

Topic: Employee and Agency Response to Governmental Investigations	Department: Entire Agency
Original effective date: 3/11/02	Last revision date: 8/23/24
Owner: VP for Quality and Compliance	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): SSA sec. 1936; SSA sec. 1902(a); 45 CFR 164-506(c)(4)(ii); 18 NYCRR 517; 18 NYCRR 504.3	
Related documents/Links: Please see references within the document	

Policy: It is the policy of The Arc of Monroe that business, administrative and support functions promote personal and organizational outcomes; and sound fiscal practices.

Additional Information: This policy applies to all persons who are affected by the agency’s risk areas (to the degree that they are so affected) including our employees, the CEO and other senior management, managers, contractors, agents, subcontractors, independent contractors, vendors consistent with the “Vendor Management Policy”, the Board of Directors, and Board committees; hereafter referred to as “affected parties.” For the purposes of this policy, the term “staff” refers to employees of The Arc of Monroe.

Both the federal and New York state governments have the right to conduct investigations here at The Arc. These could occur for a variety of reasons including but not limited to the following:

- To ensure we are compliant with regulatory requirements
- In response to a complaint or alleged misconduct, such as fraud; or any evidence of the same

PLEASE NOTE: This does NOT include routine reviews, surveys or audits such as OPWDD’s Division of Quality Improvement recertification surveys, or investigations conducted by the Justice Center in response to allegations of abuse. This policy is meant to reflect unusual and non-routine investigations only.

The Arc and its affected parties are required to cooperate with governmental investigations, as indicated within this policy. This is designed to provide guidelines for affected parties on expectations we have as an agency if an investigation were to occur.

While we may be given some warning that an investigation is going to occur, these could also happen without any warning. In this latter case, the first we might know about an investigation is when investigators show up.

Investigators or other governmental officials may present any of the following (not fully inclusive) either prior to or at the time of the investigation:

- An investigative demand letter
- A subpoena
- A search warrant

For investigations of a specific location, program or the whole agency, these would most likely be given to the receptionist upon their arrival at the facility. Subpoenas or other court orders that are for a specific person only will generally be given to that person directly.

PLEASE NOTE: Anything that affected parties members say to investigators should be considered on the record, even if the conversation seems casual. This is a tactic sometimes used by investigators: to engage in what seems like a very casual chat with staff so they will lower their guard and be more forthcoming. Any conversation with an investigator, no matter where it occurs or how casual it may appear, should be viewed the same as a formal interview.

Affected parties are prohibited from doing any of the following during an investigation:

- Removing, hiding, withholding, altering or amending any information the investigators wish to see
- Creating any information they wish to see
- Destroying any information they wish to see
- Lying to an investigator about anything related to the investigation. Staff should always be honest with an investigator.
- Convincing others to lie to an investigator
- Intimidating or retaliating against others because of their role, participation or willingness to assist in an investigation
- Asking, encouraging or demanding that others respond in a certain way to the investigator
- Doing anything illegal

All document destruction will cease for the duration of the investigation for all affected programs.

Procedure	
Task:	Responsible party:
General Guidelines:	
1. All affected parties should remain polite and professional in all dealings with government agents or investigators.	Affected parties
2. If an affected party is informed ahead of time of a forthcoming audit, they should inform their supervisor, manager or agency contact immediately.	Affected parties
3. The supervisor or manager should ensure that the investigation is communicated to leadership including director, senior director, vice president, CEO, COO, CFO, CHRO, and VP for Quality and Compliance, as appropriate.	Managers
4. If the investigation is imminent or the investigators are present on site, staff should ask to see the investigators' official IDs and then notify their manager immediately. If necessary, staff can have the investigator speak with one of the parties listed above in bullet 3.	Staff
5. Upon being informed, managers (or designees) should notify the following immediately: *The CEO: 672-2233	Managers

