

POLICY & PROCEDURE

TITLE: Reporting and Investigation of Compliance Concerns

APPROVAL DATE OF CORPORATE COMPLIANCE COMMITTEE: 5/17/2024	SIGNATURE OF CORPORATE COMPLIANCE COMMITTEE CHAIR: <i>Eileen S. Berg</i>
APPROVAL DATE OF POLICY REVIEW COMMITTEE: 5/17/2024	EFFECTIVE/IMPLEMENTATION DATE: 5/17/2024
SIGNATURE OF POLICY REVIEW COMMITTEE CHAIR: <i>Eileen S. Berg</i>	

BACKGROUND, PURPOSE & RATIONALE:

Birch Family Services (herein referred to as Birch or the Corporation) is committed to conducting its business ethically and in conformance with all Federal, State and local laws, regulations, interpretations thereof, and the Corporation’s Standard /Code of Conduct and Business Ethics. This includes, but is not limited to, Social Service Law 363-D and 18 NYCRR Part 521.

Birch recognizes that a critical aspect of its Compliance Program is the establishment of a culture that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal, State and local requirements, the Corporation’s ethical and business policies, and fraud, waste, and abuse prevention.

To promote this culture, Birch has established processes to encourage effective communication and the reporting of compliance questions, issues, concerns, or events that will result in a thorough investigation and appropriate remedial actions.

For the purposes of this Policy, the term “Affected Individuals” includes all employees, interns, volunteers, and independent contractors. Performance issues and or violations of any regulation or policy committed by a temporary employee, will be reported to the contracted vendor who will be responsible to address such with their employee. Birch will not utilize the services of the involved temporary staff for which there is a substantiated compliance violation.

POLICY STATEMENT:

It is the Policy of Birch to maintain a formal confidential and anonymous compliance reporting process to encourage the reporting of any known or suspected fraud, waste, and abuse; illegal or unethical acts; actual or suspected violations of Federal, State or local laws and regulations; actual or suspected violations of the Standard / Code of Conduct and Business Ethics, the Compliance Program, and Birch’s policies and procedures; improper acts in the delivery or billing of services; and other wrongdoing or misconduct (collectively referred to as “compliance concerns” for purposes of this Policy).

It is the Policy of Birch to fully and promptly investigate all reports of any compliance concerns and take appropriate remedial and/or disciplinary action upon completion of the investigation as warranted.

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PROCEDURES:

I. Reporting Process:

1. All Affected Individuals have an affirmative duty and responsibility to promptly report any compliance concerns.
2. An “open-door policy” will be maintained at all levels of Management / Leadership to encourage the reporting of problems and compliance concerns through normal business channels and appropriate levels of the Corporation for timely and effective resolution.
3. Birch encourages all Affected Individuals, individuals supported by Birch, vendors, and any party conducting business with Birch to promptly communicate questions, issues, or compliance concerns through any one of the following means:
 - Direct written or oral communication by fax, mail, email, text, telephone, or personal (in-person) contact to the immediate supervisor, a member of Management /Leadership and/or the Compliance Officer.
 - Confidentially or anonymously to the Compliance Officer through the third party external Compliance Hotline. If the reporter elects to make the report anonymously to the Compliance Officer, no attempt will be made to trace the source of the report or identify the person making the report.
4. If the compliance concern is about the Compliance Officer, the Chief Executive Officer and/or Senior Vice President of Human Resources is to be notified.
5. If the Compliance Officer receives a concern related to the Chief Executive Officer, the Compliance Officer shall report such information to the President of the Board of Directors.
6. If a Board member has knowledge of a compliance concern as defined by this Policy, the Compliance Officer and the Chief Executive Officer are to be notified. If there is a concern about the Chief Executive Officer, the Compliance Officer and the President of the Board of Directors are to be notified.
7. Employees have the same obligations for reporting suspected compliance concerns committed by the Corporation’s vendors or contractors.

Affected Individuals cannot exempt themselves from the consequences of their own misconduct by reporting the issue, although self-reporting may be considered in determining the appropriate course of action.

8. Strict confidentiality regarding the reporting of compliance concerns will be maintained unless the matter is subject to a disciplinary proceeding, referred to or under investigation by Federal, State, or local law enforcement, or should the disclosure be required during a legal proceeding. Those staff assigned to complete any investigation of a compliance concern shall treat the investigation

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as confidential and shall not reveal details or discuss the content or status of the investigation with Birch staff or any other party except as may be directed by the Compliance Officer or legal counsel.

