

OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

• *PROMOTING INTEGRITY* •



FOLLOW-UP REVIEW

INMATE APPEAL AND INMATE DISCIPLINARY PROCESSES

SALINAS VALLEY STATE PRISON

SOLEDAD, CALIFORNIA

SEPTEMBER 2003

GRAY DAVIS, GOVERNOR

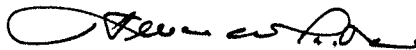


Memorandum

Date: September 16, 2003

To: EDWARD S. ALAMEIDA, JR., Director
Department of Corrections

From: STEVE WHITE
Inspector General



Subject: FOLLOW-UP REVIEW OF INMATE APPEAL AND DISCIPLINARY PROCESSES AT SALINAS VALLEY STATE PRISON

The enclosed report presents the results of the Office of the Inspector General's follow-up review of the inmate appeal process and the inmate disciplinary process at Salinas Valley State Prison. The follow-up review, conducted in July 2003, was performed under the Inspector General's oversight responsibilities delineated in *California Penal Code* Section 6126.

An earlier review by the Office of the Inspector General, completed in March 2000, found serious problems with the inmate appeal and the inmate disciplinary processes at Salinas Valley State Prison. The follow-up review found that the institution has significantly improved the inmate appeal process. Specifically, the Office of the Inspector General found that there is no longer a backlog of appeals waiting to be addressed, inmate appeal processing times have improved significantly, and responses to appeals are handled in a logical, appropriate manner. Furthermore, appeals are now properly screened, safeguards exist to ensure that appeals are not lost or destroyed by the staff, and the institution has an automated tracking system that accurately monitors the status of all formal and informal appeals.

The review also found, however, that although Salinas Valley State Prison did develop a corrective action plan following the Office of the Inspector General's March 2000 report, the institution continues to encounter significant problems in administering the inmate disciplinary process. The institution now has an automated system in place to record and track all inmate disciplinary actions, but each complex still uses its own procedures to record and process rules violation reports, and those procedures frequently do not comply with state law and regulations or with Department of Corrections policies and procedures. Furthermore, a considerable percentage of inmate disciplinary actions continue to be mishandled, resulting in violations of the due process rights of some inmates, while other inmates avoid justified disciplinary action.

The report includes seven recommendations to the management of the Salinas Valley State Prison for improving the inmate disciplinary process.

Please call me if you have questions concerning this report.

cc: Robert Presley, Secretary, Youth and Adult Correctional Agency
Anthony LaMarque, Warden, Salinas Valley State Prison

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REPORT

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EXECUTIVE SUMMARY

This report represents the results of a follow-up review conducted by the Office of the Inspector General of the inmate appeals process and the inmate disciplinary process at Salinas Valley State Prison. The follow-up review, conducted in July 2003, was performed under the Inspector General's oversight responsibilities delineated in *California Penal Code* Section 6126.

The Office of the Inspector General's original audit report, issued on March 22, 2000, found serious problems with both the inmate appeal process and the inmate disciplinary process at Salinas Valley State Prison. This follow-up review found that Salinas Valley State Prison has significantly improved the inmate appeal process. Specifically, the Office of the Inspector General found that there is no longer a backlog of appeals waiting to be addressed, inmate appeal processing times have improved significantly, and responses to appeals are handled in a logical, appropriate manner. Further, appeals are properly screened out, safeguards exist to ensure appeals are not lost or destroyed by staff, and the institution has an automated tracking system that accurately monitors the status of all formal and informal appeals.

The review also found that, although Salinas Valley State Prison did develop a corrective action plan following the Office of the Inspector General's March 2000 report, the institution continues to encounter significant problems in administering the inmate disciplinary process. The institution now has an automated system in place to record and track all inmate disciplinary actions but each complex still uses its own procedures to record and process rules violation reports, and these procedures frequently do not comply with the requirements of state law, state regulations, and Department of Corrections policies and procedures. Further, a considerable percentage of inmate disciplinary actions continue to be mishandled, resulting in some inmates' not receiving their due process rights while others avoid deserved disciplinary action.

Specifically, the Office of the Inspector General found the following.

