

# **BORNHAVA**

# **CORPORATE COMPLIANCE PLAN**

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## BORNHAVA

### CORPORATE COMPLIANCE PLAN

#### I. Introduction

Bornhava, a Danish word meaning a high-quality early childhood program with a homelike environment, provides services to children from throughout Western New York, birth to five years of age, with a variety of developmental disabilities. Our main location is at 25 Chateau Terrace, in Amherst. Additionally, Bornhava has integrated classrooms located at Grace Academy Head Start (1653 Kensington Avenue, Buffalo, 14215), New York State University College at Buffalo Child Care Center (1300 Elmwood Avenue, Buckham Hall, C-Wing, Buffalo, 14222, Amherst Community Church Child Care Center (ACCCCC- 77 Washington Highway, Snyder, NY 14226), St. James Academy (500 Terrace Boulevard, Depew, 14043) and Lockport Academy, 85 North Adam Street, Lockport, 14094. Children and their families served by Bornhava are representative of a wide socioeconomic spectrum. Most of our children and their families live in the City of Buffalo and its surrounding suburbs.

Bornhava is a 501(c) (3) not-for-profit agency incorporated under the laws of the State of New York and is governed by a Board of Directors consistent with the provisions of our by-laws and articles of incorporation

Bornhava is approved by the New York State Education Department to provide special education services and programming pursuant to the provisions of (Section 4401 & Section 4410) of the New York State Education Law and approved by the New York State Department of Health to provide early intervention services pursuant to the provisions of Title II-A of Article 25 of the New York State Public Health Law. Bornhava is subject to the following additional laws and regulations:

- Federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and regulations there under (34CFR Part 99); and
- Individuals with Disabilities Education Improvement Act (IDEIA) and regulations (under NYS 34CFR Part 300).

In accordance with the regulations of the New York State Education Department (SED) and the New York State Department of Health (DOH) as well as the terms of established contracts with several counties and school districts, Borhava provides the following educational and therapeutic services:

- EI (Early Intervention) services including center based and home based
- Preschool / special education programs and services including center based, SCIS (Special Class in Integrated Setting), SEIT (Special Education Itinerant Services)
- Evaluations
- Counseling and Family Training
- Occupational, Physical and Speech Therapy

Additionally, Bornhava maintains Day Care certification.

## **II. Bornhava's Mission / Vision / Core Values Statement**

### MISSION

Bornhava provides a home-like, loving and play-based environment to educate and nurture young children with differing abilities and to strengthen their families. Bornhava values our commitment to excellence, support for individual growth and dedication to building a foundation for our children's future.

### VISION

Bornhava will continue to be recognized as a high quality, innovative birth to five program that uses best practices and a multi-sensory approach to support our children in leading successful lives.

### CORE VALUES

- A commitment to excellence
- Support for individual growth
- Dedication to building a foundation for our children's future
- Welcoming, home-like, and family-centered environment

## **III. Purpose of a Corporate Compliance Plan**

As a recipient of federal Medicaid funding Bornhava is required to have a Corporate Compliance Plan that guides an organizational culture that embraces the values that are inherent in the provision of high quality services for special-needs children birth to 5 years of age. This Corporate Compliance Plan guides the management and the operation of programs, activities and transactions in accordance with the highest business, ethical and moral principles. Each employee, member of the Board of Directors, independent contractor, volunteer, intern or student teacher (collectively referred to as "those affiliated with Bornhava") contributes to enacting these principles by conducting themselves and any business activities for the agency with integrity and high ethical standards. It is the agency's premise that a comprehensive compliance plan helps to achieve consistency in ensuring that anyone affiliated with the agency embrace the concepts and principles detailed here.

This plan is intended to ensure a work environment where all members of the Bornhava community are able to identify and prevent fraud, abuse and unethical conduct. It provides a means for reporting, investigating and resolving issues of concern as they pertain to corporate to corporate compliance and the functioning of the agency, ensuring that there is full compliance with any applicable laws and the regulations that govern us as established by the governing bodies who provide oversight.

