

Report to the Scottsdale Unified School District Governing Board of the Conduct of District Administrative Employee

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I. Introduction.

A. Abbreviations.

For ease of reference, the following abbreviations and terms are used in this report:

“ACC” means the Arizona Corporation Commission.

“ASBA” means the Arizona School Boards Association.

“AASBO” means the Arizona Association of School Business Officials.

“Board” means the Governing Board of Scottsdale Unified School District.

“CFO” means the Chief Financial Officer of the District.

“Change Order Request” means a request that is generated internally by District staff to change a PO. There can be a variety of reasons for generating a Change Order Request.

“CMAR” means Construction Manager at Risk, an alternate project delivery method authorized by the Code. At time, District records refer to CMAR as CM@R.

“CMAR RFPs” means the CMAR requests for proposal issued by the District to procure the services of companies to serve as the Construction Manager at Risk for various District projects.

“Code” means those rules for procurement promulgated by the Arizona State Board of Education that apply to Arizona school districts, which are codified at Arizona Administrative Code, Title 7, Chapter 2, Articles 10 and 11. References to specific provisions in the Code are cited in this report with the abbreviations “A.A.C. R.”

“District” means the Scottsdale Unified School District, a political subdivision.

“District Chart of Accounts” means the list of accounting codes that combines the codes in the USFR and District generated codes,

“FMG” means Facilities Management Group, a firm that did consulting work for the District on the condition of facilities.

“General Obligation Bonds” refers to those bonds that are secured by ad valorem property taxes on property in the District that were authorized by a vote of District electors on November 8, 2016.

“Handbook” means the *Arizona Agency Handbook* (Rev. 2014), published by the Office of the Arizona Attorney General.

“MESC” means the Mohave Educational Services Cooperative, Inc., a non-profit purchasing cooperative, established pursuant to Arizona Revised Statute (“A.R.S.”) §11-952 and A.R.S. §41-2632, that conducts procurement of goods and services for its members.

“General Obligation Bonds” refers to those bonds that are secured by ad valorem property taxes on property in the District that were authorized by a vote of District electors on November 8, 2016.

“PGPC” means the Professional Group Public Consulting, Inc.

“PO” means a “purchase requisition” as defined in the Code.

The “Three Sports Fields Project” means the project for field upgrades at Chaparral, Coronado, and Saguaro High Schools.

“USFR” means the “Uniform System of Financial Records,” which is the accounting and financial reporting manual for Arizona school districts, published by the Arizona Auditor General.

“USFR Chart of Accounts” means the chart of accounts prescribed for Arizona school districts as part of a fund accounting system.

All other terms are as defined in the Code at A.A.C. R7-2-1001 or in A.R.S. §38-502.

B. Background of the Investigation and the Report.

I was retained in late November of 2017 to investigate a) the District’s procurement of the architect firm Hunt & Caraway and b) the District’s procurement of PGPC and alleged conflicts of interest of Laura Smith, who was, at the time, the District’s Chief Financial Officer.¹ This report addresses the following questions:

- Did Ms. Smith have a conflict of interest in the procurement and purchase of services of PCPG;
- If so, did Ms. Smith comply with Arizona’s conflict of interest laws, codified at A.R.S. §§ 38-501 and -511; and
- If Ms. Smith had a conflict of interest and violated the law, what sanctions and legal remedies apply.

¹ Ms. Smith resigned her position on January 26, 2018.

C. Persons Interviewed.

In addition to Laura Smith, I have interviewed the following District personnel:

Denise Birdwell (District Superintendent), Shannon Crosier (Budget & Position Control Manager), David Gonzales (Senior Contract Buyer), Louis Hartwell (Chief Business Operations Officer), Lisa Marcarelli (Senior Executive Administrative Assistant), Jill Olivas (Senior Executive Administrative Assistant to Chief Financial Officer), Rod Robinson (Senior Buyer), Martin Topham (Senior Buyer), Blake Witten (Accounting Manager).

In addition, I have interviewed the following non-District personnel:

- Missy Mudry, George Ziegler.²
- I have submitted written questions to Caroline Brackley, the managing director of PGPC, who has not responded. Ms. Marshall has also followed up with an inquiry to PGPC's attorney and we are awaiting a reply.
- I submitted questions to the former CFO, Daniel O'Brien, who responded.
- I have attempted to contact Lynn Hagen, a former District employee, who worked in the District Purchasing Department until June 30, 2017. I left messages for her, and SUSD's Legal Department left messages for her. However, she did not respond.
- I have inquired of MESC about the pricing for PGPC through its attorney, who has responded partially, but has not provided the pricing sheets..
- I attempted to determine Ms. Smith's percentage of ownership in PGPC through her attorney. Her attorney did not respond.
- I have consulted with a representative of ASBA to determine the standard model policy and exhibit for employee conflicts of interest.

D. Documents and materials reviewed.

- District procurement files.
- POs, invoices, and payment records.
- District Policies.

² Ms. Mudry refused permission to be interviewed on the record.

- Conflict of Interest Disclosures signed by Ms. Smith.
- Emails sent to and from Ms. Smith or on which Ms. Smith was copied.
- Emails sent to and from Ms. Brackley and Ms. Mudry and District personnel..
- ACC records posted on its website concerning PGPC and two other entities in which Ms. Smith had or has an interest or serves as an officer or director, as well as a limited liability corporation that Ms. Brackley owns.
- MESC procurement files, including price sheets.
- Ms. Smith’s personnel file.
- A timeline with attachments given to me by Ms. Smith on January 19, 2018.
- Ms. Smith’s letter of resignation dated January 26, 2018.
- A page of a corporate tax return for PGPC in 2016.
- Minutes of District Governing Board meetings.
- The Handbook, Chapter 8, “Conflict of Interest.”
- The USFR Chart of Accounts and the District Chart of Accounts.
- Work products of PGPC.
- Documents on file at the Arizona Board of Technical Registration.

II. Summary of Conclusions.

1. PGPC was first entered as a vendor in the District purchasing system on December of 2015. There were four purchase orders issued to PGPC in 2016 that were approved by then CFO Daniel O’Brien. Three were blanket POs for “Financial Management” consulting services to be provided by PGPC.
2. At all times, the District purchased the services of PGPC through MESC.

