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Providing independent oversight of the District's use of revenue.

Date: April 9, 2026

To: BART Audit Committee

From: Claudette Biemeret, Inspector General

RE: Formalization of OIG Authority Over Executive Leadership and Retaliation Investigations

I am requesting that the BART Audit Committee recommend that the BART Board of Directors adopt policy formalizing the Office of Inspector General's (OIG) authority to investigate matters involving executive leadership and allegations of retaliation stemming from OIG investigations. This request is intended to ensure consistency and alignment with state law, the BART Audit Committee Charter, and applicable professional standards.

I am bringing this matter forward in response to access issues the OIG experienced while investigating allegations of retaliation raised by complainants following a prior OIG fraud investigation. In following the OIG's existing processes aligned with the Principles and Standards of Offices of Inspector General, we initiated steps to assess the merit of the allegations. These steps included attempting to interview an executive identified by complainants as a subject of the retaliation claim. During this process, the executive questioned the OIG's authority to investigate executive leadership and claims of retaliation.

The OIG's authority is established in California Public Utilities Code (PUC) Sections 28840–28845, which create and define the role of the BART Office of Inspector General, specifically, the PUC:

- Establishes the OIG as an independent office responsible for identifying fraud, waste, and abuse.
- Authorizes the OIG to conduct audits and investigations relating to BART programs and operations.

Notably, the statutory framework does not place limitations on the OIG's jurisdiction, and it does not restrict access to personnel based on their position. Therefore, OIG authority extends to executive leadership when matters fall within its jurisdiction.

I am elevating this matter to the Audit Committee to align with the BART Audit Committee Charter's expectation that such issues be addressed at the governance level. The Charter specifically states that the Committee shall *"discuss the OIG's access to information, records, and personnel and advise the Board on recommended solutions."* This provision directly applies to the circumstances noted above, where OIG authority was questioned and our ability to carry out investigative responsibilities was limited.

I am also bringing this matter to your attention because the OIG adheres to Government Auditing Standards (GAGAS), which requires auditors to maintain independence and to address threats to that independence, particularly in sensitive matters such as those involving senior officials. Specifically, GAGAS §§ 3.27–3.34 assists auditors in maintaining independence in both mind and appearance and addressing undue influences.

Matters involving executive leadership inherently present heightened independence risks. Raising and documenting this issue with the Audit Committee is necessary to comply with these professional standards.

The absence of explicit language addressing investigations of executive leadership creates potential ambiguity in future matters. Formalizing this authority will:

- Provide clear and consistent guidance across the organization
- Reinforce accountability at all levels, including executive leadership
- Reduce the risk of perceived or actual interference
- Strengthen alignment with state law and professional standards
- Support the Audit Committee’s role in resolving access and authority issues

Further, BART’s Whistleblower and Anti-Retaliation Policy states that complainants are to report retaliation concerns to the “office that investigated the original complaint,” in this case, the OIG. This requirement is critical to ensuring integrity in the investigative process and protecting the interests of the complainant, subject, and BART.

The requirement preserves independence and avoids conflicts of interest. Referring such matters to another function, such as Human Resources, would present structural concerns, particularly where executive leadership exercises oversight or influence over those functions and where allegations involve individuals at or near that level of authority. Allowing an office that is organizationally subordinate to, or influenced by, executive leadership to investigate allegations against that same leadership raises both actual and perceived independence concerns.

Additionally, retaliation claims require a distinct analytical framework. Even where underlying disciplinary or personnel processes were followed correctly, retaliation may still occur. Courts and administrative bodies have consistently recognized that:

- Compliance with procedural requirements does not preclude a finding of retaliatory motive; and
- Retaliation may be established based on intent, timing, or differential treatment, even when formal processes appear proper.

Accordingly, assessing retaliation requires an independent, objective evaluation that considers the totality of circumstances, not solely whether procedures were followed.

Recommendation

To promote clarity and prevent future ambiguity, the BART Audit Committee should recommend that the Board of Directors adopt and formalize the following in District policy:

- The OIG's authority applies to all levels of executive leadership, without exception.
- The OIG is authorized to investigate allegations of retaliation arising from its investigations.

The OIG's authority is grounded in state law, supported by District policy, and reinforced by professional standards requiring independence and transparency. Formalizing this authority will strengthen governance, protect the integrity of retaliation investigations, and ensure consistent handling of future matters involving executive leadership.