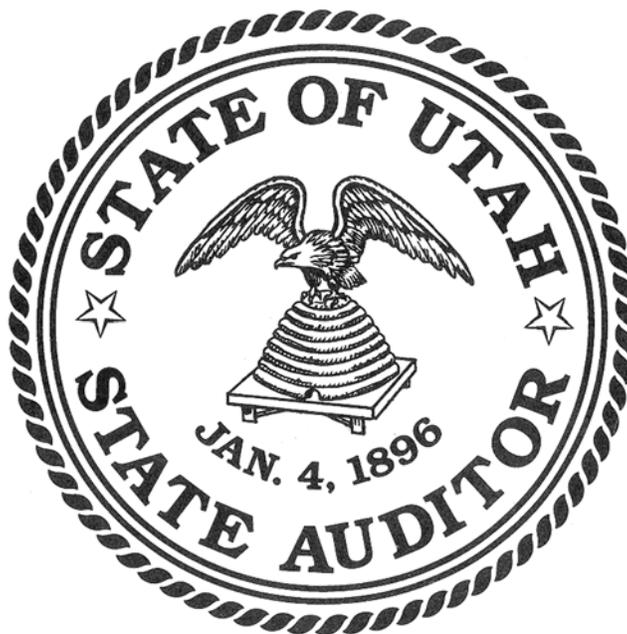


UINTAH TRANSPORTATION SPECIAL SERVICE DISTRICT

Findings and Recommendations
For the Period January 2015 through September 2017

Report No. UISS-18-SP



OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor

Ryan Roberts, CPA, Local Government Supervisor

UINTAH TRANSPORTATION SPECIAL SERVICE DISTRICT
FOR THE PERIOD JANUARY 2015 THROUGH SEPTEMBER 2017

TABLE OF CONTENTS

	<u>Page</u>
MANAGEMENT LETTER	1
FINDINGS AND RECOMMENDATIONS:	
1. Potential Violations of the Open and Public Meetings Act	3
2. Potential Inadequate Independence Between District and County	4
3. Inadequate Controls Over Payroll Expenditures	6
4. Inadequate Controls Over Credit Card Transactions	8
5. Inadequate Policies Over Non-Travel or Local Travel Expenditures	9
6. Increased Risk by Using Credit Cards versus Purchase Cards	10
7. Failure to Obtain Certification By Records Officer	10
8. Inadequate Follow-up on District Receivables	11



OFFICE OF THE
STATE AUDITOR

October 31, 2017

Dan Dilsaver, Board Chair
Uintah Transportation Special Service District
320 North Aggie Blvd., Suite 138R
Vernal, Utah 84078

Dear Mr. Dilsaver:

The Office of the State Auditor has completed an investigation of the Uintah Transportation Special Service District (District). Initially, we limited our investigation to the complaints received from a District board member regarding several concerns he had with the financial operations of the District. However, during our investigation of these complaints we were made aware of other matters that warranted our attention, and thus, expanded our investigation. We performed the following procedures at the District for the period of January 2015 through September 2017, unless otherwise noted:

1. We made inquiries and reviewed certain accounting records and other supporting documentation to evaluate various allegations.
2. We reviewed Board meeting minutes.
3. We reviewed all credit card purchases for the Executive Director from May 2015 through June 2017 for appropriateness and compliance with policy. We also scanned all District disbursements from January 2015 through June 2017.
4. We reviewed certain compensation and payroll related data, including the contract with the Executive Director.
5. We gained an understanding of internal controls over receipts, disbursements, and payroll.

The results of our investigation are included in the attached findings and recommendations section of this report.

Our procedures were more limited than would be necessary to express an opinion on any of the items referred to above or to express an opinion on the effectiveness of the District's internal control or any part thereof. Accordingly, we do not express such opinions. Had we performed additional procedures or had we made an audit of the effectiveness of the District's internal control, other matters might have come to our attention that would have been reported to you.

By its nature, this report focuses on exceptions, weaknesses and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of the District during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please call Ryan Roberts, Audit Supervisor, at 801-538-1721.