FINDING 1

The Office of the Inspector General found that the inmate appeal process has improved significantly.

Salinas Valley State Prison has significantly improved its administration of the inmate appeal process since the Office of the Inspector General's prior audit in March 2000. Specifically, there is no longer a backlog of appeals waiting to be addressed, inmate appeal processing times have improved significantly, and responses to appeals are handled in a logical, appropriate manner. Further, appeals are properly screened out, safeguards exist to ensure appeals are not lost or destroyed by staff, and the institution has an automated tracking system that accurately monitors the status of all formal and informal appeals.

FINDING 2

The Office of the Inspector General found that Salinas Valley State Prison has made little progress in improving the inmate disciplinary process.

In the more than three years since the Office of the Inspector General's March 2000 report, the institution has improved the inmate disciplinary process only marginally. Although the

institution now has an automated system in place to record and track all inmate disciplinary actions, each complex still uses its own procedures to record and process rules violation reports, and these procedures frequently do not comply with the requirements of state law, state regulations, and Department of Corrections policies and procedures. Further, a considerable percentage of inmate disciplinary actions continue to be mishandled, resulting in some inmates' not receiving their due process rights, while others escape disciplinary action they deserve.

The Office of the Inspector General recommends that Salinas Valley State Prison management take the following actions to improve the inmate appeal and inmate disciplinary processes at the institution:

- Continue to use the current inmate appeal process, including logging of all informal appeals.
- Require the Chief Disciplinary Officers to develop their own independent Registry Logs.
- Audit on a regular basis the Registry Logs, the Disciplinary Action Logs (CDC Form 1154), and the Register of Institution Violations.
- Hold those staff members responsible for the inmate disciplinary system accountable for the quality of their work.
- Use the Automated Disciplinary Management System to monitor performance indicators associated with the inmate disciplinary process.
- Continue providing periodic training to staff on the inmate appeal and inmate disciplinary processes.
- Modify the corrective action plan to incorporate these recommendations and specify completion dates for implementing each recommendation.

INTRODUCTION

The Office of the Inspector General conducted the follow-up review of the inmate appeal process and inmate disciplinary process at Salinas Valley State Prison pursuant to its authority under California Penal Code Section 6126. Part (a) of that code section gives the Inspector General responsibility for reviewing departmental policy and procedures for conducting audits of investigative practices and other audits, as well as conducting investigations of the California Department of Corrections, the Department of Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by either the Secretary of the Youth and Adult Correctional Agency or a member of the Legislature pursuant to the approval of the Inspector General. The Inspector General may, under policies developed by the Inspector General, initiate an investigation or an audit on his own accord.

BACKGROUND

Salinas Valley State Prison, located in Soledad, California, opened in May 1996 as a Level IV (maximum security) prison designed to house 2,024 inmates in four facilities organized into two complexes. Complex I contains Facilities A and B, while Complex II contains Facilities C and D. A Level I (minimum security) facility capable of housing an additional 200 inmates is located outside the secured perimeter.

Since its opening, Salinas Valley State Prison has had problems with staff turnover and inmate unrest. Problems with inmates have led to a significant number of total or partial lockdowns, which have impaired the institution's ability to provide academic and vocational programs to inmates. In response to these problems, the Office of the Inspector General conducted an audit of the inmate appeal process and the inmate disciplinary process at the prison in February and March 2000. The audit found significant problems with both processes and made recommendations for correcting the problems. As a result, Salinas Valley State Prison developed a corrective action plan that addressed the audit's findings and called for various corrective steps, including providing training to staff on the inmate appeal and disciplinary processes.

In January 2003, in response to a Salinas Valley State Prison inmate's complaint, the Office of the Inspector General initiated an investigation into certain aspects of the inmate disciplinary process. As a result of that investigation, the Office of the Inspector General found that the prison violated more than 80 inmates' due process rights in administering the inmate disciplinary process following an inmate work stoppage in October 2002. Eighty-seven inmates subsequently submitted appeals of their disciplinary actions. The appeals were granted and the appellants' rules violation reports were reissued and reheard because institution staff failed to provide the inmates their copies of the CDC 837, Incident/Crime Report as required by *California Code of Regulations*, Title 15, Article 5, Section 3320(c)(1). During the rehearings, the charges against those inmates were dismissed in the interest of justice without further explanation. Dismissal of disciplinary actions against some of the inmates who participated in the work stoppage undermines the intent of the disciplinary process. Furthermore, those inmates who participated in the work stoppage, received disciplinary actions as a result, but did not submit appeals were not afforded the same considerations.

