

**Responses to 2025-2026 Contra Costa County Civil Grand Jury Report No. 2603
"BART Office of Inspector General: Independence Delayed is Independence Denied"**

FINDINGS

Finding F1:

In 2018, Bay Area voters approved the creation of an Office of Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District (BART).

Response: Agree

The BART Office of the Inspector General (OIG) was established following voter approval of Regional Measure 3 in June 2018.

Finding F2:

Public Utilities Code Section 28841 outlines the foundational structure and responsibilities of the OIG but does not establish details regarding the scope or exercise of the OIG's authority.

Response: Agree with clarification

The OIG has been operating since 2019 based on existing statutory authority, enabling the office, as of May 2026, to perform 5 audits and 55 investigations resulting in 172 recommendations (according to the IG's tracking system, MissionMark).

The District does agree that the statute could provide more clarity regarding the scope and exercise of authority. For example, the Code could be more clear about the OIG's authority relative to following and complying with BART's policies and procedures, resulting in potential conflict in understanding roles and responsibilities.

Finding F3:

The OIG does not presently have a charter.

Response: Agree

Finding F4:

In 2021, the OIG presented a draft charter to the BART Board of Directors (Board) and the Board's Audit Committee.

Response: Agree

The draft OIG Charter was presented or discussed at the Audit Committee four times:

- September 18, 2020; October 29, 2020; July 20, 2021; June 20, 2024, and August 1, 2024.

The OIG Charter was presented at the Board of Directors for adoption one time:

- January 14, 2021.

The draft OIG Charter was presented at the Board of Director's Labor Negotiations Review Special Committee one time:

- January 16, 2024.

Finding F5:

Neither the Board nor the Audit Committee adopted or revised the draft charter received from the OIG in 2021.

Response: Agree

The charter was revised after the 2021 Board presentation by the OIG. Those revisions were discussed with the Audit and Personnel Review Committees.

Finding F6:

Following its August 1, 2024, meeting that included on its agenda an "OIG Charter Discussion," the Audit Committee has not placed on its agenda a discussion or review of an OIG charter.

Response: Partially disagree

At the August 1, 2024, Audit Committee meeting, the OIG Charter was an agenda item for discussion and possible action. At this discussion it was noted that the impending Senate Bill 827 was under debate at the State Legislature. The Committee noted that SB 827 may have an impact on the OIG, therefore, the Charter was to be brought back after SB 827, which came into place January 1, 2026. There has been no Audit Committee agenda item on the OIG Charter since August 1, 2024.

While the Audit Committee has not recently placed on its agenda a discussion of an OIG charter, at the Audit Committee meeting of April 16, 2026, the Audit Committee voted in favor of two items: (1) a recommendation that the Board amend the District's Whistleblower and Anti-Retaliation Policy to clarify that the OIG has authority to investigate retaliation complaints arising out of its investigations and that the OIG has authority to investigate complaints against executive managers; and (2) that the Board consider whether to adopt a policy requiring all District officers and employees to cooperate in OIG investigations and audits.

Finding F7:

The Board has not acted to adopt a charter for the OIG.

Response: Agree**Finding F8:**

The Board has not itself attempted to negotiate with its unions a resolution to the unions' objections to any of the OIG's proposed charters.

Response: Agree with clarification

The Board, through the GM as its representative, has not negotiated with the unions on their objections to the OIG's proposed charter.

The Board of Directors has never asked the OIG to negotiate directly with the unions. Additionally, the IG has stated that it is not appropriate or within the OIG's authority to negotiate with the unions. The Board of Directors asked the OIG to continue discussions with the unions to reach common ground.

Finding F9:

The Board asked the OIG to negotiate directly with the unions the issue of requiring advance notification to the unions when the OIG wishes to interview a union member as part of an investigation.

Response: Partially disagree

The Board did not ask the OIG to negotiate with the unions. Per comments made during the July 20, 2021, Audit Committee meeting, the Audit Committee directed the Inspector General (IG) to:

1. Meet with labor representatives regarding their concerns and return within two weeks with a revised charter developed in coordination with Labor Relations.
2. Develop a clearer understanding of the issues raised by the Unions concerning the IG Charter.

Finding F10:

BART adopted a written Internal Audit Charter confirming that its internal audit (IA) function has full and unrestricted access to data, records and information, physical property, and personnel, including union members, pertinent to carrying out IA responsibilities.

Response: Partially disagree

The Board notes that Management has internally approved the Internal Audit Charter; however, a formal adoption procedure is not required and has not been established. Management developed the Charter for IA's roles and provided it to the Audit Committee for review.

