the competitive procurement process, the procurement of these contracts should have been cancelled and rebid.

- d. The board failed to ensure the district conducted a public bid opening meeting that recorded all the bids received, were opened publically, announcing the names of the offerors, proposed fees and prices within each accepted bid.
- e. The board failed to ensure the district maintained score sheets showing the individual scorer's names, evaluation remarks and scores of each proposal ranked and scored, which is the source document that supports the bid tabulation sheets. The district had no evidence to demonstrate the proposals received by the district were ranked and scored fairly by multiple evaluators.
- f. The board failed to ensure the architect made the rankings in relation to the criteria published in the RFP open and available to the public on or by the seventh day after the contract was awarded to the CMAR.
- g. The board failed to ensure the architect carried out all three portions of the evaluation and selection process that was published in the RFP. According to the architect's recommendation letter, the offerors showed no interest in the interview round, so the architect decided to use only the first two portions of the advertised evaluation and selection process to grade the offers. Since the architect did not conduct the interview round of the selection and evaluation process published in the RFP due to inadequate criteria, the procurement process should have been stopped and cancelled. None of the applicants should have been allowed to continue and the selection and evaluation portion of the RFP should have been revised with applicable criterion, then re-advertised under a new RFP for the purpose of competitive procurement.

## **Summary and Analysis of the District's Response to Finding 11:**

The district's response to Finding 11 of this report is incorrectly labeled Finding 10. The district contends it delegated the responsibility for selecting and adhering to the competitive procurement methods used for public works contracts to the superintendent. The district agrees the RFP did not specify how 60% of the applicants score would be applied. The district maintains that it followed the manager at risk procurement methodology and was in compliance.

## **Response to District's Response to Finding 11:**

The district process was severely flawed and mismanaged. The board of trustees and executive officer share in the full responsibility of ensuring contractors hired comply with the competitive procurement method selected for the public works contracts carried out. The district had an obligation to the students, taxpayers, other stakeholders, and viable applicants to ensure the procurement process was conducted in a fair and transparent manner. Additionally, the district's response did not contain any new evidence that refutes the violations or findings denoted in this report. The TEA will ensure the district undertakes efforts to account for all the bond funds used for these projects through the means of a forensic audit required in its corrective action plan. Finding 11 is sustained.

**Finding 12: The board of trustees failed to competitively select, evaluate and award the work self-performed by the district's construction manager at risk (CMAR) in the same manner as all other offerors, in violation of TLGC §2269.253, §2269.254 and §2269.256.**

- a. The board failed to demonstrate the CMAR submitted proposals in the same manner as all other offerors for the work the CMAR self-performed. The Agency reviewed all documents regarding the scoring and ranking of the CMAR's proposal. The board failed to ensure the procurement process for work that the CMAR was also applying for was competitively procured among all other offers.
- b. The board failed to prohibit the CMAR from ranking, evaluating, scoring and recommending their own proposal against the proposals from other offerors for work the CMAR self-performed. According to the bid tabulation form, the CMAR submitted its own proposal for work and collected the proposals from all other offerors, then ranked, scored and selected its own proposal over all other bids received.

### **Summary and Analysis of the District's Response to Finding 12:**

The district contends it delegated the responsibility for selecting and adhering to the competitive procurement methods used for public works contracts to the superintendent.

### **Response to District's Response to Finding 12:**

The district's response fails to recognize that both the board and executive officers share in the responsibility of overseeing a fair and transparent competitive procurement process for the SSAISD. Furthermore, the response indicates that there is a continued lack of cooperation by the board with its administration to manage and safeguard the district's resources and assets. The TEA will ensure that the district's board and its executive management work cooperatively to account for the bond funds used in public works contracts through the means of a forensic audit required within the district's corrective action plan. Finding 12 is sustained.

**Finding 13: The board approved change order increases of 25% over the original contracted price for its 2010 construction bond projects, and circumvented the district's local change order approval process, in violation of TLGC, §252.048; and CV(LOCAL) Facilities Construction.**

The board's failure is made evident individually and collectively by the following:

- a. The board approved change order increases of 25% over the original contracted prices for its 2010 construction bond program projects. For example, as of January 2011, the initial guaranteed maximum price for the SSAISD Academy of Health Science building project was no more than approximately \$2,034,561 million. However through increased change orders authorized by the board, the guaranteed maximum price was increased over 25% to \$3,718,027 million as of July 1, 2013, in violation of TLGC, §252.048.
- b. The district's change order approval policy states that, "change orders shall be approved by the board or its designee prior to any changes being made in the approved plans or the actual construction of the facility". This policy is an internal control used to ensure change order approvals are transparent and authorized implicitly by the board. However, district records indicate that the SSAISD board president, Ms. Helen Madla approved approximately 9 change orders by herself within one day constituting a total amount of

approximately \$45,949 on January 10, 2014, in violation of CV (LOCAL).

### **Summary and Analysis of the District's Response to Finding 13:**

The district argues that it used a request for proposals method to award the public works contract to the CMAR. The board argues that since they choose a request for proposal method this allowed the CMAR to increase the contract through contract amendments versus change orders. Furthermore, the district indicates it is unclear if the board member approved 9 different change orders or change order #9 of the executed project.

### **Response to District's Response to Finding 13:**

The district negotiated a set price for construction work to be done through a public works contract, but after negotiation ended with the CMAR, the scope of work changed enough to cause a substantial price increase. This change in price constituted a change order that exceeded the 25% maximum price increase threshold mandated by law which requires that the public works contract be rebid. The use of consecutive contract amendments by the district did not permit the district to avoid the legal requirement that the public works contract be rebid. In addition, because the board member was approving change orders outside of the board's knowledge, the district was unable to identify the nine change orders the board member unilaterally approved. The TEA will ensure the district corrects and reforms these deficiencies through the means of a forensic audit required within the district's corrective action plan. Finding 13 is sustained.

Again, this report is focused on a limited number of allegations and concerns and is not intended to reflect an exhaustive forensic examination of the district's financial records or financial management practices. Furthermore, this report is not intended to reflect a comprehensive examination of all financial management issues that may be present at SSAISD. The investigation was conducted as a desk review. This report is intended to highlight key concerns raised by the local community, citizens, and elected officials.

## Appendix A—Report Distribution

### **South San Antonio Independent School District (SSAISD)**

Name Connie Prado  
Title Board President  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Carlos Longoria  
Title Board Vice President  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Stacey Estrada  
Title Board Trustee  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Leticia Guerra  
Title Board Trustee  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Helen Madla  
Title Board Trustee  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Trinidad T. Mata  
Title Board Trustee  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Stacey Estrada  
Title Board Secretary  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Dr. Abelardo Saavedra  
Title Superintendent of Schools  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214

Name Michael Balderrama  
Title Chief of Staff  
Address: 5622 Ray Ellison Drive, San Antonio, Texas 78242-2214