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SUE STENGEL
INDEPENDENT ASSESSOR

EXECUTIVE OFFICE
200 NORTH MAIN STREET, SUITE 1840
LOS ANGELES, CA 90012

(213) 978-3838 PHONE
(213) 978-3814 FAX

August 27, 2018

BOARD OF FIRE COMMISSIONERS
FILE NO. BFC 18 – 077(R)

TO: Board of Fire Commissioners

FROM: Independent Assessor

SUBJECT: SUPPLEMENTAL AUDIT OF LOS ANGELES FIRE DEPARTMENT DISCIPLINE
SETTLEMENT AGREEMENTS JULY 2017 THROUGH MARCH 2018

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

SUMMARY

On May 15, 2018, the Office of the Independent Assessor (OIA) presented an Audit of Los Angeles Fire Department Discipline Settlement Agreements from July 2017 through March 2018 (Audit) to the Board of Fire Commissioners (BOFC).

On May 23, 2018, OIA staff discovered an executed settlement agreement that was not previously provided to the OIA by the Los Angeles Fire Department (Department) for review for the Audit. Therefore, the OIA is submitting this supplemental report, which considers the additional information from the recently revealed settlement agreement, to complete the Audit.

RECOMMENDATION

That the Board:

1. Approve the OIA's Supplemental Audit of Los Angeles Fire Department Discipline Settlement Agreements July 2017 through March 2018.

DISCUSSION

In preparation for an audit related to LAFD discipline, the OIA made a formal written request to the Fire Chief for copies of all settlement agreements the Department had executed in 2017. The Department gave the OIA settlement agreements that had been executed in 2016 and 2017 and represented that they were all of the Department's recent settlement agreements, up until that time.¹ In the original audit, the OIA ultimately narrowed its objectives to focus on the two policies adopted by the BOFC in June 2017 and analyzed the settlement agreements executed between July 2017 and March 2018.

¹ The documents were provided to the OIA on January 29, 2018.

On May 23, 2017, OIA staff discovered two settlement agreements executed in 2017 that had not been provided to the OIA pursuant to the formal written request to the Fire Chief. One of the agreements was executed in January of 2017 and therefore, would not have been included in the OIA's audit; the second was executed in July of 2017, and would have been included in the original audit.

For this supplemental audit, the OIA reviewed the information in the additional case and presented the data for the Commission's consideration.

I am available to provide any additional information you may require.

Respectfully submitted,



SUE STENGEL

Independent Assessor

Board of Fire Commissioners

Attachment

c: Ralph Terrazas, Fire Chief

LOS ANGELES BOARD OF FIRE COMMISSIONERS



SUPPLEMENTAL AUDIT OF LOS ANGELES FIRE DEPARTMENT DISCIPLINE SETTLEMENT AGREEMENTS JULY 2017 THROUGH MARCH 2018



OFFICE OF THE INDEPENDENT ASSESSOR

SUE STENGEL
Independent Assessor
August 27, 2018

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PURPOSE	1
III.	OBJECTIVES	1
IV.	SCOPE AND METHODOLOGY	1
V.	BACKGROUND	2
VI.	FINDINGS	2
VII.	RECOMMENDATION	5

CHART

CHART A: Provisions Included in Each Settlement Agreement (REVISED)	4
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ATTACHMENT

ATTACHMENT A: Audit of Los Angeles Fire Department Discipline Settlement Agreements July 2017 - March 2018	
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I. INTRODUCTION

On May 15, 2018, the Office of the Independent Assessor (OIA) presented an Audit of Los Angeles Fire Department Discipline Settlement Agreements from July 2017 through March 2018 (Audit) to the Board of Fire Commissioners (BOFC).¹ The Audit is included for reference as Attachment A.

On May 23, 2018, OIA staff discovered an executed settlement agreement that was not previously provided to the OIA for review for the Audit.² Therefore, the OIA is submitting this supplemental report, which considers the additional information from the recently revealed settlement agreement, Case E below, to complete the Audit.

II. PURPOSE

The Office of the Independent Assessor (OIA) is presenting this Supplemental Audit of Los Angeles Fire Department Discipline Settlement Agreements July 2017 through March 2018 to complete the information provided in the original report.

III. OBJECTIVES

The objectives remain the same as in the original audit.

IV. SCOPE AND METHODOLOGY

The Department executed six settlement agreements since the enactment of the Settlement Agreements Policy and the Education-Based Discipline Policy.³ The OIA reviewed the five settlement agreements executed before March 31, 2018. The sixth agreement was signed on April 10, 2018, after the original audit had already been drafted and therefore, was not included. The four cases presented in the original audit remain the same. The information related to a fifth case, Case E, is added here.

Case E

- Complaint filed March 29, 2016.
- Case investigated.
- Charges⁴ (arrested for operating a vehicle while under the influence; operated a vehicle while under the influence which contributed to a traffic accident where the member rear-ended a vehicle causing injuries to the other vehicle's occupants; operated a vehicle disregarding the safety of other persons or property; after rear-ending another vehicle and causing injuries, left the scene and did not render care; demonstrated behavior and the member's arrest brought discredit to the Department; refused to submit to a Preliminary Alcohol Screening, and failed twice to submit to a chemical test to determine blood

¹ BFC No. 18-048. May 7, 2018.