Sincerely,

Office of the State Auditor

Office of the State Auditor

FINDINGS AND RECOMMENDATIONS

1. POTENTIAL VIOLATIONS OF THE OPEN AND PUBLIC MEETINGS ACT

During this review of the Uintah Transportation Special Service District (District), we discovered a number of occasions in which three or more members of the District's five-member Board of Directors (Board) made and acted upon decisions outside of an open and public meeting and, in some circumstances, without the prior knowledge of the other Board members. The Open and Public Meetings Act (OPMA) in Utah Code 52-4 requires decisions of a public body to be made in an open and public meeting. Utah Code 52-4-103(6)(a) defines a meeting as "the convening of a public body...with a quorum present, including a workshop or an executive session...for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power."

- a. In May 2015, three Board members signed an employment agreement with the Executive Director. The final terms of the agreement were not discussed in an open meeting, nor was the agreement voted on by the full Board, yet the signing of the agreement by the three Board members appears to constitute an action by a quorum of the Board. In addition, the District's Policy 9202 Salary Administration Programs requires that "the Employee base salary shall be approved by the Board and the Board shall approve all raises." Furthermore, District Policy 5203 Executive Director – Management Employees states that the Executive Director's "employment arrangement shall be determined by negotiation with the board."
- b. In November 2016, the Board Chair approved a salary and benefit schedule for the Executive Director for fiscal year 2017 which included a \$14,500 commission for grants procured or administered by the Executive Director for completed projects and a 1% pay increase. District Policy 5102.02 Performance Review requires that "prior to the annual Board meeting, the Chairman shall annually review the performance of the Executive Director. The Chairman shall report on the review and make recommendations for salary and benefit package adjustments to the Board at the annual meeting." A performance evaluation was conducted by the Board Chair in January 2017, but there is no record that the Board Chair reported the results of the review to the Board nor made recommendations for the salary and benefit package to the Board as required by the District's policy.
- c. In May 2017, three Board members met with the management of the District to discuss accounts payable issues. The following day, Board action was taken based on discussions during the previous day's meeting. This was not a chance meeting of Board members, but was a coordinated meeting. Normally, this type of meeting would be recognized as a workshop and would be regarded as an open meeting under the definition of a meeting.
- d. In August 2017, the Board Chair conducted a "phone poll" of Board members before engaging a local firm to back-up the District's information system. The District was subsequently billed \$240 for this service.
- e. Finally, in September 2017 in anticipation of an on-site investigation by the Office of the State Auditor (Office), three Board members made the decision to put the Executive Director on paid administrative leave pending our investigation. This decision was evidenced by a

“Notice of Paid Administrative Leave” memo that was presented to the Executive Director on the morning of September 11, 2017 in the presence of a law enforcement officer. The memo was from the Board Chair and carbon copied to only two other Board members. The Executive Director was then asked to turn in his keys to the District offices. Two other Board members were informed of the decision at 11:00 that morning via text after the decision had been made and acted upon. This action made it more difficult for the Office to obtain needed documentation.

Repeatedly, we have heard various Board members claim that particular actions were administrative as justification for not waiting until a public meeting to take these actions. We find these justifications baseless. We have informed the Office of the Attorney General of our concerns regarding noncompliance. Its Civil Review Committee handles compliance issues regarding OPMA.

Recommendation:

We recommend that the Board comply with the Open and Public Meetings Act and ensure that no instances occur where a quorum of the Board discusses District business or makes decisions regarding the District without holding an open and public meeting to do so.

District’s Response:

The District agrees that sometimes the District Board has failed to properly comply with the requirements of the Open and Public Meetings Act.

The District commits to get training on this subject for the Chairman and other Board members so that communications and decisions among Board members only take place in properly called open and closed meetings.

2. POTENTIAL INADEQUATE INDEPENDENCE BETWEEN DISTRICT AND COUNTY

On July 26, 2016, the Office issued an auditor alert (2016-4) to provide guidance regarding the governance and operation of separate legal entities that have been created by a county to receive federal mineral lease monies. In essence, a county may either receive mineral lease monies, which would result in a parallel reduction in its federal Payment in Lieu of Taxes (PILT) revenues, or it may establish special service districts to receive and administer the mineral lease monies. Uintah County (County) has chosen to create six special service districts, one of which is the District, to receive and administer mineral lease monies, avoiding any associated reduction in federal PILT revenues. However, in order for this allowance to endure, the mineral lease money must be given to politically and financially independent single-purpose districts which alone are responsible for providing the services in question.