## **IV. Corporate Compliance Plan**

### Overview

Bornhava has adopted and implemented this plan consistent with the provisions of Title 18 NYCRR Part 521 in order to lessen the possibility of inappropriate, unlawful or unethical activities and to have a process established for the resolution of any identified compliance concerns. In accordance

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with the guidelines provided by the New York State Office of the Medicaid Inspector General (OMIG) the purpose of this plan is to:

- establish and implement written compliance policies and procedures that describe and that describe compliance expectations for ethical conduct as embodied in the “Code of Conduct”
- ensure the designation of a specific employee as the Corporate Compliance Officer who is responsible for the compliance program operation and the Corporate Compliance Committee that is established by this plan
- establish ongoing training and education regarding compliance for employees the Board of Directors and all others who are affiliated with the program
- develop and encourage open, effective lines of communication for the reporting of compliance concerns and a process for providing a timely response
- ensure that there are effective lines of communication for the reporting of any real or perceived compliance concerns, that allows for the anonymity of the reporter and follows an established process for the investigation of such
- ensure that there are disciplinary policies that encourage good faith participation in the compliance program by everyone and reinforces a policy of non-intimidation and non-retaliation for the good faith reporting of any compliance concern
- ensure that “Whistle-Blower” protections are in place for anyone reporting a concern
- conduct routine internal monitoring and auditing to identify potential Medicaid compliance risk areas

### **Implementation of the Plan**

The Board of Directors has adopted Bornhava’s Corporate Compliance Plan to comply with all applicable laws, regulations and ethical standards. A sincere commitment by all who are affiliated with Bornhava is essential to support compliance efforts, maintain quality service and establish a positive culture for the work environment.

All individuals affiliated with Bornhava shall be provided with a copy of this Plan or have access to such and shall provide written acknowledgement of having received this and that they understand their need to comply with its contents. It is everyone’s obligation to identify and report issues of unethical conduct or compliance concerns and to direct any questions or concerns about the plan to the Corporate Compliance Officer or any member of the Corporate Compliance Committee.

## **V. Code of Conduct and Ethics**

### **Overview**

Bornhava has established a clearly articulated “Code of Conduct and Ethics” policy to ensure an orderly, safe and productive work environment for everyone. Clear ethical principles and the exercise of good judgment guide how we collaboratively work with each other and the students and families we serve.

Bornhava embraces the New York State Education Department’s (NYSED) “New York State Ethics for Educators” and the National Association for the Education of Young Children (NAEYC) “Code of Ethical Conduct and Statement of Commitment” which direct that everything we do in our role is intended to further the healthy development and welfare of young children. It is required that

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everyone affiliated with Bornhava maintains the highest ethical standards with the people we work with and those that we serve.

This policy is designed to be clear, concise and easily understood to enhance its effectiveness. It has been approved by the Board of Directors and is reviewed periodically to determine what, if any, modifications or changes are necessary to assure its continued effectiveness.

This policy applies to everyone affiliated with the organization. It elaborates upon and supplements, but does not replace, any obligations that otherwise exist under law or regulation, as well as the policies and procedures of applicable governmental agencies and as provided in Bornhava's employee handbook. A copy of the Code of Conduct and Ethics policy can be found in the Policy & Procedures Manual. Essential elements of the policy are:

**Truthfulness** - All individuals affiliated with Bornhava are expected to be truthful at all times demonstrating honesty, integrity and ethical principles. This includes, but is not limited to, truthfulness in completing internal and external hard-copy and electronic documents and reports on behalf of Bornhava, as well as, in oral communications both with all other staff, students and parents and anyone outside of the agency while acting on behalf of Bornhava. The ethics of truthfulness must be reflected in all activities in which individuals associated with Bornhava engage.

**Student Record Keeping** – “Student Records” mean any file (hard copy or electronic), that may include: evaluations, reports, letters, meeting minutes, memorandum, inter and intra-office communications, notes of any type including those regarding an oral conversation, charting, graphing and visual representation of any type.

