

Whistleblowing in secondary education
Secondary education whistleblowing scheme



1. Introduction

Whistleblowers are receiving a lot of attention. We are becoming increasingly aware that it is in the interests of society for wrongdoings within organisations to be reported, certainly if such organisations are in the public domain. Secondary education also deserves a good whistleblowing scheme.

Therefore, the Secondary Education Good Governance Code stipulates in membership requirement 1 that the management of a secondary education institution publishes the whistleblowing scheme on its website and that the supervisory body ensures that every management body has a whistleblowing scheme and that the supervisory body ensures that the interests of a whistleblower are also actually adequately protected (clause 26 of the Code). This scheme represents an important link in the desire of secondary education institutions to optimise business processes and be transparent about this. If managers or staff make a mistake and nothing is done about it, then there is always the possibility that this is reported by a whistleblower. The whistleblowing scheme should also enable a potential whistleblower to actually sound the alarm.

Persons who report wrongdoings deserve recognition. However, practice shows that whistleblowers have a vulnerable position.

The Secondary Education Council first established a whistleblowing scheme for secondary education in 2008. This was updated in 2015 on the basis of the new Good Education Governance code. In 2016, the whistleblowing scheme was again amended as a result of the enactment of the House for Whistleblowers Act (*Wet Huis voor klokkenluiders*) on 14 April 2016 (Bulletin of Acts, Orders and Decrees 2016 - no. 147).

Right of complaint and participation dispute resolution

Within education there are various facilities which stakeholders can use when in doubt about the procedure within an institution. By means of the right of complaint (governed by Section 24b of the Secondary Education Act), parents, students and staff can complain to a complaints committee about behaviour or decisions of the competent authority or the staff employed by the school management or, on the contrary, about the lack of certain behaviour or decisions. This mainly concerns issues where personal interest comes into play. The complaints procedure is an important aspect of the quality policy to be pursued by the schools. The school receives clear signals that can assist it with the improvement of education and good performance at the school.

The Education Participation Act (WMS) offers staff, parents and students the possibility of bringing up matters concerning the school for discussion via the participation council and determining their position in this respect. Special dispute regulations are also included that allow participation councils to refer issues to a disputes committee or court.

House for Whistleblowers Act

The House for Whistleblowers Act (*Wet Huis voor klokkenluiders*) came into force on 1 July 2016. This legislation enables staff to turn to an external body (the House for whistleblowers is accommodated within the institute of the National Ombudsman) in order to:

- a. seek advice on the steps to be taken if there is a suspicion of wrongdoing;
- b. assess whether there is a report concerning suspected wrongdoing;
- c. on the basis of an application, initiate an investigation into:
 - 1°. suspected wrongdoing;
 - 2°. the manner in which the employer has behaved towards the reporter.

The possibility to access and involve the House for whistleblowers is, by law, confined to staff. Parents and students do not have this option.

¹ Evaluation of public sector whistleblowing schemes, Utrecht University School of Governance, April 2008

² see also the letter to the Lower House of the Dutch Parliament from the Ministry of the Interior and Kingdom Relations 22 May 2008

Evaluation of public sector whistleblowing schemes

Scheme for dealing with a serious suspicion of wrongdoing

Despite the provisions concerning the right of complaint and participation, a limited category of wrongdoing remains where it cannot be reasonably expected that a member of staff/student/parent makes use of the above procedures. In that case, a so-called whistleblowing scheme can be useful.

The main aim of such a scheme is:

- Combating the residual category of wrongdoing for which other schemes are inappropriate;
- In a manner that contributes to the improvement of the organisation and, to the extent possible, the rectification of the wrongdoing;
- With the least possible damage to the reporter and the organisation; with due care requirements for the reporter and the organisation;
- With legal protection against discrimination for bona fide reporters.

As mentioned, the model scheme for secondary education is based on the prevailing general social attitudes to whistleblowing. The intention is for the scheme to remove the barriers that stand in the way of whistleblowing.

The following sections cover the most important questions that determine the main outlines of the scheme (section 2), followed by a model scheme in section three.

2. The whistleblowing scheme

The most important questions concerning a whistleblowing scheme are:

1. For whom?
2. What is a wrongdoing according to the scheme?
3. Who deals with the report?

1. For whom?

The essence of a whistleblowing scheme is that it provides legal protection and – if desired – confidentiality to a member of an organisation who has grounds to believe that his position in that organisation is at stake if it becomes known that he is the person who has signalled a serious wrongdoing. It is also essential that a whistleblower deliberately violates the standards (i.e. those of loyalty, confidentiality and solidarity) in order to serve a higher standard (the need to combat a serious wrongdoing).