3. Laura Smith began working as the CFO of the District on February 15, 2017, after her hire was approved by the Board on February 14, 2017. She was placed on leave on January 19, 2018, and she submitted a letter of resignation on January 26, 2018. The Board accepted her letter of resignation on January 30, 2018.
4. At the time Ms. Smith began working as the CFO of the District, she was a principal shareholder, director and president of PGPC.
5. In her interview on January 19, 2018, Ms. Smith said that she could not remember her exact percentage of ownership as of May 31, 2017, but she estimated it to be between 15%-20%. A copy of a tax filing for 2016 that she provided at my request after the interview shows that her interest in PGPC in 2016 was 17.72%.
6. Ms. Smith stated that she notified PGPC that she wanted to sell her interest in PGPC back to the company on May 1, 2017 and that the sale occurred on May 31, 2017. Although she provided evidence that she notified the company that she wanted to sell her stock, she has not provided evidence that the stock was sold or how much of her stock was sold.
7. Caroline Brackley is Laura Smith's sister. Throughout Ms. Smith's employment as CFO, Ms. Brackley was and still is listed in the records of the ACC as a director, officer and principal shareholder of PGPC.
8. At the time Ms. Smith began working as the CFO of the District, there were three existing, open blanket purchase order for purchasing the services of PGPC, which were purchased by the District through MESC. She never inquired about the open POs, even though she sat through a presentation by Missy Mudry at a Board meeting on February 23, 2017, that was billed under one of those open POs.
9. Board Policy GBEEA attaches an exhibit, which is a conflict of interest form that is almost identical to the policy and exhibit promulgated by ASBA, which many school districts in Arizona use. *See e.g.* GBEEA-E in the Board policies of Chandler Unified School District and Paradise Valley Unified School District. The District has had this policy and exhibit for many years.
10. Ms. Smith signed a conflict of interest disclosure on February 24, 2017, based upon District form GBEEA-E
11. The February 24, 2017, disclosure signed by Ms. Smith does not comply with the letter of the law because it does not fully disclose Ms. Smith's "substantial interest" in any transaction between the District and PGPC or in any decision of the District relating to that interest. It is also deficient because it did not fully disclose the "substantial interest" of her sister, Caroline Brackley, in any

transaction between the District and PGPC or in any decision of the District relating to that interest. It could be misleading as it does not provide the necessary information to inform the District and the public of what her substantial interest is.

12. Ms. Smith knew of the importance of disclosing a conflict of interest because, as an employee of PGPC and an outside consultant before she was hired as a District employee, she had participated in an audit of the District's special education department and, during the investigation, she and another consultant addressed whether certain employees had a conflict of interest. And, by her own admission, Ms. Smith said she signed the February 24, 2017 conflict of interest disclosure once she knew that PGPC was going to consult on CMAR RFPs.
13. Ms. Smith signed a conflict of interest disclosure on May 3, 2017, at the direction of the District General Counsel, who had determined that the February 24, 2017, disclosure was inadequate because it did not fully disclose the nature of the substantial interest she had due to her ownership of PGPC.
14. The conflict of interest disclosure dated May 3, 2017, failed to disclose the "substantial interest" of her sister, Caroline Brackley, in any transaction between the District and PGPC or in any decision of the District relating to that interest.
15. The District General Counsel did not know that Ms. Brackley was Ms. Smith's sister until December of 2017. Other employees also said that they did not know that Ms. Brackley was Ms. Smith's sister ever. Mr. O'Brien, the former CFO, says he knew. Ms. Olivas, who was Mr. O'Brien's assistant and then Ms. Smith's assistant, says she overheard people talking about the fact in December of 2017.
16. Board members forwarded to the Superintendent a hard copy of a powerpoint that was given to them by a constituent in early November, 2017. That powerpoint included a reference to an obituary of Laura Smith's mother who died in Plano, Texas, in 2007, that showed, among the survivors, Laura Tenison Smith and Caroline Tenison Brackley. Dr. Birdwell later had a conversation with Ms. Smith and asked her whether she was Ms. Brackley's sister. This occurred approximately at the same time I was hired by the District General Counsel to investigate both the Hunt & Caraway situation and the PGPC conflict of interest.
17. Ms. Smith engaged in a discussion with Mr. O'Brien, who was by then the Chief Business and Operations Officer of the District, and Lynn Hagen on March 16, 2017, about hiring PGPC to conduct the procurement and award of the CMAR RFPs. In an email, she stated that she had contacted her sister Caroline who told her "with a po [sic] PGPC could get this amendment out by noon tomorrow if they had the document in word for approximately \$1000. In general her CMAR

run [sic] \$5000. As you know and I have documented and signed a conflict of interest regarding this firm.”³

18. Emails show that Mr. O’Brien made the ultimate decision to hire PCPG to conduct the CMAR procurement and award of the CMAR RFPs . The decision was made because, after the retirement of the District Director of Procurement, no one in the purchasing department had experience procuring CMARs.
19. Over and above the CMAR projects, after Ms. Smith was hired, POs were issued to PGPC for procurement consulting and training of staff in procurement. Other POs were issued for attendance of District employees at PGPC training workshops and for purchasing software.
20. Employees in the District purchasing office and Ms. Smith’s former secretary say that Ms. Smith told them that she had a conflict of interest and could not do anything in connection with PGPC.
21. In a large school district, change order requests are typically handled in the business department and purchasing department. They are rarely, if ever, seen by anyone outside of those departments.
22. Ms. Smith personally signed off on five change order requests that increased the amounts of underlying purchase orders issued to PGPC by \$16,072.40. She signed off on an additional one that closed a purchase order that had no dollar value. All of these were in connection with consulting services that PGPC provided for the CMAR RFPs.
23. Ms. Smith continued to involve herself in discussions about issuing POs and Change Orders to PGPC. In an email to Louis Hartwell on April 5, 2017, Ms. Smith told Mr. Hartwell “Work with Jill, she has opened a PO for each CM@R. Is this additional work and we need to increase current POs? Do we need to open additional PO for additional projects? Have Missy get a quote to us and when PO is issued we need to send it to Mohave and vendor.”
24. There was one change order request dated June 15, 2017, for PO 1703995 (Hopi) that was signed by Louis Hartwell and approved by Blake Witten on July 19, 2017. Mr. Witten does not recall whether Ms. Smith asked him to sign for her.
25. Ms. Smith stated in her interview and in her resignation letter that she inadvertently signed change order requests because the name of the vendor was not filled in. In her interview, she said that she never looks up the underlying PO number when she signs change order requests, or she would “never get any work done if I went in and checked everything.”

³ Mr. O’Brien says he knew Ms. Smith was Ms. Brackley’s sister. That being the case, he should not have included her in the chain of emails. See Section IX below. However, that does not excuse Ms. Smith’s conduct in violation of the conflict of interest laws.

26. It is noteworthy that, in her interview, Ms. Smith was shown change orders totaling \$8000 that she had signed. Yet, her resignation letter only refers to two change orders totaling \$2000.00.
27. George Zeigler, a former Chief Financial Officer of Mesa Unified School District, has rendered an expert opinion as to school district accounting practices. In his opinion, it was inappropriate for Ms. Smith to sign these change orders without knowing who they were being issued to and she should not have signed any change order without knowing which vendor was the subject of the purchase order and the change order. Tab 2. He added that “[a]ny accounting manager or employee working in the business office should look up the underlying purchase order before he or she signs the change order in order to 1) ensure that the order is within the budget item; 2) make sure the change order comports with the underlying purchase order and 3) guard against violating any conflict of interest rules.” Tab 2.
28. Mr. Zeigler also explains that there are several ways Ms. Smith could and should have verified who the vendor was that was the subject of the change orders. There are also several ways she would have had reason to know that the change orders might pertain to PGPC. Tab 2.
29. In addition, Ms. Smith approved six POs to PGPC totaling \$43,776.35. This is reflected in the approval log on the PO, which shows who approved the PO, with signatures that are computer generated.
30. There were other POs issued to PGPC that were signed by Daniel O’Brien, Blake Witten, and Shannon Crosier. Their signatures are also computer generated. Please note that the designation “DObrien for ltsmith” is an entry error. When Mr. O’Brien left the District, the system converted his approval to read “DObrien for ltsmith.”
31. Any designation of “for ltsmith” on the Pos means someone other than Laura Smith approved the purchase order.
32. There are also six “after the fact” POs issued to PGPC, two of which were approved by Ms. Smith. “After the fact” purchase orders are not illegal *per se*, but they are contrary to the USFR guidelines and may cause an audit exception. Two of these “after the fact” POs were approved by Laura Smith and four were approved by Mr. O’Brien.
33. It would be a mistake to equate the amounts of the POs to PGPC with the amounts actually paid out to PGPC. For example, in the 2016-2017 fiscal year, in some cases, the amounts that were paid to PGPC for work performed after Ms. Smith started working at the District were a less than the amounts of the POs.