² OIA staff actually discovered *two* settlement agreements the Department failed to provide the OIA, but as explained below, only one was relevant to the Audit.

³ This was as of the time the original audit was completed, May 7, 2018.

⁴ The charges are listed in the manner they were drafted by the Department.

alcohol content, which resulted in the loss of the member's California driver's license; California driver's license revoked for one year, which is requirement for job position).

- Member attended Skelly hearing.
- Member directed to a Board of Rights.
- Settlement Agreement executed July 24, 2017.⁵
 - 30 calendar-day suspension.

V. BACKGROUND

In preparation for an audit related to LAFD discipline, the OIA made a formal written request to the Fire Chief for copies of all settlement agreements the Department had executed in 2017. The Department gave the OIA settlement agreements that had been executed in 2016 **and** 2017 and represented that they were all of the Department's recent settlement agreements, up until that time.⁶ In BFC No. 18-048, the OIA ultimately narrowed its objectives to focus on the two policies adopted by the BOFC in June 2017, and analyzed the settlement agreements executed between July 2017 and March 2018.

On May 23, 2017, OIA staff discovered two settlement agreements executed in 2017 that had not been provided to the OIA pursuant to the formal written request to the Fire Chief. One of the agreements was executed in January of 2017 and therefore, would not have been included in the OIA's audit; the second, Case E, was executed in July of 2017, and would have been included in the original audit.

VI. FINDINGS

The findings from the original Audit were amended to reflect the addition of Case E.

1. Policy for Discipline Settlement Agreements

a. Determined eligibility, developed a proposal, prepared a settlement memorandum (Sections B.1-3). 80% Compliance

In Section A of the policy, the Department articulated criteria for determining if a case is eligible to be settled with an alternative form of discipline (rather than traditional discipline/punishment).

Sections B.1-3 of the policy require the Department to prepare a memorandum explaining the case eligibility for settlement and the justification for the proposed settlement agreement.

The Department complied with these provisions in all but one case, Case A. The Department neither developed a proposal nor prepared a settlement memorandum in Case A.

The Department complied with this provision in Case E.

⁵ The Department signed the settlement agreement on July 20, 2017 and the member signed the agreement on July 24, 2017.

⁶ The documents were provided to the OIA on January 29, 2018.

b. Settlement memorandum presented to the Fire Chief for authorization (Section B.4). 80% Compliance

Section B.4 requires the settlement memorandum be presented to the Fire Chief for his signature evidencing his agreement with the settlement proposal and justification.

The memoranda for Cases B, C, D and E were presented to the Fire Chief. He approved and signed each one.⁷ As mentioned above, a settlement memorandum was not written in Case A and therefore was not presented to the Fire Chief for approval.

c. Signed settlement agreement uploaded into Discipline Tracking System (DTS) within five days of execution (Section B.6). 100% Compliance

Section B.6 requires the Department to upload all settlement agreements into DTS within five days of final execution.

The Department complied with this provision in all five cases.

d. Professional Standards Division (PSD) is monitoring compliance with settlement agreements (Section B.7). 100% Compliance

Section B.7 requires a member of PSD to monitor members' compliance with settlement agreements. The Commanding Officer of PSD represented to the OIA that a member of PSD was designated to do this.

e. Settlement agreement included provision acknowledging the case is subject to review by the OIA (Additional Notes No. 1). 0% Compliance

The Additional Notes section of the policy states, "All settlement agreements shall include a provision acknowledging that the discipline case in question may be subject to review by the Office of the Independent Assessor."

None of the agreements included this provision.⁸

2. Policy for Education-Based Discipline

Case E did not include education-based discipline.

3. General Applicability Provision

Case E did not impact this section, so it was not changed.

⁷ In Case B, the Fire Chief's signature was not dated; therefore, the OIA was unable to determine the date the Fire Chief signed the memorandum in Case B.

⁸ On October 25, 2017, the OIA inquired of the Department if this clause had been included in settlement agreements. The Department indicated that it had not, but the Department would work on this for the future. At that time, two agreements had been executed. However, none of the subsequent settlement agreements reviewed for this audit included this provision.

CHART A (REVISED) shows the provisions included in each settlement agreement, listed by agreement, that were reviewed by the OIA for this audit.