Further guidance from the Office states that the following should be considered in establishing political independence:

- The county could establish a legally separate entity (i.e. special service district) and create an administrative control board having at least three members. It is preferable that no member of the county commission serve on the board. If it is considered necessary for members of the county commission to serve on the board, they should constitute a minority of the members on the board.
- In order for the entity to be considered politically independent, the county should not control the decision-making process of the entity.

Furthermore, the following are factors establishing financial independence:

- Decisions regarding the use of mineral lease money should be the responsibility of the entity's governing board.
- Mineral lease funds should be separately budgeted and accounted for to ensure that they are spent in accordance with restrictions on their use. If a county acts as the fiscal agent for a district that receives mineral lease funds, the county should also separately account for the funds, clearly distinguishing them from county funds.
- If the entity's board chooses to use money for projects that also fall within the scope of county services, such as maintenance and construction of county roads, a formal agreement should be established that defines the entity's area of jurisdiction. The agreement should indicate that the county would not have the responsibility to undertake a function of the entity if the entity itself failed to execute those functions.

During this investigation, we discovered circumstances that bring into question the District's appropriate independence with the County. These circumstances include the following:

In November 2007, the District entered into a Memorandum of Agreement (MOU) with the County, stipulating that the District will not participate in funding or engage in any project which is not on a prioritized list of proposed projects submitted by the County, unless it is an emergency project. To facilitate this arrangement, the County agreed to submit a prioritized list every six months to the District. However, the last prioritized list that was received from the County was in 2015. Since then, there have been no less than nine letters sent by the County to the Executive Director of the District with specific proposals and requests. Under these circumstances, the District Board has little choice other than to work from the 2-year-old list of projects with ongoing directives from the County, leaving a diminishing opportunity for the Board to make independent decisions regarding the use of mineral lease funds. In an October 1986 memo from the Associate Solicitor for Energy and Resources of the U.S. Department of the Interior regarding political independence of special service districts that receive mineral lease funds, the Associate Solicitor stated, "The authority invested in the Service District should be broad enough that the district has an area of jurisdiction within which it makes decisions. If the service district has such a narrow mandate that it has no real choices, it may not be truly independent."

Each year, the Uintah Basin Association of Governments (UBAOG) updates a list it maintains to track capital improvement project requests for various governmental entities

throughout the County. This list is then presented to the Permanent Community Impact Fund Board (PCIFB) for potential funding. In January 2017, the County added a “Reconstruct 500 North” project to the 1 Year Capital Improvement List and a “Reconstruct Diamond Mt Hwy” project to the 2-5 Year Capital Improvement List for application of Community Impact Board (CIB) funding, on behalf of the District. These projects were not included on the Capital Improvement Lists that were approved by the District Board and provided to UBAOG.

It is our understanding that although the mineral lease money is passed directly to the SSDs from the State, the County provides the distribution percentages to the State dictating how much of the mineral lease monies will go to each of the six SSDs in the County. Once the mineral lease monies are received by each SSD, the board of each SSD should have decision-making authority on how to expend those funds. However, in September 2017, a County Commissioner, providing public comment as a concerned citizen, expressed concern regarding the District Executive Director’s employment agreement and indicated that “if the terms of the agreement are real, then the County should take that into account prior to distributing funds to the SSD’s.” In essence, the County Commissioner is suggesting that if the District Board honors what appears to be a legally-binding contract with the District’s Executive Director, the County Commission should limit the District’s mineral lease funding. Although it is critically important that all governmental entities use their publically-funded resources in an efficient and effective manner, this situation is particularly concerning as it gives the appearance of the Commission steering funds to control the District.

Recommendation:

We recommend the Board exercise due diligence to ensure that political and fiscal independence is maintained as long as the County chooses to pass through mineral lease monies to single-purpose districts to administer. We also recommend that whenever a Memorandum of Understanding (MOU) is established between the District and the County regarding the administration of mineral lease monies, the District ensure the MOU is in harmony with the intention of the allowance for SSDs to receive mineral lease monies without reducing the PILT revenues of the County.

District’s Response:

The previous Board had struggled with independence from county control. As a new Board we consider maintaining this separation as our highest priority. We will openly communicate the findings of this audit to our county leaders. We will also review our accounting and record keeping systems to track mineral lease money.