As an internal governance document, the Charter is intended to guide the activities of the Internal Audit function and does not extend its provisions or mandates to other organizational units. Internal Audit primarily conducts risk-based audits focused on evaluating processes, procedures, controls, compliance, and established criteria, rather than investigating specific individuals or allegations.

Accordingly, the Internal Audit Charter does not specifically reference unions or union members, as Internal Audit interviews are generally conducted based on organizational roles and responsibilities within the scope of an audit engagement, rather than as part of an investigative process.

The Internal Audit Charter was presented to the Audit Committee on July 18, 2025. The Audit Committee Charter and the Internal Audit Charter both note that the Audit Committee of the BART Board of Directors will:

Review the letter of authority[...]that describes Internal Audit's authority, roles, and responsibilities.

Finding F11:

The Board has not issued a written policy or established formal procedures stating that the OIG is to have unrestricted access to data, records, information, physical property, and personnel as necessary to carry out its responsibilities.

Response: Agree

Finding F12:

A BART executive has taken the position that the OIG cannot interview them unless their supervisor approves.

Response: Agree with clarification

A BART executive stated through personal counsel that the OIG did not have authority to investigate the executive without the concurrence of the General Manager. The executive's position was based on their personal counsel's understanding of the BART Act. The executive additionally requested that the General Manager seek clarity from the Board's Personnel Committee regarding the respective duties of the Inspector General and General Manager under the BART Act before the executive's interview with the OIG. The executive later provided written responses to the OIG for use in the investigation.

Subsequently, during the Audit Committee meeting of April 16, 2026, the Chief Financial Officer publicly clarified that Executive Management “is not disputing” the OIG’s authority to conduct investigations of executives and to investigate complaints of retaliation arising from OIG investigations.

Finding F13:

A BART executive has questioned the OIG's authority to conduct a retaliation investigation.

Response: Agree with clarification

A BART executive stated that a retaliation investigation was outside the OIG’s purview. Subsequently, during the Audit Committee meeting of April 16, 2026, the Chief Financial Officer publicly clarified that Executive Management “is not disputing” the OIG’s authority to conduct investigations of executives and to investigate complaints of retaliation arising from OIG investigations.

Finding F14:

Questions raised by a BART executive regarding the scope of the OIG's authority caused the OIG to halt a retaliation investigation for several months.

Response: Partially disagree

A letter from the OIG's counsel to the executive's counsel dated January 7, 2026, stated that the OIG's investigation would continue with or without the executive's participation in the investigation. Nevertheless, the District understands that the OIG paused certain aspects of the investigation while other aspects of the investigation moved forward. The District further notes that in a letter to executives dated May 14, 2026, the OIG advised that the investigation was closed, and that the OIG did not sustain the allegations.

Finding F15:

BART has adopted a written charter that states that IA has the authority to determine the adequacy of management's actions taken in response to IA reports and recommendations.

Response: Partially disagree

BART has internally approved the Internal Audit Charter, but there is no formal adoption procedure. The Internal Audit Charter does not specifically provide Internal Audit with such authority. However, in practice Internal Audit determines whether responses adequately address audit recommendations.

The Internal Audit Charter states:

The Manager of Internal Audit will report periodically to the Audit Committee and senior management regarding:

- Management's responses to risks that the internal audit function determines may be unacceptable or the acceptance of a risk that is beyond BART's risk appetite.

Finding F16:

The Board has not issued a written policy or established written procedures stating that the OIG has the authority to determine adequacy of BART management's actions taken in response to OIG audit and investigative recommendations.

Response: Agree with clarification

While the Board has not issued such a written policy or procedure, the OIG has such authority under the District Act and has exercised that authority as evidenced by its May 2026 report titled "Status Update on Recommendations," which reviews the adequacy of management's responses to OIG audit and investigative recommendations.

Finding F17:

Assigning the Board the responsibility for determining whether management has adequately implemented OIG recommendations following an audit or investigation would bypass an independent evaluation by the OIG of management's actions in response to OIG recommendations.

Response: Partially disagree

The Board has not assigned itself the sole responsibility for determining whether management has adequately implemented OIG recommendations.

Both the Board and the OIG may make determinations whether management has adequately implemented OIG recommendations following an audit or investigation. The Board has authority under the District Act to make such determinations. Likewise, the OIG has statutory authority to make such determinations and did so recently in a May 2026 report titled "Status Update on Recommendations." The Board's authority and the OIG's authority to make such determinations are not mutually exclusive.