CHART A: PROVISIONS INCLUDED IN EACH SETTLEMENT AGREEMENT (REVISED)

	Determined eligibility, developed proposal, prepared settlement memorandum.		Settlement memorandum included justification for assigning chosen course(s).		Settlement memorandum presented to and approved by Fire Chief.		Member required to enroll in first available course and begin coursework no later than 120 days after execution of agreement.	
	Yes	No	Yes	No	Yes	No	Yes	No
Case A		√	N/A		N/A			√
Case B	√		√		√			√
Case C	√		√		√			√
Case D	√		√		√			√
Case E	√		N/A		√		N/A	

	Member required to complete coursework off-duty, on own time, and at own expense		Member required to complete coursework and provide proof of completion within one year from date of execution of settlement agreement		Settlement agreement included provision acknowledging case subject to review by OIA.		Signed settlement agreement uploaded into DTS within 5 days of execution.	
	Yes	No	Yes	No	Yes	No	Yes	No
Case A	√		√			√	√	
Case B	√		√			√	√	
Case C	√		√			√	√	
Case D	√		√			√	√	
Case E	N/A		N/A			√	√	

VIII. RECOMMENDATION

The OIA's recommendation remains the same as in the original audit.⁹ The Department has been reporting back to the BOFC with its response to the Audit and its progress toward implementing the recommendation.

⁹ The BOFC amended the OIA's original recommendation. The final direction from the BOFC to the Department was, "not suspend the use of settlement agreements, but pending the adoption of a template that [the BOFC adopts], have the IA be involved, and the City Attorney . . . Make sure the IA takes a look at [settlement agreements] before [they are] finalized and executed."

ATTACHMENT A

LOS ANGELES BOARD OF FIRE COMMISSIONERS



AUDIT OF LOS ANGELES FIRE DEPARTMENT DISCIPLINE SETTLEMENT AGREEMENTS JULY 2017 – MARCH 2018



OFFICE OF THE INDEPENDENT ASSESSOR

SUE STENGEL
Independent Assessor
May 7, 2018

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PURPOSE	1
III.	OBJECTIVES	1
IV.	SCOPE AND METHODOLOGY	1
V.	BACKGROUND	2
VI.	FINDINGS	3
	1. Policy for Discipline Settlement Agreements	3
	2. Policy for Education-Based Discipline	4
	3. General Applicability Provision	6
VII.	OTHER ISSUES	8
VIII.	RECOMMENDATION	9

CHART

CHART A: Provisions Included in Each Settlement Agreement	7
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EXHIBITS

EXHIBIT A: Discipline Settlement Agreement Policy

EXHIBIT B: Education-Based Discipline Policy

I. INTRODUCTION

On June 20, 2017, the Los Angeles Fire Department (Department or LAFD) presented to the Los Angeles Board of Fire Commissioners (BOFC or Commission) two new policies governing discipline settlement agreements as part of a plan for creating a public service model of discipline. The first policy included the criteria and procedures governing discipline settlement agreements and the second contained the policy and procedures for including education-based discipline within settlement agreements.

The BOFC approved the proposed plan for the public service model of discipline and the two new policies.¹

II. PURPOSE

The Office of the Independent Assessor (OIA) conducted this audit to assess the Department's compliance with the provisions of the new policies governing settlement agreements.²

III. OBJECTIVES

- A. Determine if the Department is adhering to provisions in the Discipline Settlement Agreements Policy, proposed by the Department and approved by the BOFC on June 20, 2017.
- B. Determine if the Department is adhering to provisions in the Education-Based Discipline Policy, proposed by the Department and approved by the BOFC on June 20, 2017.

IV. SCOPE AND METHODOLOGY

The Department has entered into five settlement agreements since the enactment of the two policies. The OIA reviewed the four settlement agreements executed before March 31, 2018. The fifth agreement was signed on April 10, 2018, after this report had already been drafted and therefore, was not reviewed for this audit.

Case A

- Complaint filed May 11, 2016.
- Case investigated.
- Charges sustained (inaccurate timekeeping, received pay for hours not worked, absent without leave, discourteous, recorded false information in Department database, failed to follow supervisor's directive).
- Member attended Skelly hearing.
- Member directed to a Board of Rights.
- Board of Rights convened.
- Case settled during Board of Rights.
- Settlement agreement executed October 24, 2017.
 - 120 calendar-day suspension.
 - Anger Awareness Management Course (four hours).
 - LIFE Course-Decision Making (eight hours).

¹ BFC No. 17-066. BFC No. 17-071. BFC No. 17-072.

² The OIA was unable to assess compliance with *every* provision of each policy because some provisions allowed up to one year for completion from the signing of the settlement agreement and one year has not passed since the agreements reviewed for this report were executed.

Case B

- Complaint filed December 15, 2016.
- Case investigated.
- Charges sustained (left company and first-in district without permission).
- Member attended Skelly hearing.³
- Settlement agreement executed November 17, 2017.
 - Eight working-day suspension held in abeyance pending completion of:
 - Team Management Course (24 hours over three days).
 - LIFE Course-Decision Making (eight hours).

Case C

- Complaint filed August 15, 2016.
- Case investigated.
- Charges sustained (while off duty engaged in physical altercation with member of the public and attempted to use prestige of position as firefighter for personal gain).
- Member attended Skelly hearing.
- Member served with 10 working-day suspension.
- Settlement agreement executed November 27, 2017.
 - 10 working-day suspension held in abeyance pending completion of:
 - Ethics Course (eight hours).
 - LIFE Course-Decision Making (eight hours).