34. Since Ms. Smith began employment with the District, the District paid PGPC, the District paid PGPC \$59,470.29 in fiscal year 2016-2017. The bulk of that work was for Ms. Mudry's consulting services on CMAR procurement. In fiscal year 2017-2018, the District has paid PGPC \$26,645.30.
35. Ms. Smith's actions violate A.R.S. §38-503 and Board Policy GBEAA because:
- a) she did not fully disclose her "substantial interest" in any transaction between the District and PGPC or in any decision of the District relating to that interest in the February 24, 2017 disclosure;
 - b) she never fully disclosed the "substantial interest" of her sister, Caroline Brackley, in any transaction between the District and PGPC or in any decision of the District relating to that interest; and
 - c) she did not refrain from participating "in any manner" in such transactions or decisions because she approved POs to PGPC, signed change order requests, participated in finding out the cost of PGPC to consult on CMAR procurement, and instructed another employee to obtain a change order quote from PGPC for two projects.
36. Ms. Smith's continued involvement in the purchase of services from PGPC as evidenced by her email exchanges in March and April casts considerable doubt on whether her errors were inadvertent.
37. There are noteworthy inconsistencies between Ms. Smith's statements in her interview and her resignation letter and the facts.
38. The sanctions for a person violating Arizona's conflict of interest laws are not insignificant:
- A. A person who:
 - 1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a class 6 felony.
 - 2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a class 1 misdemeanor.
 - B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

A.R.S. §38-510.

This is a strict liability statute that does not depend on the amount involved in the transaction or decision at issue.

39. All open POs with PGPC were closed at the direction of Dr. Birdwell on January 24, 2018.
40. Ms. Smith was told on several occasions by Dr. Birdwell that she should take herself out of all authorizations and decisions pertaining to PGPC. Ms. Smith assured Dr. Birdwell that she was doing just that.
41. During the time Dr. Birdwell was Superintendent of Higley Unified School District, Caroline Brackley had filled in to assist in the business operations of the District on two occasions when one business manager retired and then later when one resigned. Dr. Birdwell does not socialize with either Ms. Brackley or Ms. Smith.
42. Missy Mudry, an employee of PGPC, worked out of an office at the District offices while she was consulting on the CMAR procurement and providing other consulting services. She also had a District email address. The fact that Ms. Mudry had access to an office in the District raises questions as to why PGPC charged mileage from PGPC to District locations.
43. As to the PGPC billings, PGPC's rates must align with the MESC cooperative contract, which was used to procure PGPC services. Missy Mudry's time was billed at \$130 an hour in the 2016-2017 fiscal year, and \$125 an hour in the 2017-2018 fiscal year. MESC's attorney advised me that the hourly rate under MESC's contracts with PGPC in effect during the time PGPC providing consulting services to the District was \$130 an hour. However, I have asked for the price sheets and will follow up accordingly,
44. Documents contained in this report have already been forwarded to the Office of the Arizona Attorney General.

Please note that I am conducting on-going research in the following areas: a review of the billings from PGPC compared to the prices in the MESC contract and further review of the arrangement between Missy Mudry, PGPC, and the District whereby she occupied an office there. I will also be making recommendations for changes in the change order process, training relating to conflicts of interest, and changes to Board policy and exhibits. I will be advising the Board on potential legal remedies the District may have against PGPC related to Ms. Smith's violation of Arizona conflict of interest law and other legal theories.

III. The Code.

Arizona school districts are required to procure commodities, services and technology in accordance with the Code. A.R.S. § 15-213. The Code was adopted in 1987 and, by law, is required to be "consistent with the procurement practices prescribed in title 41, chapter 23,"

which applies to state agencies. *Id.* The Code was updated several times and most recently in 2015, which made substantial changes to address, among other things, alternate methods of project delivery in construction projects.

A. District Authority to Procure without Formal Competitive Procurement.

The Code does not apply to expenditures of public monies for construction, materials and services when the total procurement cost is less than one hundred thousand dollars (\$100,000) so long as such purchases comply with the USFR. A.R.S. § 41-2535(A); A.A.C. R7-2-1002(A) and (D)(3). The USFR questionnaire tests to ensure that contracts for the procurement of construction, materials and services that exceed \$100,000 follow the Code. USFR, p. 354, available at: <https://www.azauditor.gov/reports-publications/school-districts/manuals-memorandums>.

District Board policy DJE requires verbal or written quotes for procurements under \$100,000. However, that policy does not apply to cooperative purchasing. Policy DJE. *See* discussion below.

B. Cooperative Purchasing.

Cooperative purchasing is relevant because the District procured the consulting services of PGPC through MESC, a non-profit purchasing cooperative. The Code and state statute permit a school district and nonprofit corporation to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of, among other things, professional services. A.A.C. R7-2-1191 and A.R.S. § 11-952.⁴ Under the Code, a nonprofit corporation is defined as an “eligible procurement unit” and a “local public procurement unit.” A.A.C. R7-2-1001 (42) and (69).

A nonprofit corporation, such as MESC, that engages in cooperative purchasing must comply with the Code. A.A.C. R7-2-1191(C).

IV. Arizona Conflict of Interest Laws and District Policy.

A. Arizona Law.

Under Arizona law, a public officer or employee of a public agency who has, or whose relative has, a substantial interest in “any contract, sale, purchase or service to such public agency” or “any decision of a public agency” shall 1) “make known such interest in the official records of such public agency” and 2) “refrain from participating in **any** manner” in such contract, sale or purchase or decision. A.R.S. § 38-503 (emphasis added). “Even though public officers or employees may believe that they can be objective in making a decision and that the

⁴ A.R.S. § 11-952 was amended in 2001 to add nonprofit corporations to the entities that may enter into intergovernmental agreements for the procurement of services. Forty-fifth Legislature, First Regular Session 2001, House Bill 2157.

public interest would not be harmed by their participation, they do not have discretion to ignore the statutory mandate.” Handbook, 8-7.

The District is considered a public agency under the statute. A.R.S. § 38-502(5) and (6).