For education, the main question is for whom the scheme should be open: only for staff or also for students and their parents? The various model schemes make different choices in this respect. In essence, these can always be traced back to answers to the key question: who belongs to the school and how close is their relationship to the school? This memorandum assumes that students and parents are not customers, but are internal stakeholders of the school. Compare also the starting point of the WMS versus that of the WOR (Staff Councils Act), where the WMS opts to make the same provision for both staff and parents and students.

Arguing on the basis of the above-mentioned essence of the definition, students and parents also form part of the school and may occasionally have to fear for their position within that school when disclosing a wrongdoing. Their position is – as already stated – also substantially different from that of customers in a customer-supplier relationship, even though this is only the result of compulsory education and the possibilities that schools have to punish students.

The conclusion is therefore that a whistleblowing scheme in secondary education should ideally be open to:

- Staff and students;
- Parents of students.

As indicated above, as a result of the entry into force of the House for Whistleblowers Act for the staff/employees category, the possibilities have been widened to also appeal to the House for whistleblowers if there is a suspicion of wrongdoing. These rights for staff are included in the model scheme.

2. What is a wrongdoing according to the scheme?

A whistleblower stakes a lot; his own position, that of others and possibly that of the entire organisation. After all, a whistleblower believes that the wrongdoings are so serious that they cannot be resolved in accordance with the normal procedures. There is rarely a winner with

whistleblowing, there are often only losers.

As already indicated in the introduction, the use of the whistleblowing scheme is intended as a last resort, only after all other procedures have been completed or because reasonable grounds have been ignored.

It must be clear that the whistleblowing scheme only serves for serious wrongdoings or substantiated suspicions thereof on reasonable grounds. As stipulated in the scheme, the following issues, which are associated with the definition in the House for Whistleblowers Act, may be involved:

1. (impending) violation of a statutory provision, including an (impending) criminal offence,
2. (impending) danger to public health,
3. (impending) danger to public safety,
4. (impending) danger of environmental pollution,
5. (impending) danger to the proper functioning of the organisation as a result of an improper act or omission,
6. (impending) breach of rules other than a statutory provision;
7. (impending) squandering of government funds,
8. (impending) deliberate withholding, destruction or manipulation of information about the facts referred to under 1 to 7 above.

It must be clear that the scheme is not intended for personal complaints or personal gain.

3. Who deals with the report?

In order to create barriers against improper use and to ensure that there are few barriers and legal protection for bona fide users, the following route is generally taken:

1. A person who believes that there is something to report first does so, in principle, to a manager or the competent authority. The person concerned decides whether the report is made through an integrity counsellor. The manager or (ultimately) the competent authority will have to come up with a response.
2. The member of staff may, however, also report directly to the House for Whistleblowers if it cannot be reasonably expected of him to report to his own organisation.
3. If the competent authority does not respond adequately to the report, or if the reporter does not agree with the position taken by the competent authority, the issue will be referred to the Committee on Integrity Issues (CIV), after which the procedure as described below in the model scheme will be followed.

The scheme leaves open how the CIV is organised. That may be per competent authority, but regional or national arrangements may also be made.

It is emphatically stipulated that the integrity counsellor can agree with the whistleblower that the identity of the whistleblower is protected (“confidential reporting”). The integrity counsellor can invoke a right of non-disclosure in this respect. He cannot be compelled to reveal the identity of the reporter. Nonetheless, the CIV, in the interest of the investigation, may appeal to

the whistleblower to reveal his identity to the CIV. In this way, the CIV can personally interview the whistleblower. The identity of the whistleblower is also protected in this case.

Confidential reporting is different to anonymous reporting. With anonymous reporting the identity of the reporter remains totally unknown. Anonymous reports will not be dealt with.

The integrity counsellor has a difficult task. As already stated, the interests at stake are considerable. The position of individuals and organisation is at stake. For that reason, consideration could be given to appointing a qualified external person as counsellor. An integrity counsellor can work for more than one competent authority.

In exceptional circumstances, particularly where security within the school is at stake, an integrity counsellor may continue the report in his own name if the person concerned decides not to proceed with the procedure.

