

Dealing with a suspicion of misconduct

'Whistleblower Scheme' Version 2017

applicable to primary and secondary education with

Stichting Het Rijnlands Lyceum

1. Introduction

Whistleblowing is receiving a lot of attention at the moment. We are increasingly being made aware of the fact that society benefits from the reporting of misconduct within organisations. Especially if this involves organisations in the public domain. Secondary education also deserves a good whistleblower scheme.

For this reason, the Good Education Governance Code in Secondary Education lays down in membership requirement 1 that the competent authority of a secondary education institution publishes its own whistleblower scheme on its website, that the supervisory body ensures that each competent authority has a whistleblower scheme and that the supervisory body ensures that the interests of a whistleblower are also actually adequately protected (provision 26 of the Code). These regulations form an important link in the efforts of secondary education institutions to optimise the processes and to be transparent about them. If managers or members of staff make serious mistakes and do not do anything about this, there is always the possibility that it will be reported by a whistleblower. The whistleblower scheme should encourage a potential whistleblower to actually sound the alarm.

Persons who report misconduct deserve our appreciation. However, practice shows that the whistleblower has a vulnerable position. The Secondary Education Council drew up a whistleblower scheme for secondary education for the first time in 2008. It was updated in 2015 on the basis of the new Good Education Governance Code for Secondary Education. In addition, the whistleblower scheme was amended in 2016 as a result of the entry into force of the House for Whistleblowers Act of 14 April 2016 (Bulletin of Acts and Decrees 2016 – no. 147 and 148). In 2017 the regulations were revised again and the ‘reporting of misconduct’ committee was included in them.

Right of complaint and participation bodies dispute resolution scheme

The education system has various facilities that stakeholders can use in case of doubt about the procedures within an institution. By means of the right of complaint (governed by Section 24b of the Secondary Education Act), parents, students and staff members can complain to a complaints committee about the conduct or decisions of the competent authority or the staff working for the school management or alternatively about the absence of certain behaviour or decisions. This mainly concerns issues in which their own interest is at stake. The complaints procedure represents an important aspect of the quality policy to be pursued by the schools. The school receives signals in a straightforward manner that can assist it in the improvement of education and the functioning of the school.

The Participation in School Decision-Making Act (WMS) offers staff members, parents and students the opportunity to address matters concerning the school via the Participation Council

and decide on a position in this respect.

In addition, a special dispute resolution scheme is included on the basis of which the participation councils and school boards of governors - if they are unable to jointly reach an agreement - can submit questions to a disputes committee or court (see chapter 5 of the WMS).

Integrity code

In addition, the 2015 Good Governance Code for Secondary Education states that every school board of governors must publish an integrity code as a membership requirement. This integrity code contains standards and guidelines that relate to the behaviour of stakeholders, social behaviour and the culture of the organisation. The code also establishes the core values of the organisation where integrity is concerned. The integrity code thus distinguishes itself from the whistleblower scheme, which is based on legislation and regulations and is therefore not organisation-specific, but is determined by every organisation. The integrity code relates to integrity violations, while the whistleblower scheme goes a step further and relates to the reporting of misconduct that affects the public interest and to which, in the eyes of the reporter, no or insufficient attention is paid internally.

Regulations for dealing with a suspicion of misconduct

Despite the provisions in the field of the right of complaint, integrity and staff participation, a small category of misconduct remains - as described above - in respect of which it cannot reasonably be expected that a member of staff/student/parent will make use of the above-mentioned procedures. In that case a so-called whistleblower scheme can be useful.

The main objective of such a scheme is:

- To combat the residual category of misconduct for which other regulations are not suitable;
- In a manner that contributes to improving the organisation and, as far as possible, rectifying the misconduct;
- With as little damage as possible for the reporter and for organisation;
- With due diligence for the reporter and the organisation;
- With (legal) protection from adverse effects for bona fide reporters.

As already stated, the model regulation for secondary education is based on the current general social perception of whistleblowing. The intention is for the regulations to remove thresholds that actually stand in the way of whistleblowing.