3. INADEQUATE CONTROLS OVER PAYROLL EXPENDITURES

The District has inadequate internal controls over payroll disbursements made by direct deposit. District Policy 4301 states “Disbursements of the District shall be made by checks hand-signed by any two members of the Board.” The District follows this policy for all disbursements except

payroll disbursements. Information related to payroll disbursements is entered into the financial system and then automatically paid by direct deposit. Board members may review the payroll disbursements as part of their monthly review of disbursements, but we saw no indication that they are doing so on a regular basis. As a result, we noted several weaknesses related to payroll disbursements.

The Executive Director's salary is paid in accordance with his approved salary amount. In addition, the contract for the Executive Director allows for additional payroll-related payments; however, certain payments should be made with the Board's pre-approval or review, as follows:

- Paid Time Off (PTO) – The Executive Director cashed out 116 hours of PTO amounting to \$6,090 in December 2016 and 80 hours of PTO amounting to \$4,800 in April 2017. Neither of these PTO cash out payments appear to have been approved by any Board members. Although the Executive Director's contract allows for the accrual of PTO (208 hours per year), there is no contract provision or policy related to the allowance or prohibition of cashing out PTO.
- Bonuses – The Executive Director received bonuses of \$1,083 in 2015 and \$4,200 in 2016. The bonus in 2015 was approved by the Board in an open meeting. The bonus in 2016 does not appear to have been approved by the Board in an open meeting; however, it appears that bonuses were given to all District employees, including the Executive Director. While the Executive Director has broad authority, only the Board may authorize his bonuses.
- Commissions – The Executive Director's contract allows for a 1% commission for any federal, state, FAA, CIB, or similar grants that are procured and/or administered on behalf of the Employer, or for the benefit of the Employer. The Executive Director received commissions totaling \$14,500 during 2017 for the following projects, totaling \$1,450,000, which were completed in 2016: 1) 2000 North grant of \$1,000,000, 2) Trail Master Plan grant of \$350,000, and 3) Red Fleet grant of \$100,000. These commission payouts were approved by only the Board Chair and were included in the bi-monthly salary payments to the Executive Director throughout 2017. The full Board should review any commission milestone accomplishments, then authorize payment, as appropriate.

These weaknesses in internal control over payroll occurred due to insufficient policies and procedures regarding the payroll process. The Board's failure to review payroll disbursements made by direct deposit could result in inappropriate and/or unauthorized payments.

Recommendation:

We recommend the Board establish policies and procedures for the approval of payroll disbursements made by direct deposit, including PTO cash outs, bonuses, and commissions.

District's Response:

The District agrees it needs better policies and procedures for payroll expenditures and has taken steps to correct that problem. It will adopt other policies and procedures within 90 days.

4. INADEQUATE CONTROLS OVER CREDIT CARD TRANSACTIONS

The District lacks adequate internal controls over credit card transactions. We reviewed credit card transactions for the Executive Director's credit card from May 2015 through June 2017 for appropriateness and noted the following weaknesses:

- a. We randomly selected three months (10%) of credit card transactions to determine whether adequate supporting documentation was retained. There were 55 transactions totaling \$5,211.76 during the three months observed. There was insufficient supporting documentation for 10 (18%) transactions, totaling \$769.48. Without sufficient supporting documentation, the District cannot perform an adequate review and approval of transactions. Also, for an additional 17 of the 55 transactions reviewed, the District did not have documentation on hand and it had to be obtained from the Executive Director for review.
- b. Of the 55 transactions noted in a. above, 9 transactions totaling \$175.00 were of a personal nature. These charges were made to the card in error and were subsequently noticed by the Executive Director upon which he reimbursed the District on his own recognizance prior to our investigation.

The District's existing procurement policies do not specifically address credit card use, which may have contributed to the internal control weaknesses noted above. Weak internal controls and a lack of policies increases the risk for misuse and misappropriation of funds. Proper internal controls over the use of credit cards includes:

- 1) Establishing policies on the appropriate use and safeguarding of credit cards;
- 2) Separating certain responsibilities (e.g. using credit cards and reviewing and approving payment for purchases) so that no one person has the ability to improperly use public funds without detection;
- 3) Obtaining and retaining source documents, such as original receipts from the purchaser and original statements from the credit card issuer, to ensure that documents have not been altered to conceal inappropriate activity; and
- 4) Providing for a thorough independent review of credit card purchases to ensure they are necessary, reasonable, and approved in compliance with procurement policies.