**Confidentiality** - Bornhava will protect the confidentiality of all its children's information and records and ensure that they are treated in a confidential manner. All such information shall be treated with discretion, even internally. All disclosures of such information, even to the child's parent or guardian or other members of the child's care giving team, shall be limited to the information necessary to disclose as required by the purpose of the disclosure, and shall be at all times within the limits of applicable laws and regulations, Bornhava's policies and procedures. Accordingly, all individuals affiliated with Bornhava are responsible for ensuring the confidentiality of all personally identifiable information in all records as defined above, consistent with the provision of FERPA and other applicable provisions of law governing the confidentiality of records.

Specifically, the Corporate Compliance Officer and all Administrators shall:

- be responsible for ensuring the confidentiality of personally identifiable information
- ensure that all records containing personally identifiable information are maintained in secure locations
- ensure that when records contain information about multiple children, a parent who requests access to his/her child's records only receives the record(s) pertaining to that child/family
- maintain a record of any individual who accesses children's records and the purpose for which the record was accessed (with the exception of the parent, employees of the school district, program providers, State Department of Health, New York State Education Department and/or OPWDD staff or designee)
- ensure assure that all individuals affiliated with Bornhava are informed about and are required to adhere to the confidentiality policies and procedures

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- adhere to all legal requirements that protect children’s records containing sensitive information (such as sexual or physical abuse, HIV status, treatment for mental illness, the child’s parentage, etc.)
- ensure the confidentiality of all information maintained in an electronic format
- contact the New York State Department of Health, Division of Legal Affairs, Bureau of Medicaid Law at (518) 408-1495, as directed by guidance documents governing confidentiality, should any questions arise whether documents containing Medicaid identifying information may be released.

**Legality** – Bornhava is committed to conducting all of its affairs in accordance with applicable federal and state laws and regulations. Guidance resources include but are not limited to Health & Human Services (OIG/HHS), the New York State Developmental Disabilities Planning Council, the American Speech and Hearing Association (ASHA), American Occupational Therapy Association (AOTA), American Physical Therapy Association (APTA), the National Association for the Education of Young Children (NAEYC) and the Developmental Disabilities Alliance of WNY (DDAWNY). Through these resources, Bornhava remains current with emerging issues, applicable policies and changes in laws and regulations which govern our operations.

### **VI. Avoidance of Conflict of Interest**

The interests of Bornhava and the children and families we serve take precedence over the personal interests of any individual affiliated with the agency. Each affiliated person shall avoid even the appearance of any conflict of interest, whether or not such a conflict in fact exists. A conflict of interest exists when there is any motivation or incentive for anyone to act in a manner inconsistent with the best interest of Bornhava.

#### **Duty to Disclose**

Each individual affiliated with Bornhava must disclose any conflict of interest, financial or otherwise, whether or not such a conflict in fact exists or whether even an appearance of a possible conflict exists. Forms designed to capture this information and provide the opportunity to disclose all material facts to the Agency’s Corporate Compliance Officer are completed annually by all individuals previously indicated in accordance with Bornhava’s “Conflict of Interest” policy.

#### **Addressing a Conflict**

Upon completing a review of the material facts for any circumstance that may be of concern, Bornhava’s Corporate Compliance Officer may conduct, or have conducted, an investigation of possible alternatives to the specific transaction, activity or arrangement that is of concern. Exercising due diligence, the Corporate Compliance Officer shall ascertain whether the current concern does create an actual conflict of interest. All reported real or potential conflicts of interest will be reviewed with the Executive Director in consideration of possible action.