Very exceptional situations are conceivable where the gravity of the wrongdoing or the urgent character is such that a potential whistleblower cannot be required to turn to the competent authority or the Committee on Integrity Issues, but turns directly to the trade union, parent or student organisation, the press or another third party (external report).

This can only include cases where the importance of addressing the wrongdoing is greater than the interest of the organisation in the case of confidentiality. In these rare cases, a bona fide reporter deserves legal protection if he turns directly to that third party.

In general, this procedure must ensure that immediate intervention takes place should this be required by the situation.

4. Decision making

The whistleblowing scheme for secondary education is a model scheme. A scheme will therefore have to be chosen for each competent authority. The choice will be made together with the participation council. The competent authority will naturally grant right of endorsement to the (joint) participation council, which will be comparable with the provision about this in the WMS concerning the right of complaint (Section 10(g)). This must then be established in the participation regulations (Section 24(3) WMS).

3. Scheme for dealing with a suspected serious wrongdoing ('secondary education whistleblowing scheme')

Preamble

The scheme for dealing with suspected wrongdoing within Stichting Het Rijnlands Lyceum provides a clear description of the procedure to be followed when there is a suspicion of wrongdoing (based on reasonable grounds).

The scheme reflects the starting point that a suspicion of wrongdoing should, in principle, first be exposed internally. The organisation should (in principle) be given the opportunity to set things right itself. In certain cases, however, the scheme offers the possibility of making an external report. In cases where going through the internal procedure cannot reasonably be expected, a report can be made (directly) to an independent external third party.

The scheme provides clarity on due care requirements and offers protection from victimisation to the person concerned. The scheme thus makes clear that the (internal) reporting of a wrongdoing is seen as a contribution to improving the functioning of the organisation and that the report will be seriously investigated.

The present scheme is not intended for personal complaints by the persons involved and should be distinguished from the Complaints Procedure and the 'Regulations to prevent sexual harassment, aggression, violence (including bullying) and discrimination'.

Scheme for dealing with a suspected wrongdoing within Stichting Het Rijnlands Lyceum

Article 1: Definitions and General Provisions

1.A. Definitions

In these procedures, the following terms and definitions apply:

- a. *The person concerned*: the person who is enrolled as a student at one of the schools of the competent authority or his legal representative (i.e. parent) and the member of staff.
- b. *External third party*: an external third party to whom a whistleblower reports, as referred to in Article 11;
- c. *Committee*: the Committee on Integrity Issues (CIV) as referred to in Article 5;
- d. *House*: the House for whistleblowers as referred to in Section 3 of the House for Whistleblowers Act (Bulletin of Acts, Orders and Decrees 2016 - No. 147)
- e. *Competent authority*: in this scheme one or all members of the Executive Board;
- f. *Supervisory body*: in this scheme the person/persons responsible for the internal supervision of the Executive Board;
- g. *Integrity counsellor*: the counsellor specifically responsible for dealing with reports from whistleblowers;
- h. *School management*: ultimately responsible head teacher, principal or director as defined in Section 32(2) of the Secondary Education Act (WVO);

Suspected wrongdoing: the suspicion of a person concerned that there is a wrongdoing within the organisation in which he works or has worked or at another organisation if he comes into contact with that organisation due to his activities or where he is enrolled as a student or the legal representative of these students, to the extent that:

- 1e. the suspicion is based on reasonable grounds, which arise from the knowledge gained in the organisation by those involved or resulting from the knowledge that the member of staff has gained through his activities at another organisation, and
- 2e. the public interest is at stake in the case of:
 9. (impending) violation of a statutory provision, including an (impending) criminal offence,
 10. (impending) danger to public health,
 11. (impending) danger to public safety,
 12. (impending) danger of environmental pollution,
 13. (impending) danger to the proper functioning of the organisation as a result of an improper act or omission,
 14. (impending) breach of rules other than a statutory provision;
 15. (impending) squandering of government funds,
 16. (impending) deliberate withholding, destruction or manipulation of information about the facts referred to under i to vii above;
- j. *Member of staff*: the person who works or has worked by virtue of a contract of employment under civil law or public law or the self-employed person who works or has worked other than by virtue of an employer-employee relationship.

1.B. General provisions

- a. This scheme applies to all persons involved and aims, without threatening their (legal) position, to offer them the possibility to report on a suspected wrongdoing within the organisation.
- b. This scheme is not intended for: complaints of a personal nature of a person concerned which are provided for in other regulations.
- c. The person concerned who reports the suspicion of a wrongdoing should not act for personal gain.
- d. The person who reports a wrongdoing that he has consciously participated in is not indemnified from sanctions.