Case D

- Complaint filed July 29, 2016.
- Case investigated.
- Charges sustained (made improper remarks to member of the public and failed to notify supervisor of confrontation with member of the public).
- Member attended Skelly hearing.⁴
- Settlement agreement executed December 8, 2017.
 - Six working-day suspension held in abeyance pending completion of:
 - Relationship Management - Conflict Resolution Course (four hours).
 - Dealing with Difficult People (four hours).
 - LIFE Course-Decision Making (eight hours).

V. BACKGROUND

The Department drafted and asked the BOFC to approve two new policies to further its desire to create a public service model of discipline and move beyond its traditional, penalty-based, system of discipline. The Discipline

³ Documents in the case file implied that the Department proposed an eight-day suspension from duty as the penalty in this case. However, the Department could not produce documents confirming that the member was *served* with any penalty or proposed penalty related to this case.

⁴ The member was served with proposed discipline (six-day suspension from duty) before his Skelly hearing. However, the Department could not produce documents confirming the member was served with final discipline.

Settlement Agreements Policy (Exhibit A) and the Education-Based Discipline Policy (Exhibit B) are attached.⁵

Pursuant to the traditional model, the Department could impose only penalties (reprimands, suspensions and terminations) upon members who committed misconduct.⁶ Creating a public service model of discipline allows the Department, through a settlement agreement with a member, to incorporate alternative discipline, such as a “last chance” agreement, training, or education-based discipline, in eligible cases. The Department explained “traditional penalties do not always allow for the most effective approaches to modify employee behavior . . . any alternatives to traditional discipline penalties require a settlement agreement with the member.”⁷ The new policies provide the framework for settlement agreements and alternatives to traditional discipline.

VI. FINDINGS

1. Policy for Discipline Settlement Agreements (Exhibit A)

a. Determined eligibility, developed a proposal, prepared a settlement memorandum⁸ (Sections B.1-3). 75% Compliance

In Section A of the policy, the Department articulated criteria for determining if a case is eligible to be settled with an alternative form of discipline (rather than traditional discipline/punishment).

Sections B.1-3 of the policy require the Department to prepare a memorandum explaining the case eligibility for settlement and the justification for the proposed settlement agreement.

The Department complied with these provisions in all but one case, Case A. The Department neither developed a proposal nor prepared a settlement memorandum in Case A.

b. Settlement memorandum presented to the Fire Chief for authorization (Section B.4). 75% Compliance

Section B.4 requires the settlement memorandum be presented to the Fire Chief for his signature evidencing his agreement with the settlement proposal and justification.

⁵ The policies were presented to the BOFC as part of longer, more comprehensive reports (BFC No. 17-071 and BFC No. 17-072). However, for purposes of this audit, the OIA included the policies only, without the full reports to the Commission.

⁶ On October 28, 2008, the LAFD and United Firefighters of Los Angeles City (UFLAC) agreed on a set of penalty guidelines *LAFD Penalty Guidelines for Sworn Members* that established a range of discipline for acts of misconduct, which are classified by type, and generally provided for escalating penalties for second and third offenses. Penalties range from a verbal warning to a Board of Rights. The Department reported that when imposing a suspension on a UFLAC member, the calculation begins at the one-third point of the penalty guideline range then is adjusted in accordance with mitigating and aggravating circumstances.

The Chief Officers Association (COA) did not formally agree to the October 28, 2008 guidelines; however, the Department reported that the same guidelines are followed for chief officers, with the exception that the Department begins the calculation at the midway point of the penalty guideline range rather than the one-third point.

⁷ Settlement of Discipline Cases. BFC No. 17-072. Page 2. June 5, 2017.

⁸ The settlement memorandum is different from the settlement agreement. The memorandum is an articulation of reasons why the Department deemed a case more appropriate for a reduced penalty than what was originally proposed, or a disposition that includes education-based discipline, either alone or in conjunction with suspension days. The settlement agreement is the contract signed by the accused member and the Department memorializing the terms and conditions of the reduced penalty agreement.

The memoranda for Cases B, C and D were presented to the Fire Chief. He approved and signed each one.⁹ As mentioned above, a settlement memorandum was not written in Case A and therefore was not presented to the Fire Chief for approval.

c. Signed settlement agreement uploaded into Discipline Tracking System (DTS) within five days of execution (Section B.6). 100% Compliance

Section B.6 requires the Department to upload all settlement agreements into DTS within five days of final execution.

The Department complied with this provision in all four cases.

d. Professional Standards Division (PSD) is monitoring compliance with settlement agreements (Section B.7). 100% Compliance

Section B.7 requires a member of PSD to monitor members' compliance with settlement agreements. The Commanding Officer of PSD represented to the OIA that a member of PSD was designated to do this.

e. Settlement agreement included provision acknowledging the case is subject to review by the OIA (Additional Notes No. 1). 0% Compliance

The Additional Notes section of the policy states, "1. All settlement agreements shall include a provision acknowledging that the discipline case in question may be subject to review by the Office of the Independent Assessor."

None of the agreements included this provision.¹⁰

2. Policy for Education-Based Discipline (Exhibit B)

a. Settlement memorandum included justification for assigning chosen course(s) (Section B.2). 75% Compliance

Section B.2 of the Education-Based Discipline Policy requires the settlement agreement include the justification for assigning the member the chosen course(s).