#### **Violations**

Provisions in the Conflict of Interest policy that direct the avoidance of any conflict of interest shall supplement any law, rule, regulation, guidance or directive from the New York State Department of Health and any other regulatory agency including the New York State Education Department. The following guidance documents are available for review (Compliance Plan Appendix):

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- “Statement on the Governance Role of a Trustee or Board Member”, New York State Education Department, Sept. 2010

- “Internal Controls and Financial Accountability for Not-for-Profit Boards” – New York State Attorney General’s Office, April, 2015

### **VII. Quality of Services**

All individuals affiliated with Bornhava shall pursue the highest possible quality in the provision of services to the children and families we serve. Each individual will adhere to the highest level of professionalism in the conduct of business with and on behalf of Bornhava and shall undertake all necessary effort in the successful implementation of a child’s IFSP or IEP and the services described therein. Each person will conduct themselves with courtesy and respect in all activities associated with Bornhava and shall work to ensure the highest level of satisfaction with the services provided. Satisfaction can be measured through communication and dialogue with the child’s parent and other responsible parties.

All individuals previously listed shall exercise prudent degrees of care, diligence and skill as appropriate to their responsibilities and shall use good judgment in the performance of all activities associated with and on behalf of Bornhava.

Policies have been established to ensure the maintenance of a healthy and safe environment for everyone at Bornhava. Specific policies and procedures governing the quality of care are available in Bornhava’s Policies and Procedures Manual.

### **VIII. Non-Retaliation / Non-Intimidation**

Everyone’s good faith participation in this Compliance Plan is protected by the development and effective implementation of policies of non-intimidation and non-retaliation. Accordingly, no one shall intimidate or retaliate in any way against any individual acting in accordance with the Corporate Compliance Plan and associated policies.

#### **Prohibitions**

More specifically, and consistent with the provisions of section 740 of New York State Labor Law, no one affiliated with Bornhava may act in a retaliatory manner (by dismissing, suspending or demoting, or the use of other adverse employment action affecting the terms and conditions of employment) against anyone because such individual:

- Discloses or threatens to disclose to a person in authority or to a public entity an activity, policy or practice of Bornhava that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the health or safety of anyone, which also includes any form of fraud; or which otherwise constitutes improper quality of care;
- Provides information to, or testifies before, any legal entity conducting an investigation, hearing or inquiry into such violation of a law, rule or regulation of Bornhava; or

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- Objects to or refuses to participate in any such activity, policy or practice which is a violation of a law, rule or regulation or otherwise reasonably believed to constitute improper quality of care

There cannot be any form of retaliatory action or any form of intimidation against anyone who in good faith immediately brings to the attention of an Administrator their awareness or suspicion of an activity, violation of a policy or practice that is in violation of law, rule or regulation, or otherwise reasonably believes that there is a situation that constitutes an improper quality of care. (A copy of the “Non-retaliation / Non-Intimidation” policy can be found in the Agency’s Policy & Procedures Manual.)

### **Procedure**

Anyone who believes that they have been the subject of a retaliatory personnel action or have been intimidated by anyone shall report this immediately to the Corporate Compliance Officer. The Officer shall inform the Executive Director of this concern (unless the Executive Director is the cause for the complaint) and will conduct a timely, thorough and objective investigation. The allegation will be addressed promptly by the Compliance Officer utilizing the assistance of any internal or external resource deemed to be necessary or appropriate. All documents and relevant materials pertaining to the claim shall be kept confidential and shall not be included in the personnel files of the employee making the claim. The Compliance Officer shall report their findings that will include the frequency and types of alleged intimidation and retaliation to the Executive Director and/or the President of the Board of Directors for a determination of how the person or persons who committed any act of intimidation or retaliation shall be disciplined and addressed. Anyone who believes that they have been the subject of a retaliatory personnel action may initiate such legal actions and proceedings and request relief to the extent provided in section 740 of the New York State Labor Law (See: Appendix).

## **IX. Corporate Compliance Officer**

**Overview** - The Corporate Compliance Officer is responsible for the successful implementation of Bornhava’s Corporate Compliance Plan and the promotion of a culture of excellence and professional integrity. The Compliance Officer oversees the activities of the Corporate Compliance Committee, monitors internal audits, and provides education and training on the Corporate Compliance Plan for anyone affiliated with Bornhava.