Finding F18:

The BART Employee Code of Conduct (ECOC) requires employees to act ethically, comply with District policies, and report misconduct.

Response: Agree

Finding F19:

The ECOC does not presently require cooperation with OIG investigations.

Response: Agree

Finding F20:

BART's current Collective Bargaining Agreements (CBAs) require employees to comply with BART's rules but do not explicitly incorporate the ECOC.

Response: Partially disagree

The CBAs set forth the terms and conditions of employment for represented employees, such as wages, hours, benefits, and grievance procedures. The majority of the District's rules are contained in the Operations Rules and Procedures (Orange Book), which is separate from the CBAs and also applies to non-represented employees.

Finding F21:

BART's CBAs do not specifically require cooperation with OIG investigations.

Response: Agree

RECOMMENDATIONS

Recommendation R1:

In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG has the authority and responsibility to determine whether management's planned actions will adequately address any issues identified in an audit or investigation.

Response: Analysis required

Such a policy may not be necessary and requires further analysis. It is clear that the OIG already has such authority under the BART Act, as evidenced by the OIG's May 2026 report titled "Status Update on Recommendations," which reviews the adequacy of management's responses to OIG audit and investigative recommendations.

Recommendation R2:

In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG has the authority and responsibility to follow up on audit and investigation recommendations until the OIG is satisfied that management has either implemented the recommendations or otherwise adequately addressed the concerns brought forward by the OIG.

Response: Analysis required

Such a policy may not be necessary and requires further analysis. It is clear that the OIG already has such authority under the BART Act, as evidenced by the OIG's May 2026 report titled "Status Update on Recommendations" which reviews the adequacy of management's responses to OIG audit and investigative recommendations.

Recommendation R3:

In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG is to have unrestricted access to data, records, information, physical property, and personnel as necessary to carry out its responsibilities.

Response: Implementation pending

On April 16, 2026, the Audit Committee voted to request that staff bring before the Board for consideration a policy requiring District employees to cooperate with OIG investigations and audits. A proposed policy requiring cooperation with OIG audits and investigations, including by provision of records and information, will be brought to the

Board for consideration after the District analyzes and complies with applicable labor law requirements, if any.

Recommendation R4:

By December 31, 2026, the Board should consider revising the ECOC to require all officers and employees to cooperate with OIG audits and investigations.

Response: Implementation pending

On April 16, 2026, the Audit Committee voted to request that staff bring before the Board for consideration a policy requiring District employees to cooperate with OIG investigations and audits. The Audit Committee did not request that the policy be placed within the Employee Code of Conduct, but that it be drafted as a separate policy. A proposed policy requiring cooperation with OIG audits and investigations will be brought to the Board for consideration after the District analyzes and complies with applicable labor law requirements, if any.

Recommendation R5:

In the next negotiations of CBAs, the Board should consider seeking to have the ECOC explicitly incorporated by reference into new CBAs.

Response: Analysis required

The Employee Code of Conduct is applicable to both represented and non-represented employees and has been enforced by the District regardless of represented or non-represented status. Accordingly, incorporation of the Employee Code of Conduct into the CBAs may be unnecessary. The Board will consider whether such incorporation should take priority over other District needs in its 2027 contract negotiations.

Recommendation R6:

By December 31, 2026, the Board should consider adopting a written policy affirming the authority of the OIG to interview any BART employee or officer, including executive leadership, without seeking prior approval.

Response: Implementation pending

On April 16, 2026, the Audit Committee voted to request that staff bring before the Board for consideration a policy requiring District employees to cooperate with OIG investigations and audits. A proposed policy requiring cooperation with OIG audits and investigations without seeking supervisor approval will be brought to the Board for

consideration after the District analyzes and complies with applicable labor law requirements, if any.

Recommendation R7:

By December 31, 2026, the Board should consider requesting that the OIG develop written procedures that clarify employee obligations and rights to union representation during an investigation, at the employee's discretion.

Response: Implemented

The OIG has for several years maintained written procedures for both audits and investigations that clarify the right of represented employees to union representation during interviews. OIG policy requires informing employees of their rights, and the OIG has consistently abided by this policy.

Recommendation R8:

By December 31, 2026, the Board should consider directing the Audit Committee to begin the process of adopting a formal charter for the OIG.

Response: Analysis required

The process of developing and adopting an OIG Charter will be impacted by the Board's actions with respect to the policies already requested for Board consideration by the Audit Committee at its April 16, 2026, meeting (discussed above). The District will analyze the need for an OIG Charter once the outcome of those Board actions is known.