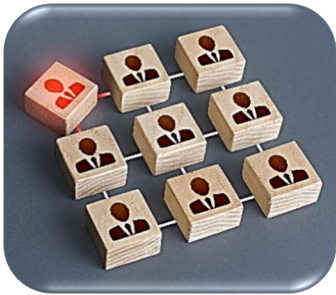


# District Followed Procedure & Law in Imposing Discipline

## Office of the Inspector General



### Investigation Results

Differing mitigating or aggravating factors can lead to employees receiving different forms of discipline even when facts and circumstances leading to discipline are similar, including among employees involved in the same incident. Our office received an allegation that the District was inconsistent in how it administered employee discipline. We do not have authority over disciplinary actions, therefore, we focused our investigation entirely on whether the District followed proper procedure in determining discipline for an employee named in the allegation and facing termination. For the discipline called into question, we determined that the employee had received a “prediscipline” notice for a failure to follow safety procedures. This notice was provided to the employee’s union as required under the applicable collective bargaining agreement, and was a factor in the District’s decision to terminate employment. It is permissible for the District to rely on prediscipline notices when imposing discipline. We also determined that the District followed California law in providing the employee their “Skelly” rights, which ensure an employee’s due process in their employer’s disciplinary decisions.<sup>1</sup> We concluded the following:

- Disciplinary decisions may be made on a case-by-case basis and employers may apply factors such as the employee’s personnel history, mitigating factors like unclear or unreasonable rules, and aggravating factors such as prior notices or adverse actions in their disciplinary decisions.
- The District provided to the employee and their union all evidence used to support the District’s disciplinary decision as required by law and in compliance with the relevant collective bargaining agreement. This documentation identified the specific rules not followed by the employee. Not all documentation collected by the District during its investigation of employee misconduct must be presented to the employee or their union; only that which the District relies on to support the disciplinary decision.
- The District held a “Skelly” hearing giving the employee the opportunity to challenge the discipline and refute the allegations by presenting exculpatory evidence or witnesses.
- The employee was removed from duty but kept on paid status immediately following the incident leading to the discipline and was required to retrain on their job duties. This is standard after a safety incident and is not considered formal discipline; therefore, the employee was not disciplined twice for the incident.
- The District’s Operations Rules and Procedures Section 2102, states, “In case of doubt in any situation, the safest course of action must be taken.” This allows and requires an employee to not follow their manager’s directives if those directives pose a safety hazard.
- Employers may consider contrition in the disciplinary decisions. Contrition allows an employer to make a determination as to whether the imposed discipline will lead to corrective action by the employee.

There are no recommendations with this report. As an investigation, our focus was on the circumstances surrounding the allegation. We did not examine a statistical sample of similar employee disciplines; therefore, we have no conclusions regarding the District’s consistency in imposing employee discipline.



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

<sup>1</sup> Skelly rights: [simasgovlaw.com/what-is-a-skelly-hearing/](https://simasgovlaw.com/what-is-a-skelly-hearing/)