The settlement memoranda in Cases B, C and D included a justification for assigning the chosen courses. The Department did not write a memorandum nor provide a justification in Case A.

b. Member required to enroll in the first available course and begin coursework no later than 120 days after execution of the settlement agreement (Sections C.1-2). 0% Compliance

Sections C.1 and 2 of the policy require the member to enroll in the first available course and begin coursework no later than four months (120 days) after execution of the settlement agreement.¹¹

⁹ The OIA was unable to determine the date the Fire Chief signed the memorandum in Case B.

¹⁰ On October 25, 2017, the OIA inquired of the Department if this clause had been included in settlement agreements. The Department indicated that it had not, but the Department would work on this for the future. At that time, only one agreement had been executed. However, none of the three settlement agreements executed after October 25, 2017 and reviewed for this audit included this provision.

¹¹ The policy has a process for requesting a reasonable extension.

None of the settlement agreements required the member to do this. However, in Case B, notwithstanding the absence of the requirement, the member completed one of two required courses within 120 days of execution of the settlement agreement.

The Department explained that several courses are not presented on a regular basis, but rather when there are enough participants. Therefore, members who are required to attend these courses may not be able to attend within the 120-day timeframe currently required by the education-based discipline policy. The Department represented that, at a later date, a proposed amendment to the policy will be presented to the BOFC for consideration.

**c. Member required to complete coursework within one year from date of execution
(Section C.3). 100% Compliance**

Section C.3 requires that all coursework be completed and proof of completion provided to PSD within one year from the date of execution of the settlement agreement.

All four settlement agreements included a provision requiring the member to complete the coursework and show proof of completion to PSD within one year after execution of the agreement. However, all of the settlement agreements were executed less than one year ago, so the OIA could not assess whether the members complied with this provision.¹²

d. Member required to complete coursework off-duty, on his/her own time and at his/her own expense (Section C.6). 100% Compliance

Section C.6 of the policy states “All coursework shall be completed off-duty, on a member’s own time and at the members own expense. The Department shall not pay for the course fee nor for the time a member spends to attend the course.”

The language in the settlement agreement in Case A said,

“[Member] is responsible to attend these courses while he is **off duty**. The Department will not compensate [member] for the time spent taking these courses. Further, the Department will not compensate for the cost of any course taken by [member] to comply with this agreement. Courses are available through the Los Angeles County Sheriff’s Department or online, depending on the course, and are offered at no cost to [member].”

The language in the three other agreements (Cases B, C and D) said, “[Member] is responsible to attend these courses while he is **off duty**. The courses are available through the Los Angeles County Sheriff’s Department, and are offered at no cost to [member].”

The language in Case A was the most thorough and more accurately reflected the requirements of the policy.

¹² The Department informed the OIA that, as of April 16, 2018, one of the four members had provided proof of completion to the Department of one course (mentioned above), but the other three members had not yet completed any of the coursework.

The OIA recommends that the Department work with the City's lawyers to draft the most comprehensive language to be used as a template for future agreements.

3. General Applicability Provision

Both the Discipline Settlement Agreements Policy and the Education-Based Discipline Policy included a clause entitled "Applicability," which stated,

The criteria and procedures set forth in this policy apply to all cases in which a member has been served with a suspension from duty, or has been directed by the Fire Chief to a Board of Rights, and the Department and the individual member have agreed to an alternative to the discipline originally imposed.

It appeared from the OIA's review of the available information that two cases (50%) were settled before the member was served with suspension from duty (Cases B and D).¹³ According to the language in the policies, these cases had not progressed far enough in the process to be eligible for settlement. The BOFC has the option of amending the policies to allow the Department to settle cases earlier in the process.

Settling cases earlier in the discipline process may save resources and positively affect morale. If a member admits guilt early in the investigation, he/she may be willing to settle the case at that time, thus saving the Department time and resources necessary to conduct a full investigation. Furthermore, morale may be improved if a member can settle a case earlier in the discipline process, rather than waiting a year or more to reach an agreement. On the other hand, if the Department begins to settle too many cases early on, the discipline guidelines may become obsolete, removing the objectivity and consistency from the discipline process; crucial tenets of a fair system.

The Department represented that, at a later date, an amendment to the policies will be presented to the BOFC for consideration.

Chart A (below) shows the provisions included in each settlement agreement, listed by agreement, that were reviewed by the OIA for this audit.

¹³ The Department represented to the OIA that the cases were settled *after* the member was served with discipline; however, the Department was unable to produce the related paperwork proving that this occurred.