1. What is a “substantial interest”?

The term “interest” does not mean a mere abstract interest in the general subject or a contingent interest but is “a pecuniary or proprietary interest, by which **a person** will gain or lose something, as contrasted with a general sympathy feeling or bias.” *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972) (emphasis added). *See also Hughes v. Jorgenson*, 203 Ariz. 71, 74-75, 50 P.3d 821, 824-25 (2002) (“[T]o violate the conflict of interest statute, a public official must have a non-speculative, non-remote pecuniary or proprietary interest in the decision at issue.”)

“Substantial interest” means an interest that is not defined by statute as “remote” that is a “pecuniary or proprietary interest, either direct or indirect,” of the public officer or employee or of his relatives. A.R.S. § 38-502(11).

A “remote interest” is an interest that has been deemed by the Arizona Legislature to be so remote that it does not impermissibly influence a person's decisions or actions. These "remote interests" are listed in A.R.S. § 38-502(10). Among the remote interests listed are”

(a) That of a nonsalaried officer of a nonprofit corporation.

...

(e) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

...

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment on the officer, the employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

(iii) A public agency except if it is the same governmental entity.

...

(k) That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.

Of the remote interests above, the one that is most pertinent to this investigation is (10) (f) above that relates to ownership of shares of stock of a corporation.⁵

If the interest at issue does not fall within one of the statutorily specified situations declared by the Legislature to be remote, the interest is substantial and creates a conflict of interest. *Yetman*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

The Arizona Attorney General provides this test to determine whether a substantial interest exists:

1. Could the decision affect, either positively or negatively, an interest of the officer or employee or the officer's or employee's relative?
2. Is the interest a pecuniary or proprietary interest? Could it affect a financial interest or ownership interest?
3. Is the interest something that is not statutorily designated as a remote interest?

Handbook, 8-4.

2. Who qualifies as a relative?

A "relative" is defined "expansively" in the Arizona conflict of interest laws. Handbook, 8-3. The term includes "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

3. What type of disclosure is required?

The employee's disclosure of a substantial interest must be complete and specific to make it clear the nature of the interest. The Arizona Attorney General states that the employee "must file a conflict of interest form which fully discloses the substantial interest with the appropriate agency or governmental unit, and must refrain from participating in any manner in discussions or decisions relating to the matter." Handbook, 8-4.

⁵ I have listed other remote interests to allow comparison. For example, if Ms. Smith had been a non-salaried officer of a nonprofit corporation, her interest would have been remote.

4. What does the term “refrain from” mean?

The term “in any manner” means more than just refraining from making a final decision. It means any participating in any way in the process leading up to a decision. Ariz. Att’y Gen. Op. 103-005. *See also* Ariz. Att’y Gen. Op. 183-111 (an employee with a conflict of interest “must not make recommendations, give advice, or otherwise communicate in any manner with anyone involved in the decision-making process”).

B. The District Conflict of Interest Policy.

The District’s conflict of interest policy is codified at Board policy GBEAA. It says, “Any employee who has, or whose relative has, a substantial interest in any decision of the District shall make known this interest in the official records of the District and shall refrain from participating in any manner as an employee in such a decision.” The policy cites, as its authority, several state statutes, including A.R.S. §38-501 *et. seq.*, which is discussed above.

Board Policy GBEAA attaches an exhibit, which is a conflict of interest form that is almost identical to the policy and exhibit promulgated by ASBA, which many school districts in Arizona use. *See e.g.* GBEAA-E in the Board policies of Chandler Unified School District and Paradise Valley Unified School District. The District has had this policy and exhibit for many years.

That form promulgated by ASBA and used by the District is not identical to the recommended form in the Handbook, but it requires the same information.

The District Administrative and Administrator Support Agreement states that “Administrators are expected to follow Policy GBEA- Staff Ethics, Policy GBEAA -Staff Conflict of Interest, and applicable standards as addressed in the “Guidelines and Procedures for Standards-Based School Administrator Evaluation.” Tab 1.

There is no evidence that Board policy GBEAA was part of Ms. Smith’s orientation. However, a District administrator, particularly one who is supposed to be an expert in school business operations and who is a part of senior management, should know the law and the policy. Affidavit of George Ziegler, Tab 2. Moreover, in her contract of employment for both the 16-17 and 17-18 fiscal years, Ms. Smith agreed to “faithfully comply with Arizona Revised Statutes, State Department of Education Rules and Regulations, SUSD Governing Policies, Rules and Regulations; and the Administrative and [Administrative] Support Employment Agreement, now in force or as they may be modified.” Tab 3.

Finally, Laura Smith was a member of AASBO. The Code of Ethics of that organization says, among other things, that members will “[a]void conflict of interest situations by not conducting business with a company or firm in which the official or any member of the official’s family has a vested interest.”

V. Laura Smith's Employment by the District.

A. Hiring of Laura Smith on February 14, 2017.

Laura Smith applied for the position of Chief Financial Officer of the District on January 29, 2017, after seeing the position posted on the AASBO website. Tab 3. In her application, Ms. Smith stated that she was a director of PGPC and made \$175,000.00 per year. She said in her application and in her interview with Dr. Birdwell that she wanted a change because she was "on the road too much." Ms. Smith told me in her interview that she was advising two districts at the time of her application for CFO: one in Kingman and the other in Coconino County.

The Board approved hiring Ms. Smith as the CFO on February 14, 2017, and she began working there on February 15, 2017.⁶ Tab 3. *See also* the minutes of the February 14, 2017, Board meeting. Tab 3.

In her orientation materials, Ms. Smith was required to disclose outside employment. Ms. Smith indicated that she worked for PGPC "consulting to school districts for financial advice, outside of SUSD hours." Tab 3.

B. Ms. Smith's Resignation on January 26, 2018.

Ms. Smith was interviewed for this investigation on January 19, 2018, by Ms. Marshall and me. She was placed on administrative leave by the Superintendent the same day. She submitted her letter of resignation on January 26, 2018. Tab 5.

VI. PGPC Corporate Structure and Ownership.

PGPC was formed in 2004. Ms. Smith said in her interview that she joined the company "around 2007." ACC records first list her as a director of PGPC on November 15, 2007. Tab 6.

At the time Ms. Smith began working as the CFO, she was a principal shareholder, director and president of PGPC. Tab 5. In her interview on January 19, 2018, Ms. Smith said that she could not remember her exact percentage of ownership as of May 31, 2017, but she estimated it to be between 15%-20%. A copy of a tax filing for 2016 that she gave me at my request after the interview shows that her interest in PGPC in 2016 was 17.72%. Tab 7. The other principal shareholders are Caroline Brackley, Rosa Saenz, and David Wood.⁷

Ms. Smith stated in her interview that she notified PGPC that she wanted to sell her interest in PGPC back to the company on May 1, 2017 and that the sale occurred on May 31, 2017. Although she provided evidence that she notified the company that she wanted to sell her

⁶ In her resignation letter, Ms. Smith says she became the CFO in May of 2017. That is obviously incorrect.