Because of the issues identified in the July 2003 investigation, the Office of the Inspector General decided to conduct a follow-up review to assess Salinas Valley State prison's progress in addressing the March 2000 audit's findings.

OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of this review was to follow up on the institution's progress in correcting the conditions reported in the Office of the Inspector General's March 2000 audit of the inmate appeal and disciplinary processes and to report on the status of the institution's implementation of the Office of the Inspector General's recommendations. To this end, the Office of the Inspector General's review team did the following:

- Reviewed the findings and recommendations from the March 22, 2000 report of the Office of the Inspector General's audit, as well as the prison's corrective action plan.
- Reviewed the *California Code of Regulations* and various Department of Corrections Operations Manual policies and procedures governing the inmate appeal and disciplinary processes.
- Interviewed Warden Anthony LaMarque and various members of his staff, including those responsible for administering the inmate appeal process and the inmate disciplinary process.
- Reviewed and analyzed various records, files, and logs associated with the inmate appeal and disciplinary processes. This information was obtained from the Department of Corrections as well as from the prison.
- Inspected housing units in Complex I and Complex II to observe various aspects of the inmate appeal and disciplinary processes.
- Sampled inmate appeals and rules violation reports for compliance with timeliness and other procedural requirements laid out in the policies and procedures cited above.
- Reviewed staff training records and personnel rosters provided by the institution.
- Reviewed medical policies and procedures designed to ensure that inmates are not denied vital medical services during lockdowns or other special circumstances.
- Reviewed pertinent parts of the Office of the Inspector General's July 2003 report of the investigation of allegations pertaining to the inmate disciplinary process at Salinas Valley State Prison.

FINDINGS AND RECOMMENDATIONS

Following are the Office of the Inspector General's findings and recommendations that resulted from the follow-up review.

FINDING 1

The Office of the Inspector General found that the inmate appeal process has improved significantly.

Salinas Valley State Prison has significantly improved its inmate appeal process since the Office of the Inspector General's initial audit in March 2000. Specifically, there is no longer a backlog of appeals waiting to be addressed, inmate appeal processing times have improved significantly, and responses to appeals are handled in a logical, appropriate manner. Further, appeals are properly screened out, safeguards exist to ensure appeals are not lost or destroyed by staff, and the institution has an automated tracking system that accurately monitors the status of all formal and informal appeals. The review of the inmate appeal process revealed the following:

There is no backlog of appeals. When the Office of the Inspector General performed its March 2000 audit, there was a significant backlog of inmate appeals that had not been processed and responded to by staff. In July 1999, there were 482 appeals overdue, of which 251 were medically related. By March 2000, although the backlog had improved there were still 229 appeals overdue; including 31 medically-related appeals. However, effective July 2003, staff at the prison had eradicated the backlog. The Office of the Inspector General observed that the Inmate Appeals Office and institution staff promptly received, processed, and responded to all inmate complaints, including those that were medically related. The only exceptions to the prompt processing of appeals were the occasional appeals that originated at Salinas Valley State Prison but required a response from another institution because the inmate had transferred to or from that institution.

Inmate appeal processing times have improved significantly. Because it focused on the backlog of appeals, the Office of the Inspector General did not test the timeliness of appeal processing during its original audit. However, appeals must be processed according to established timeliness standards if backlogs are to be avoided. Depending on the type of appeal, *California Code of Regulations*, Title 15, Article 8 establishes timeliness standards ranging from 10 to 30 working days for servicing inmate appeals. The Office of the Inspector General reviewed summary appeal data for the prison covering the two-year period from July 1, 2001 through June 30, 2003 and noted a steady decrease in the percentage of appeals not meeting time constraints. For the first six months of the period, 44 percent of all appeals did not meet time constraints, whereas for the last six months of the period only 13 percent did not meet time constraints.