For members of staff: House for Whistleblowers

The House for Whistleblowers Act came into effect on 1 July 2016. This legislation offers members of staff the opportunity to turn to an external body (the House for Whistleblowers is an independent administrative body). This external body has two separate organisational tasks, i.e. advice and research, it can:

- a. give **advice** on the steps to be taken with regard to the suspicion of misconduct;
- b. assess whether a report concerns the suspicion of misconduct;
- c. and, on the basis of a request, **inquire** into:
 - 1°. the suspicion of misconduct;
 - 2°. the way in which the employer has behaved towards the reporter.

For the full terms of reference of the House for Whistleblowers, reference is made to Section 3a of the House for Whistleblowers Act.

For students and their legal representatives: Committee for reporting misconduct

The legislation confines the possibility of approaching and deploying the House for Whistleblowers to members of staff. Parents or guardians (legal representatives) of students and students themselves cannot take this route. To this end, the Secondary Education Integrity Committee, maintained by the CAOP, was established in 2012. Because this committee was abolished in 2015, the Secondary Education Council established a national committee for secondary education in 2017, i.e. the Committee for reporting misconduct.

Reading guide

After this introduction, in section 2 you will find the regulations ‘for dealing with a suspicion of misconduct’, referred to in short as ‘whistleblower scheme’. The institutional regulations for the new Committee for reporting misconduct, which was established by the Secondary Education Council in 2017, can be found in section 3. Finally, a detailed explanation of the whistleblower scheme is included in section 4.

2. 'Whistleblower Scheme' model regulations

Regulations for dealing with a suspicion of misconduct ('Secondary Education Whistleblower Scheme [Stichting Het Rijnlands Lyceum]')

Preamble

The regulations for dealing with a suspicion of misconduct within Stichting Het Rijnlands Lyceum provide a description of the procedure that must be followed when there is suspicion of misconduct (based on reasonable grounds).

The regulations express the basic premise that a suspicion of misconduct must in principle be denounced internally first. In principle, the organisation must be given the opportunity to put its own house in order itself. However, if this does not occur, the regulations provide for the possibility of making an external report. In cases where it cannot reasonably be expected that the internal procedure will be followed, an independent external third party can be notified (directly).

The regulations offer clarity on due diligence and offer the person concerned protection from adverse effects. The regulations thus express the fact that the (internal) reporting of misconduct is regarded as a contribution to improving the functioning of the organisation and that the report will be seriously investigated.

The present regulations are not intended for personal complaints by the parties involved and must be distinguished from the 'Complaints Procedure', the dispute resolution scheme, staff participation, 'Integrity Code' and the 'Regulations for the prevention of sexual intimidation, aggression, violence (including bullying) and discrimination'.

Please note: articles 4 to 10 of the whistleblower scheme are not optional and cannot be changed in the event that the competent authority wishes to make use of the Committee for reporting misconduct.

Definitions and General Provisions

Section 1

1.A. Definitions

In these regulations the following definitions apply:

- a) *Advisor*: a person who has a duty of confidentiality by virtue of his position and who is consulted in confidence by the person concerned about a suspicion of misconduct;

- b) *The person concerned*: the person who is enrolled as a student at one of the schools of the competent authority, or his legal representative (including parent) and the member of staff;
- c) *External third party*: any organisation or representative of an organisation that, in the reasonable opinion of the person concerned, may be considered capable of directly or indirectly resolving or having resolved the suspected misconduct, as referred to in Article 4(4);
- d) *External body*: the body that, in the reasonable opinion of the person concerned, is the most qualified for the external reporting of the suspicion of misconduct.
- e) *Committee*: the Committee for reporting misconduct, part of the Education Arbitration Board (Stichting Onderwijsgeschillen), as referred to in Article 5, which is only open to Secondary students and their legal representatives;
- f) *House*: the House for Whistleblowers as referred to in Section 3 of the House for Whistleblowers Act (Bulletin of Acts and Decrees 2016 – no. 147 and 148), which is only open to members of staff;
- g) *Competent authority*: is represented by one or all members of the (executive) board;
- h) *Supervisory body*: in these regulations the person/persons charged with the internal supervision of the (executive) board;
- i) *Integrity counsellor*: the counsellor who is specifically responsible for dealing with reports from the person concerned;
- j) *Suspected misconduct*: the suspicion of the person concerned that, within the organisation in which he works or has worked or at another organisation if he has come into contact with that organisation through his activities or where he is registered as a student or the legal representative of that student, there is misconduct insofar as:
 - a. the suspicion is based on reasonable grounds, arising from the knowledge acquired by the person concerned in the organisation or arising from the knowledge acquired by the member of staff as a result of his activities at another organisation, and
 - b. the public interest is at stake in the case of:
 1. the violation of a statutory regulation, including a criminal offence,
 2. a threat to public health,
 3. a threat to the safety of individuals,
 4. a threat of environmental pollution,
 5. a threat to the proper functioning of the organisation as a result of an inappropriate act or omission,
 6. a violation of rules other than a statutory regulation,