Recommendation:

We recommend that the Board develop a policy governing the use of credit cards that would ensure the District retains all original, itemized credit card receipts or other documentation necessary to support credit card transactions and provides for an independent review and approval of credit card purchases.

District's Response:

The District will take action to have credit card statements come directly to the Treasurer, who is a Board member. It agrees it needs better policies about credit card use and approval of purchases and will develop and adopt policies.

5. **INADEQUATE POLICIES OVER NON-TRAVEL OR LOCAL TRAVEL EXPENDITURES**

The District has inadequate policies over expenditures for meals/snacks and mileage related to local meetings and travel. We noted meal purchases in the amount of \$1,176 in 2015, \$5,646 in 2016, and \$1,469 in 2017 through June 2017. We also noted mileage reimbursements of \$3,660 in 2015, \$13,794 in 2016, and \$1,221 in 2017 through June 2017. Although the meal and mileage reimbursements related to long-distance travel appear to have adhered to the per diem rates set by District Policy 9803.02 Travel Expenses, the following issues were noted.

The large increase in 2016 expenditures was due to extensive travel by the Executive Director who took an average of 4-5 trips per month to various meetings throughout the State for the purpose of networking, training, and bringing grant money into the District. The mileage reimbursements during 2016 seem excessive, and the current Board has made changes to limit the amount of mileage reimbursement expenditures in the District.

In addition, the amounts noted above include reimbursements for meals and mileage incurred by the Executive Director and the individual who was the board chair at the time as they made visits to local project sites throughout the County. Costs incurred by the Executive Director and the former board chair during normal business hours and within the Vernal area would be considered non-travel meal purchases or local travel mileage and, as such, should be subject to policies specific to such circumstances.

The District should implement policies that place limits and controls over payments for non-travel related meals/snacks and local mileage. A strong meal policy 1) defines circumstances where meals/refreshments are allowed, 2) establishes a per-person dollar limit for meals, and 3) ensures that the business purpose for meals/refreshments is properly supported with a receipt, indication of those present, and explanation of the business purpose. A strong local travel policy includes: 1) rates to be used in specific circumstances, such as whether a District car is available, number of people traveling, employees traveling on District business; 2) approval procedures; and 3) appropriate travel documentation, which includes effective time periods.

Written policies and procedures related to meals and mileage reimbursement could help reduce the District's travel costs and provide oversight to an area of business expense that is subject to misuse.

Recommendation:

We recommend that the Board develop written policies for payments related to non-travel meals/snacks and local travel mileage.

District's Response:

The District will follow the recommendation to develop written policies for payment related to non-travel meals/snacks and local travel mileage.

6. INCREASED RISK BY USING CREDIT CARDS VERSUS PURCHASE CARDS

The District has issued a credit card to the Executive Director for District use. Another credit card is available to be checked out by airport employees. The use of credit cards can be an efficient method of making purchases, especially small dollar purchases or “micro-purchases.” However, credit cards by their nature have a high risk of improper use because few controls exist over the creation of credit card accounts and an entity must rely heavily on detective controls rather than preventative controls to reduce the risk of abuse. Alternatively, the use of purchase cards, or p-cards, can effectively mitigate some of these risks, as the organization has more control in establishing p-card accounts. For example, organizations can mandate transaction limits unique to each p-card and, depending upon the p-card service provider, can limit purchases to certain merchant categories. Because p-cards are linked to an organization’s bank, only authorized employees may create p-card accounts. In addition, p-card transaction details are electronically transmitted to the purchasing entity, allowing an organization to review the purchases on a more timely basis. Transmitted information typically includes the amount, the vendor’s name and address, and the date of the transaction. In some instances, p-card service providers may be able to transmit descriptions and quantities of items purchased; however, such line-item detail is only available from some merchants. Since p-card accounts are more difficult to create and allow establishment of unique restrictions, the District could minimize potential inappropriate purchases by using p-cards rather than credit cards. Adequate controls, such as those recommended above, are still critical for ensuring proper use of any “micro-purchase” cards, be they credit cards or p-cards.