**Compliance Oversight** - While responsibility for compliance rests with everyone affiliated with Bornhava. Managerial oversight for compliance rests with the Compliance Officer and Compliance Committee with the ultimate authority residing with the Board of Directors. A complete Compliance Officer Job description can be found in the Agency’s Policy & Procedures Manual in the “Job Description” section.

**Compliance Officer** – Some of the Compliance Officer’s duties and responsibilities are:

1. Provides guidance to everyone affiliated with Bornhava on how to meet Corporate Compliance obligations.

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2. Attends educational conferences, meetings or seminars designed to enhance the understanding of the effective development and implementation of the compliance program and identification and management of risk areas.
3. Promotes the necessary compliance and adherence to Bornhava's Code of Conduct and all applicable rules, regulations and laws.
4. Facilitates communication and activities throughout the organization on compliance related issues.
5. Monitors federal and state agency websites (e.g., OIG and OMIG) for guidance, reports and other publications indicating potential areas of weakness or ways to enhance compliance.
6. Accesses resources within and outside of Bornhava to effectively design, implement and monitor the compliance program. Examining all pertinent information about the organization and operations to assess compliance and to identify possible areas of weakness. Accordingly, the Compliance Officer shall have access to all relevant documents, systems and records necessary to fulfill their obligations and duties.
7. Secures support from the Executive Director and the Board of Directors for compliance initiatives including incentivizing the reporting of compliance concerns and assuring that there is no retaliation or intimidation for reporting concerns.
8. Revises the Corporate Compliance Plan and Program, including the Code of Conduct, as deemed necessary and appropriate and to reflect changes in applicable laws and regulations.
9. Accesses outside counsel and consultants where necessary and appropriate with prior approval of the Executive Director and / or the Board of Directors if a financial cost is accrued.
10. Develop and ensure the effective implementation of a confidential system through which anyone may express compliance concerns, being assured that those concerns will be addressed.
11. Identifies patterns or issues related to compliance
12. Investigates expressed concerns of compliance
13. Substantiates the fulfillment of their duties and responsibilities through appropriate documentation.
14. Reports regularly – at a minimum monthly - with the Executive Director regarding matters of Compliance.
15. Meets at a minimum twice a year with the Board of Directors at which time an update on compliance activities being undertaken will be reviewed, annual training will occur and an opportunity for confidential dialogue minus administrative staff will take place.

### **Corporate Compliance Committee**

The Corporate Compliance Committee shares oversight responsibilities with the Compliance Officer of Bornhava's Corporate Compliance Plan and provides support to the implementation of the compliance program.

**Role of the Corporate Compliance Committee:** The Corporate Compliance Committee is responsible for reviewing the status and effectiveness of the Compliance Plan and supporting Program, presenting and discussing potential compliance concerns and issues, and recommending changes to the Compliance Plan, and Program, as well as related policies. Any concerns that staff may have about the Corporate Compliance Committee members or the Committee's decisions may be brought directly to the Executive Director or the Board of Directors.

**Membership of the Corporate Compliance Committee:** The Committee consists of the Executive Director, Chief Financial Officer, Human Resources Director, Program Director, and a member of the

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Board of Directors and is chaired by the Corporate Compliance Officer. Ad hoc members are invited to participate per topic relevance.

**Meeting Schedule:** The Corporate Compliance Committee shall conduct regular meetings, maintain a written record of its proceedings and ensure that updates are provided to the Board of Directors on a regular basis. Meetings will be scheduled quarterly during the months of October, January, March / April (depending on the scheduling of the Spring Recess) and June.

### **X. Education and Training**

#### **Overview**

The effectiveness of the Compliance Plan is further enhanced by the provision of ongoing periodic training to all employees and affiliated individuals to ensure accurate, reliable and consistent information which will lead to improved understanding and corporate compliance.