7. the squandering of public funds,
 8. the conscious withholding, destruction or
 9. manipulation of information about the facts referred to under 1 to 7 above;
- k) *Member of staff*: the person who performs or has performed work pursuant to an employment contract under civil law or appointment under public law or who performs or has performed work other than on the basis of an employment relationship.

1.B. General provisions

- a. These regulations apply to all those involved and have the purpose of offering them the opportunity to report a suspicion of misconduct within the organisation without any threat to their (legal) status.
- b. These regulations are not intended for complaints of a personal nature of the person concerned, or for criticism of policy choices or for conscientious objections.
- c. The person who makes a report of a suspicion of misconduct should not act out of personal gain.
- d. The person who makes a report of a suspicion of misconduct in which he consciously participated is not exempt from sanctions.

Information, advice and support

Article 2

1. The person concerned can consult an advisor in confidence about a suspicion of misconduct.
2. In accordance with paragraph 1, the person concerned can request the integrity counsellor for information, advice and support regarding the suspicion of misconduct.
3. In accordance with paragraph 1, the member of staff can rely on the advisory role of the House, for example with a request for information, advice and support regarding the suspicion of misconduct.

Internal report

Article 3

1. Unless there is an exception as referred to in Article 4(2), the person concerned reports a suspicion of misconduct internally:
 - a. To the competent authority or,
 - b. if the suspicion of misconduct concerns the competent authority, the supervisory body.

c. To an integrity counsellor.

Reporting to the integrity counsellor can also take place in addition to reporting to the competent authority or the supervisory body.

2. If the person concerned reported the suspicion of misconduct to the integrity counsellor, the latter informs - with the express consent of the person concerned - the competent authority or the supervisory body, stating the date on which the report was received, in a manner and at a time agreed with the member of staff. The integrity counsellor and the person concerned also determine whether the identity of the person concerned will remain secret.
3. The competent authority or the supervisory body records the date on which the report is received in writing and has the person concerned (or the integrity counsellor) sign the record for approval and sends him a certified copy.
4. The person concerned who reports the suspicion of misconduct and the person(s) to whom the suspicion of misconduct was reported will treat the report confidentially. Without permission from the competent authority or the supervisory body, no information will be provided to third parties inside or outside the organisation. When providing information, the identity of the person concerned will not be mentioned and the information will be provided in such a way that the anonymity of the person concerned is guaranteed as much as possible.
5. The competent authority or the supervisory body confirms receipt of the report to the integrity counsellor and/or the person concerned within ten working days at the latest.
6. The competent authority will, as soon as reasonably possible, conduct an investigation into the reported suspicion of misconduct, unless:
 - a. the suspicion is not based on reasonable grounds, or
 - b. it is clear in advance that the report does not relate to a suspicion of misconduct as referred to in these regulations.
7. If the competent authority decides not to launch an investigation, it will inform the person concerned in writing within two weeks of the internal report. This decision is supported by reasons.
8. If the competent authority has declared the report admissible, the competent authority informs the person concerned in writing within eight weeks of the report about the position being taken with regard to the reported suspicion of misconduct. An indication will also be given of the steps that the report has led to or will lead to.

If it becomes clear that the position cannot be given within the period stipulated in paragraph 8, the competent authority will inform the person concerned in writing. An indication will also be given of the period within which the person concerned will receive the position. If the total period exceeds twelve weeks as a result, an indication will also be given of why a longer period is necessary.