<p>*The COO: 271-0660 x1014 *The CFO: 672-2220 *The Chief HR Officer: 271-0660 x1653 *The VP for Quality and Compliance: 672-2234 *Their Director and Sr. Director *Their Operational VP *AFTER HOURS ONLY – AOD2: 953-4479</p>	
<p>6. Member(s) of leadership will meet with the investigators as soon as possible. Members of program management might also be included. Legal counsel may be informed and included when appropriate.</p>	<p>EMT; leadership; managers</p>
<p>7. If investigators request that affected parties stop working (including stopping typing, filing, writing, calling, texting, etc.), affected parties are required to comply immediately. They do not need to wait until management arrives before doing so.</p>	<p>Affected parties</p>
<p>8. Investigators should be asked to wait to look at anything until they can talk to one of the people listed above (in step 5).</p>	<p>Staff greeting the investigator or manager</p>
<p>9. An investigator cannot search any Arc property without a search warrant unless we give them permission. This includes properties we lease.</p> <p>Staff or other affected parties are not authorized to give permission for a search if they don't have a search warrant. Only the CEO, COO, CFO or CHRO (the Executive Management Team or EMT) can give that permission.</p>	<p>Staff, affected parties; EMT</p>
<p>10. If the investigators have a search warrant, they can begin their search. If leadership has not spoken with them yet, staff should ask again if they could please wait until that happens. If they refuse to wait, then staff should not stop them and should cooperate as necessary.</p>	<p>Staff</p>
<p>11. During a legally-authorized search (such as with a search warrant), investigators may both review information and seize it. This may include taking hard copy documents, flash drives, hard drives, computers, cell phones, etc. This could include both agency and personal items based on the scope of the warrant.</p>	<p>Investigators</p>
<p>12. The following will occur during a search under the oversight of EMT or designee: *EMT will identify a person who is the main contact for the investigator *A member of leadership will be designated to go with the investigators to document everything the investigators look at, and everything they say to or request from staff (unless in the context of a private interview). *If investigators want to take copies of information, we will assist in making those copies for them. If they demand to take originals, we will make a copy for our records and attach a note indicating the date and time the original was taken, by whom (person and agency) and why. If they refuse to allow us to make copies of originals, a member of EMT should be notified and the investigator should be asked to remain until they speak with them.</p>	<p>EMT; designated member of leadership</p>

<p>*At the end of the search, the investigator(s) should give the agency contact person a list of everything they are taking – including an accounting of any copies made.</p> <p>*If the investigator demands to take computers, we will provide the decryption code, and document the serial numbers of the computers, the date and time they are being taken, by whom (person and agency) and why. We will ask if we can make a copy of the files contained on the computer before they secure the computer (under their supervision, if necessary). The investigator(s) will provide a receipt for them. If they refuse to do so, a member of EMT should be notified and the investigator should be asked to remain until they speak with them.</p> <p>*If investigator asks staff where information is and the staff knows, the staff is obligated to share that information with the investigator.</p>	
<p>13. Investigators might ask to speak with or interview staff or other affected parties. Staff can refuse to answer other questions until such time as they have legal counsel available and present with them. Other affected parties can refuse to answer questions.</p>	<p>Staff, affected parties</p>
<p>14. Staff should remember:</p> <p>*Investigators can't threaten staff into talking with them. Staff are not required to speak with investigators immediately; they can schedule a time later. They can also refuse to be interviewed altogether. Staff are only required to speak with investigators if a court orders them to do so.</p> <p>*If staff chooses to speak with an investigator, they should let the agency audit rep know as soon as possible.</p> <p>*Staff can have someone with them during an interview, including legal counsel which The Arc will provide at no cost. Staff are permitted to hire their own attorney at their own expense if they prefer.</p>	<p>Staff</p>
<p>15. Anytime staff talk with investigators, whether during a formal interview or during an incidental conversation, they should do the following:</p> <p>*Always tell the truth.</p> <p>*If they don't know something, say they don't know something.</p> <p>*If they aren't sure about something, say they aren't sure about something.</p> <p>*Only answer the question that is asked. If they ask a "yes/no" question, answer with a "yes" or "no". Wait for them to ask additional questions.</p> <p>*Be clear in their answers.</p> <p>*Not ramble or include extraneous information that was not specifically asked</p> <p>*Be clear as to whether they saw something first hand or if they learned it from someone else.</p> <p>*Not speculate or guess.</p> <p>*Let the agency rep know as soon as they are done.</p>	<p>Staff</p>
<p>16. Staff should refrain from talking about the investigation with other staff or affected parties without management permission. This will enhance the integrity of the investigation and inhibit the likelihood that rumors might spread.</p>	<p>Staff</p>