⁷ I am assuming that Ms. Brackley owns three percent or more of the shares of stock of PGPC, since she is listed as a "principal shareholder" and calls herself the "managing partner." *See* letter dated May 1, 2017. Tab 7.

stock, she has not provided evidence that the stock was sold or how much of her stock was sold. Tab 7. Further, the records posted on the ACC website still show Ms. Smith as a shareholder, director, and the president of PGPC.⁸ This is particularly noteworthy since PGPC changed its statutory agent in the records of the ACC on December 22, 2017. One has to wonder why the records do not reflect the change in ownership that allegedly occurred on May 31, 2017.

VII. Ms. Smith's Conflict of Interest Disclosures.

A. The February 24, 2017 Disclosure.

Ms. Smith submitted a "Staff Conflict of Interest" form to the District's Human Resources Department that is dated February 24, 2017. Tab 4.⁹ Although the form that she signed is the GBEAA-E form, the information given by Ms. Smith is incomplete, could be misleading, and does not meet the requirements of A.R.S. §38-503.

For example, she does not disclose (much less fully disclose) what decision, contract, sale, purchase, or service she had a substantial interest in. It could have been one of three corporations in which she has an ownership interest.¹⁰ It also does not list that Caroline Brackley, who is also a shareholder of PGPC and relative of Ms. Smith has a substantial interest in any transaction involving PGPC.

Ms. Smith says that when she learned that Mr. O'Brien, the former CFO, was recommending hiring PGPC to conduct the procurement and award of the CMAR requests for proposal due to a staffing shortage, she "stood up" and told him she had a conflict of interest on file. She also says that Mr. O'Brien told her "'Laura, you don't need to do that.' I insisted, and HR dug up another form."¹¹

⁸ I asked Ms. Smith's attorney to verify the percentage of shares that Ms. Smith owned in PGPC and the fact that she has sold 100% of her stock. He replied, "She has resigned," which I took to mean that she believes she is under no obligation to respond. I previously asked Caroline Brackley the same question and have received no answer.

⁹ We do not know for certain when she submitted the form, but it appears from the print stamp that it was printed on February 24, 2017.

¹⁰ According to the records of the ACC, in addition to PGPC, Ms. Smith also is an officer and owner of Deux Soeurs, LLC, which she owns with Caroline Brackley, and the Professional Group Public Consulting Insurance, Inc., which is also owned by Caroline Brackley. She said in her interview that Deux Soeurs was formed because she and Caroline owned a house together. She said that the insurance company has an insurance license and is in the insurance business. She said that the District has not conducted business with either. I am verifying that the District has not done business with these entities. Ms. Brackley also owns an interest in another entity called Colonial, LLC. District records do not reflect any purchases or transactions with that entity.

¹¹ In her interview, Ms. Smith raised the fact that Mr. O'Brien, the former CFO, did not have a conflict of interest form for his father's association with Valley Schools, Valley Schools Insurance Trust and Valley Schools Management. Mr. Tim O'Brien does work for Valley Schools, but he does not have an ownership interest in the entity.

Mr. O'Brien told me, "I never told her that" she did not have to file a conflict of interest disclosure and "[w]e never talked about her ownership in PGPC or a conflict of interest form." He also says he never saw the disclosure that Ms. Smith's file. He did know that Caroline Brackley was Ms. Smith's sister. *See* discussion below.

Ms. Smith's statement about the timing of her filing of the February 24, 2017, disclosure raises additional questions. In an email chain discussion between Mr. O'Brien, Ms. Hagen, and Ms. Smith, the discussion about hiring PGPC to conduct the procurement and award of the CMAR procurements occurred on March 17, 2017. Tab 9. *See* discussion below about Ms. Smith's involvement in the decision to hire PGPC to conduct the CMAR RFP process. Her next disclosure did not occur until May--six weeks later—after Ms. Marshall told her that her February 24, 2017, disclosure was incomplete.

B. The May Disclosure.

On April 26, 2017, District constituent Karen Treon notified District General Counsel Michelle Marshall that she believed Ms. Smith had a conflict of interest and requested a copy Ms. Smith's disclosure, which was a public record. At the time, conflict of interest disclosures were located in the District Human Relations Department. (They are all now in one file in the office of the General Counsel.)

After obtaining a copy of Ms. Smith's February 24, 2017, disclosure from the District Human Relations Department, Ms. Marshall notified Ms. Smith that she needed to correct her disclosure to fully disclose the information required by statute. The May 3, 2017, disclosure was the result. Tab 4.

At that time, Ms. Smith did not tell Ms. Marshall that she had offered to sell her interest in PGPC. At no time did she say that she is related to Ms. Brackley.

C. Ms. Smith's Knowledge of Arizona Conflict of Interest Law.

Ms. Smith obviously knew of the importance of filing conflict of interest laws. Before she was an employee of the District, as a consultant for PGPC, she had participated in an audit of the District Special Education Department. Among other things, she and another consultant addressed whether employees of the District were also vendors and had a conflict of interest.

In addition, Ms. Smith acknowledged the importance of the disclosure in February, when she filled out a disclosure form. She said in her interview, "10 days into working for the District, I realized they had no Purchasing Department" (I believe she was referring to the Procurement Department). This is relevant because she signed the February 24, 2017 disclosure three weeks before the District decided to hire PGPC to conduct the CM@R process. And, it was not until May 3, 2017, that she signed a new, more detailed conflict disclosure.

VIII. Ms. Brackley's Status as a "Relative" of Ms. Smith and District Knowledge of Brackley's Relationship.

As stated above, Caroline Brackley is a principal shareholder, officer and Director of PGPC. In a letter she sent to Ms. Smith dated May 1, 2017, Ms. Brackley signed as "Managing Partner" of PGPC. Tab 6.

As previously noted, I am assuming that Ms. Brackley owns three percent or more of the share of stock of PGPC, since she is listed as a "principal shareholder" of PGPC and identifies herself as a "Managing Partner." If she owns less than three percent of shares of PGPC stock, her interest would be remote under A.R.S. §38-502.

Mr. O'Brien says that he knew Ms. Brackley was Ms. Smith's sister and that it was "general knowledge in the education community" that Ms. Brackley was Ms. Smith's sister. While that may have been true with respect to Mr. O'Brien and some persons in the school business community outside of the District, other persons who have worked for years in the school business community outside the District tell me that they did not know the two were sisters.

Persons in the District did not know Ms. Smith and Ms. Brackley were sisters, nor did others I asked outside of the District who are in the education community. Some did not even know who Ms. Brackley was. Dr. Birdwell will attest that she did not know of the relationship between the two until mid-late November, 2017, around the same time I was hired. Ms. Marshall will attest that she did not know of the relationship until December, 2017, when I discussed it with her. Even Ms. Smith's secretary says she did not know until she heard someone discussing the relationship in November or December, after this investigation was initiated.