External reporting

Article 4

1. After making an internal report to the competent authority or supervisory body of a suspicion of misconduct, the person concerned may make an external report if:
 - a. the person concerned disagrees with the decision or the position of the competent authority as referred to in Articles 3(7) and 3(8) respectively and is of the opinion that the suspicion has been wrongly set aside;
 - b. the person concerned has not received a position within the period as referred to in Article 3(8) or Article 3(9).
2. The person concerned can immediately make an external report of a suspicion of misconduct if it is in all reasonableness not possible to first request an internal report from the competent authority. That is the case in any event if this ensues from any statutory regulation or there is:
 - a. acute danger, with an important and urgent public interest necessitating an immediate external report;
 - b. a reasonable suspicion that both the competent authority and the supervisory body are involved in the suspected misconduct;
 - c. a situation in which the person concerned has reason to fear countermeasures in connection with the internal report;
 - d. a clearly demonstrable threat of disappearance or destruction of evidence;
 - e. an earlier report in accordance with the procedure for the same misconduct, which has not resulted in the misconduct being rectified;
 - f. a (statutory) duty to immediately report externally.
3. The person concerned can make the external report to an external body that is most qualified for this in the reasonable opinion of the person concerned. 'External body' is in any case be understood to mean:
 - a. a body charged with the investigation of criminal offences;
 - b. a body charged with supervising compliance with the provisions under or pursuant to any statutory regulation;
 - c. another competent authority to which the suspicion of misconduct can be reported by a member of staff, including the investigation department of the House.
 - d. another competent authority to which the suspicion of misconduct can be reported by a parent and/or student, i.e. the Committee for reporting misconduct as referred to in Article 5. [Secondary education only].

4. If, in the reasonable opinion of the person concerned, the public interest weighs more heavily than the interest of the institution in the case of secrecy, the person concerned may also make the external report to an external third party who, in his reasonable opinion, may be considered capable of resolving the suspected misconduct directly or indirectly.
5. Both in the case of a report to an external body and a report to an external third party, the person concerned must act carefully and weigh up the public interest and the interests of the institution, avoiding damage to the institution as much as possible (insofar as that damage does not necessarily result from the action against the misconduct).

Committee for reporting misconduct (secondary education only)

Article 5

1. There is a Committee for reporting misconduct. The task of this committee is to investigate a report submitted in accordance with Article 4(3)(d) and to advise the competent authority about this.
2. It performs its activities with due observance of the provisions of the institutional regulations relating to the 'Regulations for dealing with a suspicion of misconduct' as laid down by the Secondary Education Council on 8 September 2017. The documents can be consulted on the website of the Education Arbitration Board (Stichting Onderwijsgeschillen).
3. The secretariat of the committee is arranged by the Education Arbitration Board in Utrecht. The report to the committee can be addressed to: Stichting Onderwijsgeschillen, Zwarte Woud 2, 3524 SJ Utrecht

Admissibility

Article 6

1. The committee is only authorised to deal with reports pertaining to an organisation to which the relevant competent authority, of which this committee forms part, has declared applicable the 'Regulations for dealing with a suspicion of misconduct in the secondary education sector'.
2. The committee declares the report of a suspicion of misconduct to be inadmissible if, in the opinion of the committee:
 - a. the possibilities for making an internal report of a suspicion of misconduct have not been sufficiently investigated or used by the person concerned;
 - b. there is apparently no question of misconduct as referred to in these regulations;
 - c. the report was made by someone other than the person who has been authorised to do so in these regulations.
3. If the report is declared inadmissible, the committee will inform the person concerned and, if the competent authority was aware of the report, also the competent authority in writing and stating the reasons for this.