The Office of the Inspector General also reviewed a sample of 40 inmate appeals filed in the month of April 2003 and found that only seven (17.5 percent) of the 40 informal and first level formal appeals did not meet time constraints. Further, the average number of days overdue for the seven appeals was only six calendar days. For another 40 second-level formal appeals, only 12 (30 percent) did not meet time constraints, and the average number of days overdue was also only six calendar days. The percentage of overdue appeals is consistent with other Department of Corrections institutions

Responses to appeals are handled in a logical, appropriate manner. The Office of the Inspector General tested a sample of 40 appeals filed in April 2003 and found that 39 (98 percent) of the 40 appeals were handled appropriately. That is, the responses to the appeals were logical, reasonable, and appropriately addressed all issues raised by the inmate. In the one unsatisfactory response, institution staff failed to properly conduct a fact-finding inquiry or an investigation into the inmate's allegations. Further, the response to the inmate was condescending.

Inmate appeals are properly screened out. Appeals can be screened out and returned to the inmate with an explanation if they lack specific attributes required for further processing. The Office of the Inspector General reviewed a sample of 40 inmate appeals that had been recently screened out by the Inmate Appeals Office. Thirty-nine (98 percent) of the 40 screened-out appeals were properly screened out. One appeal was improperly screened out because the Inmate Appeals Office determined it to be a duplicate medically-related appeal that requested medication for an inmate's physical condition. However, the Office of the Inspector General found that the inmate's previous medically-related appeal was filed four months earlier. The inmate appeals coordinator was unable to prove that both appeals were related to the same medication request.

Safeguards exist to ensure appeals are not lost or destroyed by staff. The Office of the Inspector General reviewed the procedures governing how inmate appeals are collected and received by the institution's Inmate Appeals Office. Most commonly, inmates submit appeals through institution mail via a lock-box at each facility. In addition, inmates can insert appeal forms into the Ombudsman's lock-box on each facility's yard. The Office of the Inspector General physically inspected three lock-boxes on the institution grounds and verified with staff that only a select few staff members have access to the keys. Problems can occur, however, when the facility or institution is on extended lockdown status. Under a modified program, inmates can drop their inmate appeals into a lock-box when they have access to showers or make telephone calls. Under a complete lockdown, however, access to lock-boxes is limited. The Office of the Inspector General was told by an Inmate Appeals Coordinator that inmates must place their mail outside their cells, under those circumstances, which potentially allows the appeals to be intercepted and destroyed by staff. The compensating factor is that one officer, usually the floor officer, collects such mail twice daily on first and third watches.

The institution has an automated tracking system that accurately monitors the status of all formal and informal appeals. At the time of the Office of the Inspector General's March 2000 report, the prison lacked accurate and reliable information on inmate appeals. Further, it did not track informal appeals at all. Since the initial audit, the institution has incorporated the use of its automated database to track the status of all appeals, including informal appeals. Using a sample of 40 appeals filed in April 2003, the Office of the Inspector General compared seven essential appeal data elements from a copy of the actual appeal to what is recorded in the institution's inmate appeal database. The seven appeal data elements for the 40 appeals examined were the inmate's name, the appeal log number, the date submitted, the date received, the date assigned, the due date for appeal response, and the date the appeal was returned to the inmate. The review revealed that every data element for all 40 appeals was accurately recorded and tracked in the institution's inmate appeal database.

FINDING 2

The Office of the Inspector General found that Salinas Valley State Prison has made little progress in improving its inmate disciplinary process.

In the more than three years since the Office of the Inspector General's March 2000 report, the institution has improved the inmate disciplinary process only marginally. Although the institution now has an automated system in place to record and track all inmate disciplinary actions, each complex still uses its own procedures to record and process rules violation reports, and these procedures frequently do not comply with the requirements of state law, state regulations, and Department of Corrections policies and procedures. Further, a considerable percentage of inmate disciplinary actions continue to be mishandled, resulting in some inmates' not receiving their due process rights, while others escape disciplinary action they deserve. The review of the inmate disciplinary process revealed the following:

The institution now has a system in place to record and track all inmate disciplinary actions. However, each complex still uses its own procedures to record and process rules violation reports. In its March 2000 report, the Office of the Inspector General found that Salinas Valley State Prison did not have a system in place to ensure that rules violation reports were uniformly and accurately recorded and processed in a proper and timely manner. Instead, each facility used its own procedures to record and process rules violation reports. Further, some rules violation reports were missing, resulting in the institution having to void them and take no action against the inmates. The Office of the Inspector General's follow-up review found that the institution has since acquired an automated disciplinary action tracking system from Pelican Bay State Prison. The system, known as the Automated Disciplinary Management System, has been in place for approximately three years in the four facilities.