17. Staff should report to a member of EMT or Marketing and Communication if they are approached by the media about the investigation. Staff are prohibited from talking about the investigation or any ongoing agency issue without express permission from a member of EMT or Marketing and Communication. This includes off the record conversations.	Staff
18. The agency’s crisis communication plan will be implemented as appropriate in regards to the media.	VP for Quality and Compliance; Marketing and Communication
19. The CEO or their designee will let the Board chairperson and The Arc of NY know about the investigation.	CEO (designee)
20. The EMT will monitor the investigation and will keep the VP for Quality and Compliance informed (and vice versa).	EMT, VP for Quality and Compliance
21. The EMT will respond to the investigation findings with the support and assistance of legal counsel if/as appropriate.	EMT, Lawyers
Managers:	
1. Have a responsibility to understand the key components of this policy and their roles in it.	Managers
2. Are required to support their staff in following the elements listed in this policy.	Managers
3. Cooperate fully with both agency leadership and investigators consistent with this policy.	Managers
EMT:	
1. Have primary responsibility for managing investigations as referenced in this policy with the support of the VP for Quality and Compliance, and other members of leadership	EMT
2. Will keep the Board informed.	EMT
3. Will keep Arc of NY informed.	EMT
4. Will work with legal counsel both during and after/in response to the investigation.	EMT
5. Will cooperate fully with investigators.	EMT
VP for Quality and Compliance:	
1. The VP for Quality and Compliance acts as the agency’s Compliance Officer, as required in NYS law.	VP for Quality and Compliance
2. Has primary responsibility for administering the agency’s compliance program, and related policies and procedures.	VP for Quality and Compliance
3. Will support EMT, agency leadership, and staff throughout the course of investigations as described here; and in responding thereto	VP for Quality and Compliance

Document revision record:

Revision Date	Release Date	Reason for change	Approver
10/27/05	10/27/05	Reasons for changes not documented	P Dancer
4/14/06	4/14/06	Reasons for changes not documented	P Dancer
11/8/06	11/8/06	Reasons for changes not documented	P Dancer
5/19/08	5/19/08	Reasons for changes not documented	P Dancer
6/25/09	6/25/09	Reasons for changes not documented	P Dancer
8/6/10	8/6/10	Reasons for changes not documented	P Dancer
1/7/11	1/7/11	Reasons for changes not documented	P Dancer
8/3/12	8/3/12	Reasons for changes not documented	P Dancer
7/29/13	7/29/13	Reasons for changes not documented	P Dancer
10/24/14	10/24/14	Reasons for changes not documented	P Dancer
7/29/15	7/29/15	Reasons for changes not documented	P Dancer
5/31/17	5/31/17	Reasons for changes not documented	P Dancer
11/9/18	11/9/18	Reasons for changes not documented	P Dancer
11/26/19	11/26/19	Transitioned to new procedural format	P Dancer
8/18/21	9/8/21	Fleshed out information; added discrete sections for managers, EMT and the VP for Quality and Compliance; Added that the decryption code for any computers will be provided to investigators; and we will ask to make copies of files on computers being seized	ICC
7/18/22	7/18/22	Clarified that personal items may also be covered by a warrant and would need to be turned over to investigators; corrected typos	ICC
7/21/22	8/8/22	Defined "staff" for the purposes of this policy	ICC
2/20/23	3/15/23	Removed definition of "staff" and added definition for "affected parties," and defined those; updated terms throughout	ICC
9/13/23	9/13/23	Spelled out acronyms, changed Arc Foundation to Marketing and Communication and corrected some typos	ICC
8/23/24	9/25/24	Added minor clarifying language	ICC