CHART A: PROVISIONS INCLUDED IN EACH SETTLEMENT AGREEMENT

	Determined eligibility, developed proposal, prepared settlement memorandum.		Settlement memorandum included justification for assigning chosen course(s).		Settlement memorandum presented to and approved by Fire Chief.		Member required to enroll in first available course and begin coursework no later than 120 days after execution of agreement.	
	Yes	No	Yes	No	Yes	No	Yes	No
Case A		√		N/A		N/A		√
Case B	√		√		√			√
Case C	√		√		√			√
Case D	√		√		√			√

	Member required to complete coursework off-duty, on own time, and at own expense		Member required to complete coursework and provide proof of completion within one year from date of execution of settlement agreement		Settlement agreement included provision acknowledging case subject to review by OIA.		Signed settlement agreement uploaded into DTS within 5 days of execution.	
	Yes	No	Yes	No	Yes	No	Yes	No
Case A	√		√			√	√	
Case B	√		√			√	√	
Case C	√		√			√	√	
Case D	√		√			√	√	

VII. OTHER ISSUES

1. Course Did Not Meet Policy Requirements.

The agreement in Case A indicated that the required course was available for the member to complete online. The Education-Based Discipline Policy is silent regarding online courses. However, the policy provides a procedure for including additional courses in the education-based discipline program. The online course was not submitted for approval through this process and therefore was not authorized for inclusion in the program. It should not have been included in the agreement.

2. Settlement Agreement Dispositions Were Not Clearly Articulated.

The agreement in Case A is thorough. It reflected the disposition as “Founded,” stated the number of suspension days, the sections of the Rules and Regulations which were alleged to be violated by the member’s conduct, the dates on which the misconduct occurred and the facts upon which the alleged violations were based.

The other three agreements were not as comprehensive. In fact, Case C did not state a disposition and Cases B, C and D did not include the sections of the Rules and Regulations that were violated by the member. Without this information, progressive discipline may prove difficult.

The OIA recommends that, at minimum, all settlement agreements include the disposition, and the Department rule, regulation, policy or law that was alleged to be violated by the misconduct.

3. Settlement Agreement Dispositions Were Not Consistent With Department Practice.

The final dispositions in the agreements in Cases B and D were articulated as “Founded, Courses.” As the OIA has explained in previous audits, the Department has six adjudications for cases: Exonerated, Non-Disciplinary, Unfounded, Not Sustained, Sustained, Non-Punitive and Sustained. While “Founded” is synonymous with “Sustained,” introducing another term might suggest an additional disposition and may ultimately create unnecessary confusion, especially in the Complaint and Discipline Tracking Systems. The OIA recommends that the Department use the language consistent with its practices and tracking systems in the settlement agreements.

4. The Department was Unable to Produce Important Documents.

The City Charter¹⁴ sets forth time limits (statute of limitations) within which the Department must act when seeking to suspend a member from duty.¹⁵ Charges must be filed with the Board of Fire Commissioners within these limits. If the Department fails to do this, the order of suspension is void and automatically revoked.¹⁶ Prior to filing the charges with the BOFC, the Department is required to serve the accused member with the order of suspension and a statement of the charges.¹⁷ Service may be either in person or,

¹⁴ Los Angeles City Charter Section 1060.

¹⁵ City Charter Section 1060(a) requires charges against the accused member be filed with the BOFC within one year of the Department’s discovery of the act or omission and no later than two years from the date of the act or omission.

¹⁶ City Charter Section 1060(c).

¹⁷ Id.

alternatively, by certified mail to the last known address of record if the member cannot be found.¹⁸ In neither Case B nor Case D was the Department able to produce documents definitively proving that the order of suspension and statement of charges were served on the accused member. Furthermore, the Department could not show that the charging documents were definitively filed with the BOFC.¹⁹ Additionally, no information was on file with the BOFC demonstrating that the charges were filed in Cases B and D. Although the relevant cases in this audit were settled, it is imperative that the Department maintain and be able to show proof that the member was properly served and that charges were filed with the BOFC. Otherwise, the case may be vulnerable to challenge.

VIII. RECOMMENDATION

The OIA recommends that the BOFC require the Department collaborate with the Office of the City Attorney and the OIA to formulate a template for settlement agreements for BOFC approval. The template must include ALL provisions required by the policies, not only those assessed in this audit. The OIA recommends the BOFC require the Department to temporarily suspend the practice of settling cases until the template has been approved by the BOFC. Once approved, the OIA recommends the language in the template be used in every settlement agreement where the provisions are relevant.²⁰

¹⁸ City Charter Section 1060(d).

¹⁹ The Department showed the OIA a handwritten post-it note in Case B which said “FC served 4/27/17” and one in the file for Case D which said “FC served 6/26/17.” The Department explained the post-it notes indicated that the charges were filed with the BOFC on the dates written. Neither post-it note was attached to a copy of the relevant documents.

²⁰ The OIA recognizes that each settlement agreement is unique and not all language in the template will be relevant in every agreement.

EXHIBIT A

POLICY

DISCIPLINE SETTLEMENT AGREEMENTS

PURPOSE: When a member of the Los Angeles Fire Department (LAFD) has been found to have engaged in misconduct and is facing suspension or termination from duty, the member and the Department may enter into a settlement agreement if the LAFD determines that an alternative form of discipline will better serve the individual and the Department to modify an employee's behavior and maintain high standards of professionalism. Alternative forms of discipline include training, counseling, education-based discipline, substance abuse or addiction treatment programs, or "last chance agreements."