Recommendation:

We recommend that the District consider replacing credit cards with p-cards.

District’s Response:

The District will investigate the use of p-cards to replace credit cards.

7. FAILURE TO OBTAIN CERTIFICATION BY RECORDS OFFICER

Utah Code 63G-2-108 requires that each records officer of a governmental entity shall, on an annual basis, successfully complete online training and obtain certification from state archives. The records officer of the District has not obtained this training. Training for records officers is designed to provide legal and policy matters relating to responding to a public records request. Requests for information under the Government Records and Access Management Act (GRAMA) that are received by a governmental entity should be handled by individuals who have been properly trained in order to ensure that the requests are handled appropriately. Violations of GRAMA by intentionally disclosing information that is private, controlled or protected, or by intentionally refusing to disclose information that should be made public could result in criminal penalties under Utah Code 63G-2-801.

The Executive Director has typically handled GRAMA requests for the District. However, the Board Chair has responded to GRAMA requests since the Executive Director has been placed on

administrative leave. None of the board members or District employees have been trained in responding to GRAMA requests.

Recently, the Board Chair responded to a records request for all texts between himself and two other board members. The request was denied citing that a portion of the requested records do not concern District business and are purely private communications. The remaining portion of the requested records were denied on the basis that the requested records were protected records that are subject to the attorney client privilege, records prepared for or by an attorney...for, or in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding, or records concerning a governmental entity's strategy about imminent or pending litigation. There was also an Orem City ordinance that was cited. The denial was copied to legal counsel that was not the District's established legal counsel.

In addition, the Board Chair included an appeals process as required by law; however, the appeal seemed to be directed back to the District where the chair of the highest authority of the District had already denied the request. Alternatively, the appeal could have been directed to a higher authority, such as the creating entity.

We are concerned that the GRAMA request was denied based upon correspondence with legal counsel even though legal counsel was not cited as party to the requested records. The remaining reason for denial referenced "imminent or pending litigation." This is also concerning since there does not appear to be any documented instances of imminent or pending litigation against the District as of the date of our report. Furthermore, if outside legal counsel was consulted to provide a response to the GRAMA request, we question whether the outside legal counsel is familiar with GRAMA requirements and protocol.

Given our observations, we have concerns when entities improperly withhold records from the public.

Recommendation:

We recommend that the District ensure that the records officer receive required training from state archives. Furthermore, we encourage any individuals involved in the process of responding to GRAMA requests to also obtain the training. This training should help to ensure that GRAMA requests are handled properly and in accordance with state law.

District's Response:

The District has designated a records officer and notified State Archives. The District plans to provide District office personnel training in responding to GRAMA requests.

8. INADEQUATE FOLLOW-UP ON DISTRICT RECEIVABLES

We investigated allegations of mismanagement regarding two receivable amounts of the District and determined that the District does not have adequate procedures to ensure the timely receipt of amounts owed.

- a. In July 2014, the District signed an agreement with the State and Institutional Trust Lands Administration (SITLA) for the Potential Book Cliffs Transportation Corridor Study. SITLA paid the District \$200,000 of the \$300,000 project at this time, with the remaining \$100,000 to be paid upon completion of the study. The study was completed and presented to the SITLA Board of Directors in April 2016; however, the District did not bill SITLA for the remaining \$100,000 until June 2017. The delay in billing for the remaining amount was due partially to the District not being able to locate a copy of the Study Agreement.

- b. In March 2015, the District signed an agreement with Ashley Valley Water & Sewer (AVWS) Improvement District for the 500 West Sewer Line Replacement and Road Repairs. The project was substantially completed in June 2016 in accordance with the contract provisions, at which time a one-year warranty of the work began; however, the District did not bill AVWS Improvement District the \$112,097.75 for the project until July of 2017, after the one-year warranty had expired.

These errors occurred because the District does not appear to perform a regular formal review of accounts receivable to prompt a timely follow-up on unpaid invoices.

Recommendation:

We recommend that the District establish a formal process to regularly review accounts receivable and follow-up on outstanding balances on a timely basis.

District's Response:

The District will implement a system for tracking accounts receivable and add review of accounts by the board at regular meetings.