Investigation

Article 7

1. For the purpose of the investigation concerning a report of a suspicion of misconduct, the committee is authorised to request all relevant documents that it deems necessary for the issue of its advice. The competent authority is in principle obliged to provide the committee with the requested information or to assist in the acquisition thereof. If the information requested is not or only partially provided by the competent authority, this will be made known to the committee stating this reasons.
2. For the purpose of the investigation concerning a report of a suspicion of misconduct, the committee may in any case hear the competent authority.
3. If the content of the information provided by the competent authority - due to its confidential nature - only needs to be kept for perusal by the committee, this will also be shared with the committee.
4. The committee may call in experts to obtain the necessary information, with due observance of the provisions of paragraph 5 of this Article.
5. The costs incurred by the committee up to a maximum of 5000 euros are automatically charged to the relevant competent authority. Expected costs in excess of 5000 euros are first submitted to the relevant competent authority for approval.

Advisory report

Article 8

1. If the reported suspicion of misconduct is admissible, the committee records its findings regarding the reporting of a suspicion of misconduct in an advisory report addressed to the competent authority or the supervisory body as soon as possible, but no later than eight weeks after receipt of the report. In the advisory report, an opinion is given about the merits of the report and the committee makes recommendations to the competent authority.
2. In exceptional cases this period can be extended by eight weeks to a maximum of sixteen weeks and the committee informs the person concerned, the competent authority and the supervisory body about this.
3. The advisory report with recommendations - insofar as necessary for the protection of the person concerned - is provided to the person concerned, the competent authority and the supervisory body in an anonymous form and with due observance of the possibly confidential nature of the information provided to the committee and the applicable legal provisions.

Position

Article 9

1. Within four weeks of receiving the advisory report from the committee, the person concerned, the committee and optionally the integrity counsellor, as well as the person(s) to whom the suspicion of misconduct relates, will be informed in writing by or on behalf of the competent authority or the supervisory body about the position being taken with regard to the reported suspicion of misconduct. An indication will also be given of the steps that the report has led to or will lead to.
2. If the position cannot be given within four weeks, this period may be extended by a maximum of four weeks. The competent authority or the supervisory body will report this in writing to the person concerned, the committee and, where applicable, the integrity counsellor.

Legal protection

Article 10

1. The person concerned who, with due observance of the provisions of these regulations, has properly and in good faith reported a suspicion of misconduct, will in no way be aggrieved in his position as a result of the report.
2. The advisor as referred to in Article 2(1) or the integrity counsellor as referred to in Article 3, who works for the institution, will in no way whatsoever be adversely affected as a result of acting in this capacity by virtue of these regulations.

Access to the regulations

Article 11

1. The competent authority ensures that the regulations can be consulted in a confidential manner and publishes the regulations on the website of the school organisation.
2. The competent authority informs all interested parties of the manner in which the provisions in paragraph 1 have been implemented.

Other provisions

Article 12

1. These regulations come into force on 1 January 2018.
2. In cases not covered by the procedure, the competent authority will decide.
3. These regulations may be cited as ‘Regulations for dealing with a suspicion of misconduct [name of competent authority]’.

Thus established by the competent authority at the meeting of on 20XX.

3.Regulations establishing the Committee for reporting misconduct

Definitions

- a) *Committee*: the Committee for reporting misconduct;
- b) *Competent authority*: is represented by one or all members of the (executive) board;
- c) *The person concerned*: the person who is enrolled as a student at one of the schools of the competent authority or his legal representative;
- d) *Stichting*: Education Arbitration Board (Stichting Onderwijsgeschillen), established in Utrecht;
- e) *V.O-raad*: Secondary Education Council.

Maintenance

Article 1

The committee bears the name the Committee for reporting misconduct and is maintained by the Education Arbitration Board.

Scope of operation

Article 2

1. The task of the committee is to investigate a report submitted in accordance with Article 4(3)(d) of the 'Regulations for dealing with a suspicion of misconduct' declared applicable to the organisation by the competent authority, and to advise the competent authority on this matter.
2. It performs its activities with due observance of the provisions in the 'Regulations for dealing with a suspicion of misconduct' as made available on <add date> by the Secondary Education Council, and laid down by the relevant competent authority.

Composition

Article 3

1. The committee consists of four members. A chair and a deputy chair are elected from the members. During meetings, two members are present under the leadership of the (deputy) chair.
2. One member is appointed by the Education Arbitration Board on the binding recommendation of the Secondary Education Council.
3. The (deputy) chair and the members may in any case:
 - not belong to a competent authority in secondary education;
 - not be a supervisor at a competent authority in secondary education;
 - not work for or at a competent authority in secondary education;
 - not be a student or legal representative of a student at the competent authority.