This policy sets forth the criteria for determining if a case is eligible for a settlement agreement, and the procedures for implementing settlement agreements; to ensure consistency, objectivity and accountability.

APPLICABILITY: The criteria and procedures set forth in this policy apply to all cases in which a member has been served with a suspension from duty, or has been directed by the Fire Chief to a Board of Rights, and the Department and the individual member have agreed to an alternative to the discipline originally imposed.

DEFINITIONS: For purposes of this policy, the following definitions apply.

- *Training:* Time spent remediating operational skill deficiencies.
- *Education-based discipline:* Classes aimed at remediating behavioral issues.
- *Last Chance Agreement:* A written agreement between an LAFD member and the LAFD, which gives an employee who has committed serious misconduct one last chance to keep his/her job. Violation of the agreement results in the employee's termination from employment.
- *Douglas Factors:* In *Douglas v. Veterans Administration* (1981).¹ The Merit Systems Protection Board created a non-exhaustive list of factors that federal government agencies are to consider when imposing discipline on employees. These factors are used by the LAFD to determine the appropriate level of discipline.
 - The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 - The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
 - The employee's past disciplinary record;
 - The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

¹ Merit Systems Protection Board (MSPB), 313 (1981).

- Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
 - Consistency of the penalty with any applicable agency table of penalties;
 - The notoriety of the offense or its impact upon the reputation of the agency;
 - The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
 - Potential for the employee's rehabilitation;
 - Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
 - The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- *Public Service Discipline philosophy:* A discipline philosophy based on four concepts, which provides the Department with a structure for determining the appropriate level of corrective or punitive action necessary to modify a member's behavior while maintaining a high level of public service.

Concept One: The Department's first and foremost consideration is maintaining its high level of public service to the City and the public;

Concept Two: The Department's second consideration is to balance the interests of the City, the public, the Fire Service, the Department, its members and the accused member;

Concept Three: Third, the Department strives to use the appropriate level of corrective or punitive action that will ensure the delivery of public service and correct the member's long-term behavior to conform to the Department's expectations; and

Concept Four: Finally, in determining the appropriate level of corrective or punitive action, the Department considers (1) the harm to the public service; (2) the circumstances surrounding the incident and (3) the likelihood of reoccurrence.

A. CRITERIA FOR DETERMINING ELIGIBILITY FOR SETTLEMENT

The Department will determine if a discipline case is eligible for settlement based on the following criteria:

1. Did the misconduct harm the Public Service?
 - Was there significant harm to the public service?
 - Is it more likely to warrant traditional disciplinary action?
 - Will recurrence of the misconduct cause significant harm to the public?
 - Did the misconduct result in widespread bad publicity for the Department or its members, or bring discredit to the reputation of the Department?

- What was the actual or potential harm to the public service posed by the misconduct?
2. Is the Misconduct Likely to Recur?
 - Has the member demonstrated remorse and accepted responsibility for the misconduct?
 - Has the member made restitution (where appropriate)
 - Has the member taken proactive steps to correct his/her behavior (such as enrolling in chemical dependency treatment, where applicable)?
 - Has the member been disciplined in the past (whether involving the same/similar behavior or not)?
 3. Was the Misconduct or the Harm Caused by the Misconduct Serious?
 - Cases in which a member has been convicted of a felony or where the member is found to have engaged in heinous misconduct, such as child molestation or possession of child pornography, even absent a felony conviction, shall not be eligible for a settlement agreement.
 4. Whether the Department is Likely to Prevail in a Board of Rights Hearing
 - Have any evidentiary problems developed, since the adjudication, with the availability of the witnesses or evidence that could adversely impact a Board of Rights hearing.
 - Would the same or similar level of discipline be imposed at a Board of Rights hearing?
 5. Will Alternative Sanctions Likely Deter Future Conduct?
 - Are alternative discipline measures more appropriate for the given circumstance to meet the spirit and goal of the Public Service Discipline philosophy?
 6. Are there mitigating or aggravating circumstances, pursuant to the *Douglas Factors* that were not considered when the case was originally adjudicated?

B. PROCEDURES

The following procedures shall be followed when the Department enters into a settlement agreement with a member.

1. The Department will determine if a discipline case is eligible to be settled using the criteria listed above.
2. If a discipline case is eligible for settlement, the Department will develop a settlement proposal.

3. The Commanding Officer of Professional Standards Division (PSD) will prepare a settlement memorandum that explains the eligibility for settlement and the justification for the proposed settlement agreement.²
4. The settlement memorandum will be presented to the Fire Chief. If the Fire Chief agrees with the eligibility and proposal, the memorandum will be signed by the Fire Chief.
5. After the Fire Chief agrees and signs the memorandum, the settlement agreement will be presented to the member for final execution.
6. PSD shall upload the signed settlement agreement into the Discipline Tracking System within five days of the final execution of the agreement.
7. Within 14 days of adoption of this policy, PSD shall designate a monitor from within PSD who shall be responsible for monitoring members' compliance with all settlement agreements.