1. All employees during their initial orientation will receive information and an overview of the Corporate Compliance Plan and related policies.
2. All employees, members of the Board of Directors and those affiliated with Bornhava will receive ongoing training regarding the Plan that includes the following components:
  - training shall address identified or potential weaknesses in current procedures including the development and implementation of corrective action plans when necessary
  - training shall explain the importance of complying with applicable laws, rules and regulations and convey Bornhava's commitment to compliance and high standards of integrity
  - training shall include legal requirements relating to the False Claim Act and related laws (See: Appendix)
  - training shall include the review of disciplinary policies which encourage good faith participation in the compliance program and the assurance of non-retaliation / intimidation for reporting compliance concerns
  - training shall occur during regularly scheduled staff meetings, staff development days and through the use of email communication, etc.
3. In accordance with daycare Regulations and Policies, Bornhava will provide the necessary 30 hours of training every two years of the four year daycare licensing period. Attendance at training sessions is mandatory and will include the following topics:
  - principles of childhood development
  - nutrition and health needs of infants and children
  - child day care program development
  - safety and security procedures
  - business record maintenance and management
  - child abuse and maltreatment identification and prevention
  - statutes and regulations pertaining to child day care

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- statutes and regulations pertaining to child abuse and maltreatment
- “Education and Information, Diagnosis on the Identification of “Shaken Baby Syndrome”

All training shall be documented by sign-in sheets or by certificates of participation from any other presenting agency, if it has not been provided by Bornhava. A cumulative record of each staff members training is maintained to ensure that the required number of hours of training is being met.

### **XI. Compliance Concern Reporting and Responding**

#### **Overview**

It is Bornhava’s sincere desire to do its best to efficiently and openly address concerns pertaining to compliance. All of Bornhava’s Administrators maintain an open door policy for the discussion and resolution of concerns related to compliance.

#### **Communication Lines to the Compliance Officer**

The Compliance Officer and Committee will be fully accessible to everyone who is affiliated with Bornhava. The reporting of compliance concerns is encouraged through the conspicuous posting of the Compliance Officer’s contact information, the provision of opportunity for discussion at staff meetings and other means of communication.

1. All individuals affiliated with Bornhava shall report any suspected or known violation of law, regulations, agency policy or the Plan itself. Initially, such report can first be made to the Program Director or Executive Director, who shall then convey the report to the Compliance Officer. If such report is received orally, the report shall be made to the Compliance Officer in writing and shall identify the individual originally having made the report, unless such individual has requested anonymity. Bornhava will make every effort possible to honor all requests for confidentiality to the extent reasonably possible.

2. If, circumstances exist that anyone wishes not to make a report directly to his or her direct supervisor, they may:

- (a) make a report directly to the Compliance Officer or a member of the Compliance Committee
- (b) make a report via the Compliance Officer’s mailbox
- (c) submit an anonymous written report via the “Compliance Lock Box” located near the staff mailboxes or
- (d) contact the Compliance Officer on his personal cell phone or home phone

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3. The Compliance Officer will document in writing any expressed compliance concerns that are received and will report them (not the person reporting if unknown or having requested anonymity) to the Executive Director and to the Compliance Committee.

### **Responding to Compliance Concerns**

#### **Overview**

Bornhava has developed the following procedures to address and respond to a reported concern or suspected violation of policies, laws, rules and regulations. Compliance concerns will be investigated and addressed promptly and completely and action will be taken to prevent further occurrences.

1. Upon the receipt of a report of a concern from any source, the Compliance Officer will investigate as deemed necessary in order to determine if there is a basis to conduct further inquiry and as appropriate will share the concern with the Executive Director. The Executive Director may become involved in the designing of an investigation and/or assist in securing additional resources necessary to conduct an investigation. In the event involvement by the Executive Director would not be appropriate the Compliance Officer would directly contact the President of the Board of Directors. An investigation may be conducted by the Compliance Officer, an outside expert or legal counsel as approved by the Executive Director or the Board President.

2. Bornhava will safeguard the confidentiality and anonymity of the reporter's identity to the greatest extent reasonably possible.

3. Results of any investigation will be documented and if substantiated, corrective actions will be taken. Modifications may be made to Bornhava's Policies and Procedures to prevent a re-occurrence if needed.