Appointment

Article 4

1. The members of the committee are appointed for a period of four years and upon resignation are eligible for reappointment for a total maximum appointment period of eight years.
2. Before a member makes himself available for reappointment, an internal evaluation is held within the committee.
3. The member who is appointed to fill an interim vacancy steps down at the moment the person in whose place he is appointed would have stepped down.
4. Membership of the committee also ends:
 - a. upon death;
 - b. upon resignation by the member;
 - c. upon placing under guardianship;
 - d. upon discontinuance of the committee.
5. The committee draws up a schedule for retirement by rotation that is attached to the regulations of the committee.

Chairperson

Article 5

The chairperson chairs the meetings and sessions of the committee. The chairperson represents the committee.

Secretariat

Article 6

1. The Stichting is responsible for the secretariat of the committee in the manner set out in the following paragraphs.
2. The committee is assisted by an official secretary.
3. The secretary is responsible for the preparation of the committee's meetings and sessions, makes proposals for the members of the committee concerning the formulation of the admissibility of the report, is responsible for drafting the documents issued by the committee, preparing the report of meetings and sessions, the keeping of a register of incoming documents and reports dealt with, the management of the archive and other activities and support that the chairperson or committee reasonably need in the performance of their duties.

Confidentiality

Article 7

The members of the committee and the secretary are prohibited:

- a. from disclosing or making known to third parties what has come to their knowledge in their capacity;
- b. making known the feelings about pending reports expressed in closed meetings or sessions of the committee;
- c. from having contact with third parties and/or seeking information about pending reports or about reports that they suspect or know will be brought before them, other than in connection with the committee, unless explicit consent has been granted by those involved.

Regulations of the committee

Article 8

With due observance of the whistleblower scheme in secondary education and the principles of due process, the committee will draw up regulations specifying the course of proceedings and procedure for the dealing with and assessing reports of misconduct.

Annual report

Article 9

The committee reports annually on its activities. The Stichting is responsible for the publication of the report on the website www.onderwijsgeschillen.nl.

Settlement of costs

Article 10

The Stichting charges the relevant competent authority for the committee's meeting costs, which are separate from any costs that the committee may charge the competent authority within the scope of the investigative powers as included in Article 7(5). The members of the committee receive an attendance allowance from the Stichting for each meeting or investigation session with a maximum of four hours, as well as a reimbursement for travel expenses incurred.

Unforeseen circumstances

Article 11

In cases not provided for in these regulations establishing the Committee, the Board of the Education Arbitration Board decides together with the Secondary Education Council, having heard the chair of the committee.

Entry into force

Article 12

These regulations come into effect on 8 September 2017.

The regulations establishing the Committee may be amended by the Board of the Education Arbitration Board together with the Secondary Education Council after the committee has been informed about this orally and in writing and has been given the opportunity to respond. The schools will be informed of this amendment.

Official title

Article 13

These regulations will be cited to as: Regulations establishing the Committee for reporting misconduct.

Adopted by the Education Arbitration Board together with the Secondary Education Council on 8 September 2017 in Utrecht, after the committee had been heard.

4. The explanation of the whistleblower scheme

The most important questions about a whistleblower scheme are:

1. For whom?
2. What is misconduct according to the regulations?
3. Who deals with the report?

1. For whom?

The essence of a whistleblower scheme is that it offers 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 raised the issue of misconduct. It is also essential that a whistleblower deliberately violates standards (i.e. those of loyalty, secrecy and solidarity) in order to serve a higher standard (the need to challenge misconduct).

For education, the main question is for whom the scheme should be open: only for members of staff or also for students and their parents/guardians? The various model regulations make different choices in this respect. These are essentially always related to answers to the key question: who belongs to the school and how close is their relationship to the school? This memorandum is based on the assumption that students and their parents/guardians are not customers, but are the school's internal stakeholders. Compare also the starting point of the Participation in School Decision-Making Act (WMS) with that of the Staff Councils Act (WOR), with the decision being taken in the WMS to make the same arrangements for both members of staff and parents/guardians and students.