Article 2. Information, advice and support

1. The persons involved may consult a counsellor in confidence about a suspected wrongdoing.
2. In accordance with paragraph 1, the person concerned may ask the counsellor for information, advice and support with respect to the suspected wrongdoing.
3. In accordance with paragraph 1, the member of staff may also ask the House for information, advice and support with respect to the suspected wrongdoing.

Article 3: Internal report

1. Unless there is an exception as referred to in Article 10(2), the person concerned reports a suspected wrongdoing internally.
 - a. To the competent authority or
 - b. To the supervisory body if the suspected wrongdoing concerns the competent authority,
 - c. To an integrity counsellor. The integrity counsellor may also be notified in addition to the competent authority or the supervisory body.
2. If the person concerned has reported the suspected wrongdoing to the integrity counsellor, the latter informs the competent authority or the supervisory body, stating the date on the report was received, as and when agreed with the person concerned. The integrity counsellor and the person concerned also determine whether the identity of the person concerned will remain confidential.
3. The competent authority or the supervisory body records the report in writing, along with the date on which it was received, has the person concerned or the integrity counsellor sign the record as approved and sends him a certified copy of the record.
4. After reporting a suspicion of wrongdoing, the competent authority or the supervisory body will inform the committee about the internal report.
5. The chair of the committee sends an acknowledgement of receipt to the person concerned and/or the integrity counsellor who reported the suspected wrongdoing.
6. The person concerned who reports the suspected wrongdoing and the person(s) to whom the suspected wrongdoing was reported will treat the report confidentially. No information is provided to third parties inside or outside the organisation without the consent of the competent authority or the supervisory body. When providing information, the identity of the person concerned will not be mentioned and information will be provided in such a way that the anonymity of the person concerned will be protected as much as possible.

Article 4: External report by member of staff

The member of staff can report a suspected wrongdoing directly to the House if it cannot reasonably be asked that he report the suspected wrongdoing to his own organisation.

Article 5 Committee on Integrity Issues

1. The committee consists of a chair and two members. There is also a deputy chair and two deputy members.
2. A (deputy) member is nominated by the competent authority, the other (deputy) member is nominated on the recommendation of the (Joint) Participation Council. The

members jointly elect a (deputy) independent chair.

3. The rules for appointment, suspension and dismissal of the (deputy) chair and the (deputy) members are laid down in regulations.
4. The (deputy) chair and the (deputy) members are appointed for a period of four years and may be reappointed for a maximum of one further period.
5. The (deputy) chair and the (deputy) members may in any case:
 - not form part of the competent authority;
 - be a supervisor to the competent authority;
 - not work for or with the competent authority;
 - be a student or legal representative of a student with the competent authority.

Article 6: Admissibility

1. The committee declares the report of a suspected wrongdoing inadmissible if, in the opinion of the committee, there is clearly no question of a wrongdoing as referred to in this scheme.
2. If the report is declared inadmissible, the committee informs the competent authority, the supervisory body and the person concerned who has reported a suspected wrongdoing internally, in writing and stating its reasons.

Article 7: Investigation

1. For the investigation into a report of suspected wrongdoing, the committee is authorised on behalf of the competent authority to obtain all information it deems necessary to make its recommendation. The competent authority is required to provide the committee with the requested information, or to be cooperative in obtaining this.
2. For the investigation into a report of suspected wrongdoing, the committee may in any case hear the competent authority.
3. If the content of the information provided by the competent authority must remain for the committee's information, due to its confidential nature, the committee will be informed of this.
4. The committee may call in experts to obtain the necessary information.
5. All costs reasonably incurred by the committee will be reimbursed by the competent authority.

Article 8: Recommendation

1. If the reported suspected wrongdoing is admissible, the committee will, as soon as possible but no later than eight weeks after receipt of the report, record its findings concerning the report of a suspected wrongdoing in a recommendation addressed to the competent authority or the supervisory body.
2. In special cases, this period may be extended by up to eight weeks.
3. If the reported suspected wrongdoing is inadmissible, the committee will not deal with the report and will record this in the recommendation.
4. The recommendation will be provided to the competent authority and the supervisory body in anonymised form and with due observance of the possible confidential nature of the information provided to the committee and the relevant legal provisions.
5. Should the situation so require, emergency measures may be taken to avoid an emergency situation in anticipation of the recommendation.