9. The Compliance Officer will ensure that all reports of compliance concerns as defined by this Policy are recorded and investigation reports with any supporting documents will be maintained by the Compliance Officer.
10. Any member of Management / Leadership who receives a report of a compliance concern will immediately notify the Compliance Officer.
11. Knowledge of a violation or potential violation of this Policy must be reported directly to the Compliance Officer or the Compliance Hotline.
12. Affected Individuals who report issues or concerns that are unrelated to the Compliance Program shall be redirected to the appropriate department or party. In instances where the Affected Individual seeks confidentiality or reports anonymously, the Compliance Officer shall redirect the report to the appropriate department or party while maintaining the request for confidentiality/anonymity.
13. Birch strictly prohibits its Management, employees, and Board members from engaging in any act, conduct, or behavior that results in, or is intended to result in, retribution, retaliation or intimidation (hereafter, collectively referred to as “retaliation”) against any party for reporting and/or intending to report any compliance concerns as defined by this Policy.
14. If an Affected Individual believes in good faith that they have been retaliated against for reporting a compliance concern or for participating in any investigation of such a report, the retaliation should be immediately reported to the Compliance Officer or the Compliance Hotline. The report should include a thorough account of the incident(s) and should include the names, dates, specific events, the names of any witnesses, and the location or name of any document that supports the alleged reported retaliation.
15. The Compliance Officer will ensure that the means for reporting actual or suspected compliance concerns to the Compliance Officer are communicated to all Affected Individuals and individuals supported by Birch. The Compliance Officer’s contact information and Compliance Hotline number will be published on the Birch website and visibly posted in a manner consistent with employee notification in all Birch sites in locations frequented by Birch employees.

II. Investigation and Resolution:

1. It is the responsibility of the Compliance Officer to conduct or oversee the conducting of all internal investigations involving compliance concerns and shall have the authority to engage legal counsel or other consultants, as needed. The Compliance Officer, in conjunction with the Chief Executive Officer and legal counsel, will consider whether the investigation should be conducted under attorney privilege.
2. Before conducting an investigation of any compliance concern as defined by this Policy, the Compliance Officer shall ensure a full understanding of the relevant laws, regulations, and

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government issuances. If a reported violation is related to improper billing, the Compliance Officer will consider the need for an audit of billing practices and determine the scope of interviews.

3. If deemed appropriate, the Compliance Officer will recommend the cessation of internal activities that may be the cause of, or contribute to, the alleged non-compliance.
4. The Compliance Officer will determine the scope of the reported compliance concern and make a determination regarding the course of action, including the investigation process and notifications to be made.
5. Upon report, notice or discovery of an alleged compliance concern, the Compliance Officer will conduct an initial inquiry into the alleged situation. The purpose of the initial inquiry is to determine whether there is sufficient evidence of possible non-compliance to warrant further investigation. The initial inquiry may include documentation review, interviews, audit, or other investigative techniques.

The Compliance Officer should:

- (a) conduct a fair impartial review of all relevant facts;
 - (b) restrict the inquiry to those necessary to resolve the issues; and
 - (c) conduct the inquiry with as little visibility as possible while gathering pertinent facts relating to the issue.
6. If, during the initial inquiry, the Compliance Officer determines that there is sufficient evidence of possible noncompliance with any criminal, civil, or administrative law to warrant further investigation, legal counsel will be notified and the issue should be reviewed with legal counsel. A memorandum to this effect from the Compliance Officer should be directed to legal counsel with a copy to the Chief Executive Officer.
 7. The Compliance Officer or Chief Executive Officer will immediately make arrangements to retain legal counsel and no further internal discussion or investigative activity shall take place regarding the report except as directed by legal counsel. Once legal counsel is retained, it will be determined whether legal counsel, an external third party investigator or the Compliance Officer will be leading the investigation.
 8. All documents produced during the investigation by or under legal counsel to be possibly protected from disclosure should include the notation: "Privileged and Confidential Document; Subject to Attorney-Client Privileges; Attorney Directed Work Product."
 9. For investigations that do not involve legal counsel, the Compliance Officer will conduct the investigation and/or determine which personnel possess the requisite skills to examine the particular issue(s) and will assemble a team of investigators, as needed. The Compliance Officer shall work with the investigation team to develop a strategy for reviewing and examining the facts surrounding the possible violation. The Compliance Officer will also decide whether Birch has sufficient internal resources to conduct the investigation or whether external resources are necessary. If it is determined that additional resources are needed, the Compliance Officer will work with the Chief Executive Officer to secure such resources.