4. The Compliance Officer shall provide a comprehensive written report inclusive of findings and recommendations to the Executive Director and/or President of the Board of Directors. The Executive Director and Board President will determine if any further action is to be taken, including, but not limited to, any required disclosures to any government agency.

#### **Practices that Encourage Participation**

Bornhava's Corporate Compliance Plan encourages the meaningful implementation of the plan by everyone affiliated with Bornhava by:

- Evaluating each employees familiarity with the compliance plan as a part of their annual evaluation
- Training and educating everyone who is affiliated with Bornhava, on compliance issues, expectations and the compliance program's operation. Such training shall occur periodically and shall be made a part of the initial orientation for everyone

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- Establishing and maintaining communication lines to Bornhava’s Corporate Compliance Officer that are easily accessible allowing for concerns to be reported in good faith, anonymously and confidentially

### **XII. Disciplinary Policies and Whistle-Blower Protection**

#### **Overview**

Each individual regardless of their affiliation with Bornhava is responsible for guaranteeing that their conduct fully complies with Bornhava’s Corporate Compliance Plan and its related policies and procedures. Additionally, any employee, member of the Board of Directors or anyone otherwise affiliated who fails to detect and/or report any violation of the plan or policies are in violation of Bornhava’s policy, and possibly applicable law. Violations will be addressed in accordance with the “Progressive Discipline Policy” (see Policy Manual). Any violation by a contractor could be a basis for the termination of the contractor’s relationship with Bornhava.

1. The following shall be deemed violations of Bornhava’s policies and shall warrant disciplinary action:

- (a) violating applicable laws, regulations or the Corporate Compliance Plan while conducting the affairs of Bornhava
- (b) encouraging, facilitating, or permitting actively or passively any violation of applicable laws, regulations or the Plan by another individual while conducting the affairs of Bornhava
- (c) failing to report any suspected violation of applicable law, regulation or the Plan by anyone conducting the affairs of Bornhava
- (d) failing to cooperate in any investigation undertaken by the Compliance Officer or agency administration in accordance with the Plan
- (e) encouraging, directing, facilitating or permitting non-compliant behavior; and
- (f) retaliating against or harassing in any way any individual making a report, cooperating with any investigation, or otherwise acting in accordance with the Plan.

2. No individual making a good faith report of any concern pursuant to the Plan shall be subject to any form of discipline or adverse action, irrespective of the outcome of the Compliance Officer’s investigation of same, assuming that they did not have any active participation in these activities.

3. All sanctions imposed under the disciplinary policies shall be consistent with past practices for similar violations.

#### **Whistle-Blower Protection**

Any employee, member of the Board of Directors or anyone affiliated with Bornhava who in good-faith reports a compliance concern or the actual violation of the Corporate Compliance Plan or related policies or governing regulations is afforded protection from any retaliation or harassment by anyone associated with Bornhava.

### **XIII. Compliance Risk Areas**

Bornhava's compliance risk areas, listed as follows, are monitored on an annual basis, or more often, if the Compliance Officer determines that the need for more frequent review exists. This monitoring consists of internal and / or external auditing and evaluation of any potential for non-compliance as a result of such self-evaluations as the Compliance Officer deems appropriate:

- Billing for services
- Receiving of payments
- Quality of care
- Governance
- Credentialing
- Mandatory reporting
- Any other risk areas that are or should be identified with due diligence, as they relate to Bornhava's operations.

### **Routine Identification of Risk Areas**

The Compliance Officer shall, in consultation with the Chief Financial Officer, Human Resources Director, Program Director and other such individuals as deemed appropriate, and upon review of applicable guidance materials from the Office of Medicaid Inspector (OMIG) and other governing entities, routinely identify such compliance risk areas which shall be assessed based upon review of applicable governmental work plans, audits and internal and external reviews. The Compliance Officer shall conduct, or have conducted, internal audits with sufficient frequency and thoroughness to effectively identify non-compliance according to an audit plan which:

- Is developed at least annually, and revised as necessary
- Reviews any existing compliance data from the previous year (audits, statistics, etc.) to identify high risk areas for the coming year (trend tracking)
- Is a review of any current corrective action plan(s) to confirm compliance and

Audit findings will be analyzed to identify non-compliance through comparison with prior audits and identification of trends that have been identified in advance of the audit. Audit results will be shared with the Executive Director, Compliance Committee and the Board of Directors.