However, the follow-up review found that there is still considerable variation between the complexes in how they record rules violation reports, and neither complex is fully complying with state law and regulations in what it is doing. *Penal Code* Section 2081 requires that each institution keep a Register of Institution Violations in which it records the types of punishment, if any, that each inmate receives. *California Code of Regulations*, Title 15, Article 5, Section 3310 et seq. and the Department of Corrections Operations Manual, Article 23, Section 52080 et seq. itemize specific requirements for maintaining the register and for managing the inmate discipline system. The Office of the Inspector General found the following problems with the Register of Institution Violations at Salinas Valley State Prison:

- Neither of the institution's two Chief Disciplinary Officers (the Associate Wardens for Complex I and Complex II, respectively) maintains an independent Registry Log of the Register of Institution Violations. An independent log is important as a check against inaccurate data being reported by the facilities. Instead, for Complex I, the support technician receives backup disks to the Automated Disciplinary Management System from Facility A and Facility B, downloads the information to her system, and prints out the Registry Log. For Complex II, the support staff receives copies of the CDC 1154, Disciplinary Action Logs, from Facility C and Facility D and uses the copies to create a Registry Log in the Automated Disciplinary Management System. The need for an independent Registry Log is illustrated by the Office of the Inspector General's having noted two rules violation reports typed with the same log number for different inmates and incidents..

- The Registry Log was not reviewed and approved by the Chief Disciplinary Officer of either complex. Furthermore, the logs were incomplete and missing information for the assigned log numbers of the rules violation reports (CDC Form 115's).
- Facility staff does not routinely provide a completed copy of the dismissed or voided CDC Form 115's for inclusion in the Register of Institution Violations. Thirty-six percent of the CDC Form 115's were missing from the Register of Institution Violations. In 30 of the 50 instances of missing CDC Form 115's, Notices of Action were improperly substituted in place of the missing completed CDC Form 115's. These Notices of Action stated that the CDC Form 115's were dismissed or voided.
- In Complex II, the Register of Institution Violations contained the original CDC Form 115's, as required. However, support staff removes the register's copy prior to the inmate's receiving the completed copy of the CDC Form 115. In Complex I, 40 percent of the CDC Form 115's entered in the register consisted of photocopied, rather than original CDC Form 115's.

A considerable percentage of inmate disciplinary actions continue to be mishandled. When the Office of the Inspector General conducted its March 2000 audit, it found that a high percentage of the disciplinary cases against inmates were mishandled. The audit cited statistics from the Department of Corrections Classification Services Unit audits of all prisons in the system. These statistics, which covered a three-month period in 1999, showed that Salinas Valley State Prison had a 24 percent error rate, ranking the prison 32 out of 33 institutions in error frequency. The average error rate for all other institutions for the same period was 11 percent. The Office of the Inspector General reviewed the same statistics for the three-month period of January through March 2003, and found marginal improvement. The 2003 statistics showed that the prison had a 21 percent error rate, ranking it 33 out of 33 institutions in error frequency. The average error rate for all other institutions for the same period was nine percent.