I did not know of the relationship when I was hired to do this investigation in late November. I know Ms. Brackley because I have been on one panel with her and other panelists at an ASBA Law Conference and, in another matter, I read a report she wrote. I had never met Laura Smith, nor heard of her for that matter, until I started this investigation. While researching the ACC records in late November, shortly after I was hired to do this investigation, I saw that Ms. Smith and Ms. Brackley were both owners and shareholders of Deux Soeurs, which means "two sisters" in French. I then inquired and did research and found out that they are indeed sisters. The Superintendent also gave me a powerpoint presentation that had been given to Board members in early November that included copies of a 2007 obituary that listed the two as sisters. *See below.* While the obituary was evidence of a possible connection, it required further verification of the relationship and percentage ownership in PGPC.

Ms. Brackley and Ms. Smith do have the same maiden name, but Ms. Brackley does not list her maiden name in the ACC records or on the PGPC website. Neither the MESC website nor the Arizona State Purchasing Office list Ms. Brackley's or Ms. Smith's maiden name. When one uses the Google search engine, Ms. Brackley's name does show up as Caroline Tenison Smith one time, as well as in the 2007 obituary of Joyce Wynn Tenison, who died in Plano, Texas.

As CFO, Ms. Smith signed checks “Laura Smith.” From time to time, but not always, Ms. Smith signed District-related documents as “Laura T. Smith” or “LTSmith.” The only reference to her as Laura Tenison Smith, using a google search, is in the 2007 obituary of Joyce Wynn Tenison.

Board members forwarded to the Superintendent a hard copy of a powerpoint that was given to them by a constituent in early November, 2017. That powerpoint included a reference to the obituary of Joyce Wynn Tenison that listed Laura Tenison Smith and Caroline Tenison Brackley among the survivors. Dr. Birdwell later had a conversation in November with Ms. Smith and directly asked her whether she was Ms. Brackley’s sister. This occurred around the same time I was hired by the District General Counsel to investigate both the Hunt & Caraway situation and the PGPC/Laura Smith conflict of interest.¹²

IX. District POs Issued to PGPC prior to Ms. Smith’s Employment.

PGPC was first entered as a vendor in the District purchasing system on December of 2015. On January 4, 2016, purchase order 16030450 for \$250 was issued for two District employees to attend a workshop in school finance offered by PGPC . It was followed by a purchase order approved by then CFO Daniel O’Brien on February 18, 2016, for \$20,000.00 for “Financial Management Consultant for review of departments.” PO. No. 1604093.

In fiscal year 2016-2017, there were four purchase orders issued to PGPC before Ms. Smith was hired:

PO Number	Date Approved	Approver	Purpose	Date Closed
1702256	10/06/16	O’Brien	General Financial Management Services (SPED)	12/08/17
1702257	10/06/16	O’Brien	General Financial Management Services (fixed assets)	09/27/17
1702233	10/05/16	O’Brien	General Financial Management Services on an as needed basis.	09/28/17
1702837	12/06/07	O’Brien	General Financial Services (SPED)	09/28/17

Tab 14.

As the above shows, at the time Ms. Smith began working as the CFO of the District, there were three existing, open blanket purchase order for purchasing the services of PGPC,

¹² There was also an email sent by a constituent to Dr. Birdwell on December 17, 2017, referring to the familial relationship.

which were purchased by the District through MESC. She said in her interview that she never inquired about the open POs, even though she sat through a presentation by Missy Mudry at a Board meeting on February 23, 2017, that was billed under one of those open POs.

X. Need for Assistance in the Procurement of CMARs.

According to Ms. Smith, the District was in dire need of a Purchasing Director who knew how to procure CMAR contractors in the Spring of 2017. Although they had interviewed several candidates, for a variety of reasons, none was hired.

Emails between Ms. Smith, Ms. Hagen and Mr. O'Brien on March 16, 2017, show that the idea to hire PGPC was initially raised by Ms. Hagen and that Mr. O'Brien made the final decision. Tab 9. However, Ms. Smith was also involved, as some of these excerpts from emails show:

- | | |
|--|---|
| March 16, 2017,
sometime before 7:19 am | Ms. Smith asks Ms. Brackley to look over the CMAR for Hopi after concerns were raised that the CMAR did not comply with the Code and an amendment was needed. |
| March 16, 2017, 7:35 am | Ms. Smith writes Mr. O'Brien and Ms. Hagen and tells them that she "asked Caroline to take a look [at the CMAR] and here are her comments. My only issue is getting this right, it is way above my skill set on the procurement side." She sends Ms. Brackley's comments to them. |
| March 16, 2017, 8:51 am | Ms. Hagen writes: "Perhaps also, a discussion on the possibility of hiring Caroline's group to assist and/or do the CM's for us should also be addressed." |
| March 16, 2017, 11:44 am | Ms. Smith writes Mr. O'Brien and Ms. Hagen and tells them, "not knowing of this email I spoke with Caroline and she said with a po PGPC could get this amendment out by noon tomorrow if they had the document in word for approximately \$1000. In general her CMAR run [sic]\$5000. As you know and I have documented and signed a conflict of interest regarding this firm." |
| March 16, 2017, 12:03 pm | Mr. O'Brien says "I am good with this option. I have not done a CM@R in many many years and our department here has not done them. So any assistant that we can have would be great and welcomed." |
| March 16, 2017, 2:10 pm | Mr. O'Brien asks Lynn Hagen and Laura Smith to "sent RFQ to Caroline." (Presumably this is the CMAR RFP that was found to be defective.) |

March 16, 2017, 2:24 pm Ms. Hagen writes to Mr. O'Brien and Ms. Smith and asks if Jill Olivas can "put in a requisition for this assistant we are requesting of Caroline?"

March 16, 2017, 2:42 pm Mr. O'Brien tells Jill Olivas to "work with Lynn to get a Req. for this. For %, 5000" (meaning not to exceed \$5000)

Tab 9.

The invoice from PGPC says that Missy Mudry started working on the Hopi CMAR that day at 1:00 pm, an hour before Mr. O'Brien asked his assistant to put in for a PO for this project. Tabs 9 and 10. The PO for this project (No. 1703995) was not approved by Mr. O'Brien until March 23, 2017, although he asked his assistant, Jill Olivas, to prepare it on March 16, 2017. Tabs 9 and 11.

Ms. Smith's actions in deliberately contacting her sister to review the RFQ and then find out her prices of PGPC services causes me to question whether her violation of the Arizona conflict of interest law was indeed caused by an inadvertent error. She should not have contacted her sister to facilitate hiring PGPC. She should have remained entirely out of the decision to hire PGPC to do this CMAR. She should have told Ms. Hagen and Mr. O'Brien that she could not be involved.

One might say, as Ms. Smith has argued, that Mr. O'Brien was complicit to a certain extent in this chain of events that led to hiring PGPC for the CMAR procurements. He says he knew Ms. Smith and Ms. Brackley were sisters. He had been the CFO for five years, as well as the Executive Director for Business Services for Tolleson Elementary School year for six years. He knew or should have known the law and he should not have included Ms. Smith in this discussion. But the responsibility for complying with the Arizona conflict of interest law ultimately lies with the employee who has the conflict—not Mr. O'Brien.