Article 9: Point of view

1. Within four weeks of receipt of the recommendation of the committee, the person concerned and if necessary the integrity counsellor, as well as the person(s) to whom the suspected wrongdoing relates, will be informed in writing by or on behalf of the competent authority of a substantive point of view concerning the reported suspected wrongdoing. An indication will also be given of the steps to which the report has led or will lead.
2. If the point of view cannot be given within four weeks, this period may be extended by up to a further four weeks. The competent authority or the supervisory body will report this to the person concerned, the committee and, where necessary, the integrity counsellor.

Article 10: Reporting to an external third party

- a. The person concerned can report a suspected wrongdoing to an external third party as referred to in Article 11(1), with due observance of the provisions contained in Article 11 if:
 - a) He does not agree with the point of view as referred to in Article 9;
 - b) He has not received the point of view within the required term as referred to in the first and second paragraphs of Article 9;
 - c) The term, as referred to in Article 9(2), is unreasonably long in view of all the circumstances and the person concerned has accordingly objected about this to the competent authority or the supervisory body; or
 - d) An exception applies as referred to in the following paragraph.

2. An exception as referred to in d above applies in the case of:
 - a) Acute danger, such that an important and urgent public interest demands immediate external reporting;
 - b) A situation in which the person concerned has reason to fear countermeasures as a result of the internal report;
 - c) A clear threat of disappearance or destruction of evidence;
 - d) An earlier report in accordance with the procedure, essentially involving the same wrongdoing, which has not resulted in the wrongdoing being rectified;
 - e) A statutory duty or authority to immediately report externally.

Article 11: External third party

1. The person concerned may make the external report as referred to in Article 10 to an external body that is the most eligible in the reasonable opinion of the person concerned. External body is in any case understood to be:
 - a. a body entrusted with the investigation of criminal offences;
 - b. a body charged with monitoring compliance with the provisions under or pursuant to any legal requirement;
 - c. another authorised body to which the suspected wrongdoing can be reported;
 - d. the House to the extent that the person concerned is a member of staff.
2. If, in the reasonable opinion of the person concerned, the public interest outweighs the interests of the employer in the case of confidentiality, the person concerned may also make the external report to an external third party that in his reasonable opinion may be considered capable of directly or indirectly resolving the suspected wrongdoing.
3. The report is made to the external third party/parties which, in the reasonable opinion of the person concerned, is/are the most eligible in view of the circumstances of the case. In this respect, the person concerned on the one hand takes account of the effectiveness with which that external party can intervene and, on the other, of the interests of the competent authority with as little damage as possible caused by the intervention, to the extent that this damage is not an inevitable outcome of the action being undertaken against the wrongdoing.
4. The person concerned should observe an appropriate form of caution and confidentiality when reporting to an external party.
5. The greater the possibility of damage for the competent authority as a result of reporting to an external third party, the stronger the suspicion of a wrongdoing has to be with the person concerned notifying the external third party.

Article 12. Legal protection

1. The competent authority may not penalise the person concerned or the member of staff

because of the fact that the person concerned or the member of staff has made a report to the competent authority, or – insofar as the member of staff is concerned – to the House, of a suspected wrongdoing.

2. The employer may not terminate the contract of employment with a member of staff:
 - a. due to the fact that the member of staff reported a suspected wrongdoing properly and in good faith to the competent authority or the House;
 - b. during the investigation by the House;
 - c. up to one year after the opinion of the House that a wrongdoing is plausible.
3. The legal position of a member of staff with a public-law contract of employment will not be prejudiced by the competent authority due to the fact that he reported a suspected wrongdoing properly and in good faith.
4. Prejudice to a student or parent who has reported a wrongdoing in accordance with the present scheme is considered a breach of contract or wrongful act.
5. The integrity counsellor cannot be forced to disclose the identity of a person concerned who has indicated that he wishes to report in confidence.
6. The member of staff may ask the House to instigate an investigation into the way in which the competent authority has acted towards the member of staff following a report made in respect of the suspicion of wrongdoing.

Article 13: Access to the scheme

1. The competent authority ensures that the scheme can be consulted in a confidential manner.
2. The competent authority will notify all interested parties how the provisions of paragraph 1 are interpreted.

Article 14: Other provisions

1. This scheme comes into force on 14 July 2016.
2. In cases not covered by the scheme, the competent authority will decide.
3. This scheme may be cited as the ‘Scheme for dealing with a suspected wrongdoing’.

Thus agreed on 14 July 2016.