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10. The Compliance Officer will be responsible for the investigation of and follow-up on any reported retaliation against a party for reporting a compliance concern or participating in the investigation of a compliance concern. The Compliance Officer will report the results of an investigation into suspected retaliation to the Chief Executive Officer, the Human Resources department administrator(s), the Corporate Compliance Committee, the Audit Committee the Board of Directors.
11. If at any time, during an investigation, it is determined that the situation warrants the retention of legal counsel, the Compliance Officer will immediately suspend the investigation and follow the process in Procedure #6 (Investigations and Resolution) above.
12. The Compliance Officer, in consultation with the respective department Leadership and Human Resources department Leadership may undertake measures during an investigation of a compliance concern to protect the integrity of the investigation, prevent the destruction of documents or other evidence relevant to the investigation, and respect the due process rights of involved parties. Measures may include, but are not limited to, reassignment or placement on administrative leave until the investigation is complete.
13. The Compliance Officer will track the investigation, responsible parties, and due dates.
14. The Compliance Officer should ensure that the following objectives are accomplished for each investigation:
 - The complainant or reporter, if known, is debriefed;
 - Appropriate internal parties are notified;
 - The cause of problem, desired outcome, affected parties, applicable guidelines, and possible regulatory or financial impact are identified;
 - A complete list of findings and recommendations are provided;
 - The necessary corrective action measures (e.g., policy changes, operational changes, system changes, personnel changes, discipline, training/education) are identified; and
 - The investigation is documented.
15. Upon receipt of the results of the investigation, depending upon the scope and severity of the identified violations, the Compliance Officer may consult with legal counsel, the Chief Executive Officer, and/or the Corporate Compliance Committee to determine:
 - (a) the results of the investigation and the adequacy of recommendations for corrective actions;
 - (b) the completeness, objectivity, and adequacy of recommendations for corrective actions; and/or
 - (c) further actions to be taken as necessary and appropriate.
16. Upon conclusion of the investigation, the Compliance Officer will organize the information in a manner that enables Birch to determine if an infraction did, in fact, occur. The Compliance Officer

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will maintain all notes of the interviews, all evidence and documents as part of the investigation file. The investigation file will be securely maintained by the Compliance Officer.

17. If the Compliance Officer, in consultation with legal counsel, identifies credible evidence or credibly believes that a State, Federal or local law, rule, or regulation has been violated, the Compliance Officer will promptly report such violation to the appropriate governmental entity, where such reporting is otherwise required by law, rule or regulation. The Compliance Officer will receive and maintain copies of any reports submitted to governmental entities.
18. The Compliance Officer, in consultation with legal counsel, the Chief Executive Officer, and the Corporate Compliance Committee, will evaluate any confirmed violation to determine if a voluntary self-disclosure of the violation is appropriate. In the event that voluntary disclosure is appropriate or required, the Compliance Officer will consult with legal counsel on the notification of appropriate government officials, private payors, or other entities. Notification shall be made within a reasonable time period from date of discovery and may include restitution of monies paid by the applicable Federal, State or local agency, payer, or other entity. The Compliance Officer will ensure that all overpayments are reported and refunded to the appropriate payer within 60 days of the identification of the overpayment and in accordance with the Billing Errors, Overpayments, and Self-Disclosure Policy and Procedure and current applicable regulations including but not limited to Social Service Law 363-D and 18 NYCRR Part 521.
19. The Compliance Officer will be responsible for reporting the results of all investigations to the Chief Executive Officer, Corporate Compliance Committee, Audit Committee and the Board.
20. The Compliance Officer or appropriate member of Management/Leadership as determined by the Compliance Officer in consultation with Leadership, will inform the reporter, if known, of the conclusion of the investigation and the outcome, if appropriate.