XI. Ms. Smith's Involvement in the District Purchase of PGPC Services.

In addition to the above described email exchange, Ms. Smith was further involved with the purchase of services from the company owned by her and her sister in the following ways:

A. The Direction to Mr. Hartwell.

On April 5, 2017, in response to a question from Mr. Hartwell, Ms. Smith told Mr. Hartwell in an email "Work with Jill, she has opened a PO for each CM@R. Is this additional work and we need to increase current POs? Do we need to open additional PO for additional projects? Have Missy get a quote to us and when PO is issued we need to send it to Mohave and vendor." Tab 9.¹³

¹³ Mr. Harwell states that, at the time, he did not know that Ms. Smith was an owner of PGPC or that Caroline Brackley was her sister, although he did know Ms. Smith had worked as a consultant with another individual earlier on a project.

This email causes me to question whether her violation of the Arizona conflict of interest law was indeed caused by an inadvertent error. She should have told Mr. Hartwell “I can’t be involved in this in any manner.” She did not.

B. Change Order Requests Signed by Ms. Smith.

Ms. Smith personally signed five change order requests for increases in POs issued to PGPC totaling \$16,072.40.

Date of Change Order Request	Number of P.O.	Project/Purpose	Amount of increase
March 30, 2017	1703885	CMAR RFP-Pima	\$862.60
April 10, 2017	1704118	CMAR RFP-3 Sports Fields	0 (closed PO and reopened as 1704291)
April 26, 2017	1703995	CMAR RFP-Hopi	\$5209.80
May 16, 2017	1704291	CMAR RFP-3 Sports Fields	\$6000.00
May 16, 2017	1704119	CMAR RFP-Hohokam	\$2000.00
May 16, 2017	1703995	CMAR RFP-Hopi	\$2000.00
			Total = \$16,072.40

Tab 11.

Ms. Smith characterizes these signoffs as inadvertent. It is true that the name of the vendor was not on the change order document. However, she could and should have verified which vendor the change order pertained to by requiring the person who generated the change order to fill in the form completely or by looking up the underlying purchase order that was listed on the change order herself. Tab 2, affidavit of George Zeigler. Moreover, based upon my interviews, other departments in the District do fill in the box for indicating which vendor is the subject of the change order request.

Moreover, simply by looking at the change order, Ms. Smith would have some indication of the name of the vendor who was the subject of the change order. For example, if one looks at the change order dated May 16, 2017 relating to purchase order 1704119, you will see the accounting code is 630.100.25106330.114.CMAR.545. Account 630 is Bond funds under the USFR Chart of Accounts. USFR and Tab 12. Account 6330 is Other professional services (i.e. consulting) under the USFR Chart of Accounts. USFR and Tab 12. Account 114 is Hohokam School under the District Chart of Accounts; CMAR is Construction Manager at Risk; and 545 is Facilities and Operations. Tab 12. It is my understanding that, at the time, there were only a

few firms providing consulting services to the District under “other professional services.”¹⁴ One was FMG. There were also two architect firms. PGPC was also one of those firms.

In her interview, Ms. Smith said that she never looks up the underlying PO number of any change order request when she signs a change order request, or she would “never get any work done if I went in and checked everything.” I have verified with several school district business officials and Mr. Ziegler that this is not a prudent practice of someone in Ms. Smith’s position as the chief financial officer of a school district.

Mr. Zeigler, who is an expert witness and the former CFO of Mesa Unified School District, has stated that, in his opinion, it was inappropriate for Ms. Smith to sign these change orders without knowing who they are being issued to and she should not have signed any change order without knowing which vendor was the subject of the purchase order and the change order. Tab 2. Mr. Zeigler added that “[a]ny accounting manager or employee working in the business office should look up the underlying purchase order before he or she signs the change order in order to 1) ensure that the order is within the budget item; 2) make sure the change order comports with the underlying purchase order and 3) guard against violating and conflict of interest rules.” Tab 2.

C. Purchase Orders Issued to PGPC Approved by Laura Smith.

Ms. Smith approved six POs to PGPC totaling \$43,776.35. This is reflected in the approval log on the PO, which shows who approved the PO, with signatures that are computer generated.

Date of Purchase Order	Number of P.O.	Project/Purpose	Amount
April 13, 2017	1704291	3 Sports Fields	\$12146.60
May 26, 2017	1704841	On-site procurement consulting and training	\$24601.50
September 15, 2017	1801951	PGPC Workshop	\$250.00
September 28, 2017	1802155	PGPC Workshop	\$250.00
October 10, 2017	1802327	POS Food Services RFP	\$6268.25
October 30, 2017	1802529	PGPC Compliance Workshop	\$250.00
			Total = \$43,766.35

Tab 11.

¹⁴ The USFR defines “other professional services” as “Professional services other than educational services that support the operation of a district.”

One question I had when looking at the POs issued to PGPC was what the approval signature “DObrien for ltsmith” meant. Ms. Crosier confirmed that “DOBrien for ltsmith” means that Daniel O’Brien, the former CFO, approved the purchase order. This occurred because the computer entry generated after Mr. O’Brien left the employment of the District read that way. To show this is true, there are some POs that have DOBrien for ltsmith and were approved before Ms. Smith was employed by the District, which is a technological mistake.

The entry “scrosier for ltsmith” means that she approved the purchase order rather than Ms. Smith because of the conflict. The same is true for “bwitten for ltsmith.” However, these individuals told me that they would only know that they should sign a PO for Ms. Smith if someone called it to their attention or they looked at the “queue” of POs awaiting approval and saw one to PGPC.

D. After the Fact Purchase Orders issued to PGPC.

There were six “after the fact” POs issued to PGPC, which are listed below. Two of these were approved by Laura Smith. “After the fact” purchase orders are not illegal *per se*, but they are contrary to the USFR guidelines and may cause an audit exception.¹⁵ Issuing a PO before the purchase is an important requirement because it allows an orderly process to ensure compliance with procurement and budget requirements, as well as allowing verification that the expenditure is within the budget. They are as follows:

No. of P.O.	Date of P.O.	Approved By	First date services were rendered-per the PGPC invoices	Location/Description of Services
1703995*	3/23/17	Dan O’Brien	3/16/17	Hopi CMAR
1704119*	3/31/17	Dan O’Brien	3/17/17	Hohokam CMAR
1704152*	4/4/17	Dan O’Brien	3/19/17	Cheyenne CMAR
1704291* (was previously 1704118)	4/13/17	Laura Smith	3/19/17	Initially PO was denoted Chaparral, then became the PO for the Three Sports Fields CMAR.
1703885*	3/20/17	Dan O’Brien	4/6/17	Pima CMAR
1704841*	5/26/17	Laura Smith	4/23/17	Blanket P.O. First billing was for a presentation to Governing Board on 4/25/17.

Tab 13.

¹⁵ The USFR states, “Sequentially numbered purchase orders should be prepared and approved by an authorized district official for all district expenditures **before the goods or services are ordered**, except for exempted items such as salaries and related costs, utilities, and in-state travel, or when a written contract is prepared. Districts may implement alternative procedures for credit card and procurement card purchases.” USFR, VI-G-I, p. 5.