From the point of view of the above-mentioned essence of the definition, students and parents also form part of the school and their position within that school may occasionally be threatened by the disclosure of misconduct. Their position is - as stated - also fundamentally different from that of customers in a customer-supplier relationship, if only because education is compulsory and because schools have possibilities to punish students.

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

- Members of staff and students;
- Legal representatives of students.

As indicated above, as a result of the entry into force of the House for Whistleblowers Act for the members of staff/employees category, the possibilities have been extended to also invoke

the House for Whistleblowers in the case of a suspicion of misconduct.

The definition of members of staff is broadly formulated to also include former members of staff, former civil servants, as well as those who do not have an employment contract, such as trainees, volunteers and self-employed persons. These rights for the members of staff are included in Article 4(3)(c) of the model whistleblower scheme.

For parents and students the Secondary Education Council has established a committee, i.e. the Committee for reporting misconduct, which is available to every competent authority by declaring applicable the provisions of Article 4 (3)(d) of the 'Regulations for dealing with a suspicion of misconduct in the secondary education sector'.

2. What is misconduct according to the regulations?

A whistleblower jeopardises a lot; his own position, that of others and possibly that of the entire organisation. After all, a whistleblower believes that the misconduct is so serious that it cannot be resolved by means of the normal procedures. With whistleblowing there is rarely a winner, there are often only losers.

As indicated in the introduction, the use of the whistleblower scheme is intended to be a last resort after all other procedures have failed, or because, according to the reporter, reasonable arguments have been ignored by the competent authority. It must be clear that the whistleblower scheme only serves for misconduct or suspicions of this on reasonable grounds. As stipulated in the regulations, this may concern the following matters, which are in line with the definition in the House for Whistleblowers Act:

1. the violation of a statutory regulation, including a (threatened) criminal offence,
2. a threat to public health,
3. a threat to the safety of individuals,
4. a threat of environmental pollution,
5. a threat to the proper functioning of the organisation as a result of an inappropriate act or omission,
6. a violation of rules other than a statutory regulation,
7. the squandering of public funds,
8. the conscious withholding, destruction or manipulation of information about the facts referred to under 1 to 7 above.

It must be clear that the regulations are not intended for personal complaints or personal gain.

3. Who deals with the report?

The model regulations explain how the internal and external procedure must be followed via the competent authority, integrity counsellor, House and committee. With regard to the integrity counsellor, a more detailed explanation follows.

It is explicitly stipulated that the integrity counsellor can agree with the whistleblower that the latter's identity is protected ("confidential reporting"). The integrity counsellor can invoke a right of non-disclosure in this case. He cannot be forced to reveal the identity of the reporter. This does not alter the fact that the Committee for reporting misconduct can appeal to the whistleblower to make his identity known to the committee in the interest of the investigation. In this way, the committee can interview the whistleblower personally. The identity of the whistleblower is also protected in this case.

Confidential reporting is different from reporting anonymously. When reporting anonymously, the identity of the reporter remains completely unknown. Anonymous reports will not be dealt with.

The integrity counsellor has a difficult task. As already mentioned, the interests at issue are substantial. The position of individuals and organisation are at stake. For that reason, the appointment of a qualified trusted third party could be considered. An integrity counsellor can work for more than one competent authority.

In exceptional situations, especially where the safety in the school is at stake, an integrity counsellor can pursue the report in his own name if the person concerned refrains from continuing with the procedure.

This can only concern cases in which the importance of raising awareness of misconduct is greater than the interest of the organisation with respect to confidentiality. In these rare cases, a bona fide reporter also merits legal protection if he contacts that third party directly.

In general, this procedure should never lead to immediate intervention if required by a situation.

4. Decision making

The whistleblower scheme for secondary education is a model scheme. A scheme must therefore be chosen for each competent authority. The choice will have to be made together with the participation council.

To this end, the competent authority will naturally grant the (joint) participation council a right of endorsement, which will be comparable to the provision in the Participation in School Decision-Making Act (WMS) concerning the right of complaint (Section 10(g)). This must then be laid down in the participation regulations (Section 24(3) of the WMS).