III. Compliance Violations:

A. POLICY STATEMENT:

It is Birch's Policy to ensure that:

1. Affected Individuals who, upon investigation, are found to have committed compliance violations will be subject to appropriate disciplinary action, up to and including termination of employment, contract, assignment, or appointment with Birch.
2. The following actions shall result in disciplinary action:
 - Authorization of or participation in actions that violate Federal, State or local laws, regulations, the Birch Compliance Program, Birch Standard / Code of Conduct and Business Ethics, or any related Birch compliance policies and procedures;
 - Failure to comply with the Corporation's policies governing the prevention, detection, or mandated reporting of fraud and /or abuse;

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- Falsification of records of any type;
 - Submitting or causing to submit a false claim;
 - Failure to report a violation by anyone;
 - Failure to cooperate in an investigation including participation in interviews and providing written statement(s);
 - Obstruction during an investigation includes, but not limited to destruction of relevant records, giving false testimony in an investigation and /or persuading other interviewees as to what information they should disclose during the investigation.
 - Retribution, retaliation, or intimidation against a person for reporting or intending to report a possible compliance violation or for participating in an investigation. Refer to the Non-Retaliation and Non-Intimidation Whistleblower Protection Policy.
3. Birch will apply progressive discipline consistent with the violation and the Corporation's Progressive Discipline Policy. Examples of the disciplinary action that may be taken in accordance with the nature and scope of the infraction include but are not limited to: (
- (a) verbal counseling or warning;
 - (b) counseling with written warning;
 - (c) retraining;
 - (d) reassignment or demotion;
 - (e) suspension without pay; and
 - (f) termination of employment, contract, assignment, or appointment.

Birch will consider intentional or reckless behavior as being subject to more significant disciplinary action.

4. The Compliance Officer in consultation with Human Resources Leadership will be responsible for assuring that disciplinary actions related to compliance violations are consistent with actions taken in similar instances of non-compliance and that the same disciplinary action applies to all levels of Affected Individuals.

B. PROCEDURES:

1. All reports of compliance violations are to be reported to the Compliance Officer in accordance with the Birch Compliance Plan, Standard / Code of Conduct and Business Ethics and the Reporting and Investigation of Compliance Concerns Policy and Procedure.
2. To the extent possible, disciplinary action for employees will be taken in accordance with the Corporation's s Human Resource Employee Handbook Manual and/or any Collective Bargaining Agreement.

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3. When the determination is made that a compliance violation by an Affected Individual has occurred, the Compliance Officer will notify the Chief Executive Officer, the appropriate department/program administrator and HR Administrator who will inform the employee's supervisor. Legal counsel may be consulted, as appropriate or warranted.
4. When the determination is made that a compliance violation by a Board member or a Corporate Officer has occurred, the Compliance Officer will notify the Chief Executive Officer and the Chair of the Board. If the Chair of the Board is implicated in the violation, the Compliance Officer and Chief Executive Officer will work with the Audit Committee of the Board of Directors and the Board of Directors to determine and execute appropriate disciplinary action. Legal counsel may be consulted, as appropriate or warranted.
5. When the determination is made that a compliance violation by the Chief Executive Officer has occurred, the Compliance Officer will notify the Chair of the Board in order to determine and execute appropriate disciplinary action. Legal counsel may be consulted, as appropriate or warranted.
6. When the determination is made that a compliance violation occurred involving a contractor or vendor, the Compliance Officer will notify the Chief Executive Officer and CFO and work collaboratively to determine and execute the appropriate corrective action.
7. The Compliance Officer and Senior Vice President of Human Resources will work in collaboration with the appropriate department administrator & supervisor/manager in determining and executing the disciplinary action related to a compliance violation by an employee. The Compliance Officer shall have the discretion to recommend a disciplinary process other than the normal procedure.
8. The Compliance Officer and/or Senior Vice President of Human Resources shall consult with the Corporate Compliance Committee, the Chief Executive Officer and legal counsel, as necessary to determine the appropriate disciplinary action to be taken.
9. Discipline will be appropriately documented in the disciplined employee's personnel file, along with a written statement of reason(s) for imposing such discipline. Such documentation will be considered during the employees' regular and promotional evaluations.
10. The Compliance Officer and Human resources Leadership shall maintain a written record of all disciplinary actions taken against Affected Individuals for compliance issues, including verbal warnings, and will reference these records when necessary to ensure consistency in the application of disciplinary measures.
11. The Compliance Officer shall report regularly to the Chief Executive Officer, the Corporate Compliance Committee, the Audit Committee and the Board of Directors, regarding such actions.
12. Non-compliance with this policy may result in disciplinary action, up to and including termination.