A one day “after the fact” is understandable and occasionally occurs in school districts due to timing issues. However, some of these approvals of PGPC POs by Ms. Smith and Mr. O’Brien occurred weeks after the first date PGPC commenced work.

E. Inconsistencies In and Questions Arising from Ms. Smith’s Testimony and Statements in Her Resignation Letter.

I find the following inconsistencies in Ms. Smith’s testimony and statements that raise questions about her conduct and are troubling. I have raised some of these previously, but summarize them here as follows:

- Ms. Smith stated in her interview that she filled out a conflict of interest form on February 24, 2017, because “10 days into working for the District, I realized they had no Purchasing Department.” However, there already were three open purchasing order with PGPC for other services that she should have known about or inquired about on day one of her employment, which would have triggered the conflict of interest disclosure requirement. She does say that she “didn’t think Scottsdale was doing any business with PGPC. I would have assumed the district would have closed POs when Danny [Mr. O’Brien] knew I was being hired.” However, she never verified that fact and she sat through a presentation by Missy Mudry of PGPC to the Board on February 23, 2107.
- Moreover, it was not until March 16, 2017, that the email exchange occurred where Ms. Hagen proposed hiring PGPC to conduct the CMAR procurement due to a shortage of staffing and Ms. Smith contacted her sister to find out prices.
- In her interview, Ms. Smith said, “I asked Danny to not use PGPC.” Yet, she contacted her sister on March 16 to evaluate the previous CMAR for Hopi and, after Ms. Brackley confirmed there were problems, asked Ms. Brackley what it would cost to hire PGPC to do all the CMAR proposals.
- In her resignation letter, Ms. Smith says she became the CFO in May of 2017. However, she was hired as the CFO on February 14, 2017 and began working at the District on February 15, 2017.
- In her resignation letter, Ms. Smith refers to her “ministerial error” in signing two change order requests totaling \$2000. Yet, she was shown in her interview another change order request for \$6000. At a minimum, she was aware of \$8000 of change order requests for additional payment to PGPC when she wrote the resignation letter.
- Ms. Smith characterizes her error as a “ministerial error.” *Merriam Webster Dictionary* defines “ministerial” as something that “involves obedience to instructions, but demands no special discretion, judgment, or

skill.” "Ministerial." Merriam-Webster.com. Accessed February 4, 2018. <https://www.merriam-webster.com/dictionary/ministerial>. Increasing an amount on a PO request is more than ministerial because the person signing has to determine that the change order amount is within the contracted amount and the budget. It requires both special judgment and skill in the area of financial operations.

XII. Ms. Smith’s Violation of the Conflict of Interest Law.

As I stated in the Summary of Conclusions above, Ms. Smith’s actions violate A.R.S. §38-503 and Board Policy GBEAA in that:

- a) she did not fully disclose her “substantial interest” in any transaction between the District and PGPC or in any decision of the District relating to that interest in the February 24, 2017 disclosure;
- b) she never fully disclosed the “substantial interest” of her sister, Caroline Brackley, in any transaction between the District and PGPC or in any decision of the District relating to that interest; and
- c) she did not refrain from participating “in any manner” in such transactions or decisions because she approved POs to PGPC, signed change order requests, participated in finding out the cost of PGPC to consult on CMAR procurement, and instructed another employee to obtain a change order quote from PGPC for two projects.

Because criminal sanctions go against the person who violated the conflict of interest laws, it will be up to the appropriate law enforcement agency to determine whether it will charge and prosecute Ms. Smith.

XIII. Analysis of the Amount of Money Paid to PGPC after February 14, 2017.

The amount paid out to PGPC does not affect the conclusion that Ms. Smith violated the conflict of interest laws. It is relevant, however, to the extent of remedies, which I will address with the Board in executive session as legal advice. It also requires further analysis of the allocation of charges that relate to the amounts approved by Ms. Smith.

It would be a mistake and imprecise to equate the amounts of the POs to PGPC with the amounts paid out to PGPC. In both fiscal years during the time Ms. Smith worked at the District, in some cases, the amounts that were paid to PGPC for work performed after Ms. Smith started working at the District were less than the amounts of the POs. For example, in the case of the Three Sports Fields, the amount paid out for the CMAR procurement for the Three Sports Fields in FY 2016-2017 was \$8984.33, but the total amount authorized in the POs was \$12,146.60. The amount paid out for the POS Food Services procurement in 17-18 was \$5,324.07, while the total amount authorized was \$6268.25. The amount paid out for on-site

procurement consulting and training in FY16-17 was \$20,356.25, while the amount authorized in the POs was \$24,601.50.

In all, after Ms. Smith was hired as CFO, the District paid PGPC \$59,470.30 in fiscal year 2017-2017 and \$26,645.30 in fiscal year 2017-2018. Tab 15. The bulk of the charges for fiscal year 2016-2017 relate to Missy Mudry's services as a consultant on the CMAR procurement.

XIV. Analysis of the Charges Billed by PGPC.

The District acquired PGPC's services through a MESC cooperative purchasing contract. Therefore, the rates charged by PGPC have to align with the rates it bid in the MESC procurement.

PGPC billed Missy Mudry's time at \$130 an hour in the 2016-2017 fiscal year, and \$125 an hour in the 2017-2018 fiscal year. MESC's attorney advised me that the hourly rate under MESC's contracts with PGPC in effect during the time PGPC provided consulting services to the District in fiscal year 2016-2016 and fiscal year 2017-2018 was \$130 an hour. However, I have asked for the price sheets and will follow up accordingly.

XV. Recommendations.

The following are recommendations to assure compliance with the conflict of interest laws:

1. The requirements of Arizona conflict of interest law and Board policy GBEAA should be a part of new employee orientation. As part of that orientation, in addition to the fundamentals of that law, the following should be addressed:
 - The requirement that a substantial interest of an employee's relative must also be included in the disclosure and the definition of relative.
 - The importance of refraining from participating in "in any manner" in transactions or decisions involving a substantial interest.
2. The requirements of Arizona conflict of interest law and Board policy should be a part of a mandatory in-service training of all employees. As part of that training, the following should be addressed.
 - The requirement that a substantial interest of an employee's relative must also be included in the disclosure and the definition of relative.
 - The importance of refraining from participating in "in any manner" in transactions or decisions involving a substantial interest.

3. Employees should be required to review the District policy and affirmatively state they have no conflict of interest (if that is the case) on a regular basis. They should be reminded to fill out a disclosure form if they have a conflict of interest.
4. Supervisors should be vigilant if they believe an employee has a substantial interest in a transaction or decision and address it with the employee.
5. GBEAA-E should be amended to more closely follow the form recommended by the Arizona Attorney General.
6. GBEAA should be amended to fully explain the Arizona conflict of interest law and include the definition of parent, as well as an explanation of “substantial interest.”
7. The District should continue to maintain conflict of interest disclosures in a central location.

Dated this 6th day of February.¹⁶

/s/ Susan Plimpton Segal

Susan Plimpton Segal

¹⁶ This version includes corrections of typographical errors that previously incorrectly indicated events relating to the closing of POs and the interview and resignation of Laura Smith as occurring in January of 2017. The correct year of these events is 2018.