In addition, the Office of the Inspector General conducted its own compliance review of the inmate disciplinary process. Using a sample of 140 rules violation reports filed in the two complexes by the four facilities during January, February, March, and May 2003, the Office of the Inspector General found substantial non-compliance with the requirements of *California Code of Regulations*, Title 15, and the Department of Corrections Operations Manual Article 23. The following findings indicate that a considerable percentage of inmate disciplinary actions continue to be mishandled:

- Fourteen percent of the disciplinary proceedings failed to meet time constraints. In some cases, inmates were not provided a copy of the CDC Form 115 within 15 calendar days of discovery. In another instance, a CDC Form 115 was issued less than 24 hours prior to the hearing. In other cases, the charges were not heard within 30 days of the date the inmate was provided a copy of the rules violation report as required by *California Code of Regulations* Title 15, Section 3320(b). Facility B fared particularly poorly, with 32 percent of its rules violation reports failing to meet the criterion. By contrast, Facility D failed to meet the criterion only four percent of the time. As a result of missing time constraints, inmates may not be assessed credit forfeiture, meaning that some inmates go unpunished for improper acts or conduct.

- Inadequate documentation that inmates received completed CDC Form 115's within prescribed time constraints. *California Code of Regulations* Title 15, Section 3320(l) requires that inmates be provided with a completed CDC Form 115 within five working days after the Chief Disciplinary Officer's audit. However, 46 percent of the disciplinary actions sampled from the Register of Institution Violations contained no staff signature or date to indicate when the inmate received the decision. Rates of non-compliance regarding signatures and delivery dates on the CDC Form 115's ranged from a low of 23 percent in Facility A to a high of 61 percent in Facility D. When there is no signature and delivery date on a CDC Form 115, there is no assurance that an inmates' due process rights have been observed.

In addition, a review of the rules violation reports issued by Facility B disclosed four (80 percent) out of five of the CDC Form 115's that did contain staff signatures and dates failed to meet the requirement that inmates be given a completed copy within five working days of the Chief Disciplinary Officer's audit.

- Insufficient review to ensure accuracy and reliability of information in the CDC Forms 115. The Office of the Inspector General found a variety of errors in the CDC Form 115's sampled, and these errors had evaded the review of various staff in the chain of command, from the reporting employee through the Chief Disciplinary Officer. In one case, a portion of one inmate's disciplinary decision was found typed on another inmate's rules violation report. In another case, the rules violation report cited the inmate's plea as "not guilty" on the first page, and "guilty" on the second page. In other cases, inmates were assessed time credit forfeitures despite the fact that hearings occurred after the 30-day limit imposed by *California Code of Regulations* Title 15, Section 3320(b) or before the minimum 24-hour notice to the inmate required by Section 3320(a). Without proper review by staff and the Chief Disciplinary Officer's thorough audit of the CDC Form 115's, the inmates have grounds for appealing and possibly having disciplinary action against them overturned.

The Office of the Inspector General also reviewed the CDC 1154, Disciplinary Action Logs at the individual facilities for the four months sampled and noted incomplete entries at three of the facilities. Missing information included critical dates such as delivery date of the initial CDC Form 115 to the inmate, hearing date, date of the Chief Disciplinary Officer's review, delivery date of the final copy to the inmate, and date the copy was sent to the records office. Furthermore, the facility captains had not regularly reviewed and signed the logs.

RECOMMENDATIONS

The Office of the Inspector General recommends that Salinas Valley State Prison management take the following actions to improve the inmate appeal and inmate disciplinary processes:

- Continue using the current inmate appeal process, including the logging of all informal appeals.
- Require the Chief Disciplinary Officers to develop their own independent Registry Logs in lieu of relying on the information provided by the facilities.
- Regularly audit the Registry Logs, the Disciplinary Action Logs (CDC Form 1154's), and the Register of Institution Violations (and the rules violation reports therein) to ensure

they comply with the requirements of *Penal Code* Section 2081, the *California Code of Regulations*, and the Department of Corrections Operations Manual.

- Hold those staff responsible for the inmate disciplinary system, including the Chief Disciplinary Officers, accountable for the quality of their work. Use progressive discipline if necessary to ensure compliance with the requirements of the *California Code of Regulations* and the Department of Corrections Operations Manual.
- Use the Automated Disciplinary Management System to monitor performance indicators, including compliance with timeliness criteria, associated with the inmate disciplinary process.
- Continue providing periodic training to staff on the inmate appeal and inmate disciplinary processes.
- Modify the corrective action plan to incorporate these recommendations, and specify completion dates rather than notations such as “Ongoing” for implementing each recommendation.