### **Provisions Specific to Billing**

In furtherance of Bornhava's Code of Ethics which demands integrity in all business matters, great attention must be given to protocols governing the billing for services and claims for reimbursement as areas of greatest risk for fraud or non-compliance.

Accordingly, the following components are integrated into the Code of Conduct to which each employee, officer, director and anyone affiliated with Bornhava is bound and shall be the focus of the Compliance Officer's compliance review:

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- Anyone who performs billing responsibilities must take reasonable precautions to confirm that their work is accurate, timely and in accordance with all applicable laws, rules and regulations
- No one shall submit any claims for payment or reimbursement that is false, fraudulent, inaccurate or fictitious; and
- Only services identified in a child's IFSP/IEP shall be billed.

Anyone who has any compliance concern regarding any billing component or procedure shall report such concern to the Corporate Compliance Officer.

### **Provisions Specific to Credentials**

In the furtherance of Bornhava's Code of Conduct, the appropriate credentialing and/or licensure of all employees and consultants shall be verified and confirmed to be consistent with applicable laws, rules and regulations and municipal contracts. These are reviewed annually to ensure that all certificates remain valid. A fingerprint and Staff Exclusion List (SEL) review is conducted through the New York State Justice Center on anyone who will have regular or substantial unsupervised or unrestricted contact with students prior to their start at Bornhava. An on-line, monthly "Exclusion Verification" process is completed on all employees, members of the Board of Directors and anyone affiliated with Bornhava utilizing the resources of the Office of Medicaid Inspector General (OMIG), Health and Human Services/ Office of Inspector General (HHS/OIG) and the System for Award Management (SAM) to ensure that no one should be excluded from the delivery of services in the eyes of these agencies.

## **Compliance Plan Appendix**

A comprehensive body of law has been developed to prevent Medicaid fraud or abuse by programs that are supported by Medicaid funding and to ensure that quality services provided. This body of law includes, but is not limited to:

- ✓ The Federal False Claims Act (summary);
- ✓ Federal administrative remedies for false claims and statements (31 U.S.C. §3801 et seq);
- ✓ Title 18 of the Codes, Rules & Regulations of the State of New York, Part 521
- ✓ New York State Private Sector Whistleblower Law – NY Labor Law 740, 741
- ✓ New York State Code of Ethics for Educators, State Education Department
- ✓ NAEYC – Code of Ethical Conduct and Statement of Commitment
- ✓ Dept. of Health Memorandum 2003-1 “Guidance on Early Intervention Program Records”
- ✓ Statement on the Governance Role of a Trustee or Board Member
- ✓ Internal Controls and Financial Accountability for Not-for Profit Boards
- ✓ Corporate Responsibility and Corporate Compliance- The Office of Inspector General

### **Related policies are available in Bornhava’s Policy and Procedures Manual:**

- Code of Conduct and Ethics
- Disciplinary Policy
- Non-Retaliation Policy
- Corporate Compliance Committee
- Confidentiality of Children’s Information
- Excluded Medicaid Provider Verification
- Medicaid Risk Assessment
- Reporting of Compliance Concerns and Non-Retaliation
- Investigation and Resolution of Compliance Concerns

### **Additional References:**

- Employee Handbook
- New York State Office of Child and Family Services Daycare Review & License Renewal

To obtain further detailed information or guidance about Bornhava’s Compliance Program, Code of Conduct and Ethics, policies and procedures, applicable laws and regulations, please contact your supervisor, the Compliance Officer or any member of the Corporate Compliance Committee.