Additional Notes

1. All settlement agreements shall include a provision acknowledging that the discipline case in question may be subject to review by the Office of the Independent Assessor.
2. Any application of Education-based Discipline within settlements must conform to the relevant policies and procedures approved in BOFC #17-071 and in PSD Policy Education-Based Discipline.

² Per BOFC #17-072, the Department will properly document its settlement decisions to ensure consistent application of the settlement criteria and detail its assessment of the merits of each discipline case so that it is clear to an independent reviewer the propriety of settlement and the offered settlement. To ensure consistency in the approach to settlements in disciplinary cases, the Department shall document in its memorandum, at minimum, the application of five settlement criteria, as well as any other mitigating and aggravating circumstances presented in the case (e.g. Douglas Factors), and document the justification and eligibility for settlement and the settlement proposal to be offered in each case.

EXHIBIT B

POLICY EDUCATION-BASED DISCIPLINE

PURPOSE: When a member of the Los Angeles Fire Department (Department or LAFD) has been found to have engaged in misconduct and is facing suspension or termination from duty, the member and the Department may enter into a settlement agreement if the LAFD determines that an alternative form of discipline will better serve the individual and the Department to modify an employee's behavior and maintain high standards of professionalism. Alternative forms of discipline may include education-based discipline, which can substitute for all or part of the recommended suspension days.

This policy sets forth the criteria for determining which courses can be included in the Department's education-based discipline program (Program), determining which course(s) will be selected for the member to attend, and procedures for course completion.

APPLICABILITY: The criteria and procedures set forth in this policy apply to all cases in which a member has been served with a suspension from duty, or has been directed by the Fire Chief to a Board of Rights, and the Department and the individual member have agreed to an alternative to the discipline originally imposed, which includes education-based discipline. Settlement Agreements must adhere to policy and procedures approved by the Board (BOFC #17-072) before education-based discipline can be applied.

DEFINITION: *Education-based discipline* is coursework aimed at changing behavior by providing tools for improving skills, preventing recurrence of misconduct, and enhancing professionalism. Classes may also address substance use and abuse.

A. PROCEDURE FOR DETERMINING COURSE ELIGIBILITY FOR INCLUSION IN THE EDUCATION-BASED DISCIPLINE PROGRAM

1. Before including a course in the Program, the Department shall obtain a comprehensive syllabus for the course. The syllabus must include the name of the agency which sponsors the course, the name, phone number and email address for someone who can be contacted about the course, learning objectives, methods for instruction and instructional activities.
2. The Commanding Officer of Professional Standards Division (PSD) shall determine if the course is suitable for inclusion in the Program.
3. The syllabus must be provided to the Office of the Independent Assessor for review before the course is included in the Program. At his/her discretion, the OIA may request formal review and approval by the Board of Fire Commissioners.
4. A syllabus for each course included in the Program shall be kept by PSD and a current list shall be appended to this policy and updated quarterly.

B. CRITERIA FOR DETERMINING WHICH COURSES WILL BE ASSIGNED AS PART OF THE SETTLEMENT AGREEMENT

1. The goal of education-based discipline is to improve the member's behavior and performance, and to prevent the recurrence of misconduct. Courses assigned as part of the education-based discipline program must closely match the misconduct in the discipline case and reflect the resources the member may need to effect change in his/her behavior.
2. As part of the settlement memorandum required in the Policy for Settlement Agreements, the Commanding Officer of PSD shall include the justification for assigning the member the chosen course(s).

C. REQUIREMENTS FOR COURSE COMPLETION

1. The member must enroll in the agreed upon course(s) at the first available time it is offered after execution of the settlement agreement.
2. The member must begin coursework, no later than four months (120 days) after execution of the settlement agreement.
3. All coursework must be completed, and proof of completion provided to PSD, within one year from the date of the execution of the settlement agreement.
4. The member may request a reasonable extension, upon a showing of good cause, for requirements C.1 – 3. This request must be submitted in writing to the Commanding Officer of PSD as soon as the member is aware of circumstances requiring the extension.
5. The Commanding Officer of PSD will make a decision whether or not to grant an extension and for how long.
6. All coursework shall be completed off-duty, on a member's own time and at the member's own expense. The Department shall not pay for the course fee nor for the time a member spends to attend the course.
7. Members are required to complete a Department-provided course evaluation form upon completion of the coursework.
8. Provisions C.1 – 6 of this policy shall be articulated in every settlement agreement in which education-based discipline is included.

List of Approved Courses for Education-Based Discipline
June 6, 2017

Course Name	Presenting Agency	Contact
Anger Awareness	Los Angeles County Sheriff's Department	
Behavior Stress Management	Los Angeles County Sheriff's Department	
Dealing with Difficult People	Los Angeles County Sheriff's Department	
Ethics	Los Angeles County Sheriff's Department	
LIFE Decision Making Process	Los Angeles County Sheriff's Department	
Relationship Management/Conflict Resolution	Los Angeles County Sheriff's Department	
Team Management	Los Angeles County Sheriff's Department	
Cultural Diversity	Museum of Tolerance	