



HSV regulation reporting malpractice (whistleblower policy) for primary education, January 2021

Article 1. Definitions

For the purposes of these rules, the following definitions shall apply:

- a. employee: a person who performs or has performed work pursuant to an employment contract or a person who performs or has performed work other than as an employee;
- b. competent authority: the director;
- c. supervisor: the supervisory board;
- d. advisor: a person who is consulted by an employee in confidence about a suspicion of wrongdoing;
- e. confidential adviser: the person¹ designated to act as such for the organisation of the competent authority;
- f. reporter: the employee who has reported a suspicion of wrongdoing;
- g. suspicion of wrongdoing: the suspicion of an employee that there has been wrongdoing within the organisation in which he works or has worked or at another organisation if he has come into contact with that organisation as a result of his work:
 1. the suspicion is based on reasonable grounds arising from the knowledge acquired by the employee from his employer or arising from the knowledge acquired by the employee through his work in another company or organisation, and
 2. the interests of society are at stake in the event of a violation² of a statutory requirement, a danger to public health, a danger to the safety of persons, a danger to the environment, a danger to the proper functioning of the organisation as a result of an improper act or omission; a violation of rules of conduct in force within the educational establishment, the deliberate withholding, destruction or manipulation of information relating to these facts;
- h. investigator(s): the person(s) to whom the investigation is assigned.

¹ The consultant has an obligation of secrecy. A consultant can be the internal confidential adviser. Outside the organisation, for example, this could be a lawyer, an employee of a trade union, a company doctor.

² You can choose to have the whistleblower regulation also apply to a *threat*. In that case, you include in the text: in the event of an (imminent) violation; *an (imminent) danger to public health; an (imminent) danger to the safety of persons, etc. etc.* This expands the scope of application.

Article 2. Information, advice and support for the worker

An employee may do so in the event of a suspicion of malpractice:

- a. consult an advisor in confidence;
- b. consult the counsellor in confidence;
- c. consult the advice department of the House for Whistleblowers in confidence.

Article 3. Internal reporting

1. An employee with a suspicion of malpractice within the organisation of the competent authority can report this to
 - a. any manager in a higher position than himself or herself, or
 - b. the supervisor if the employee has a reasonable suspicion that the competent authority is involved in the suspected wrongdoing. In that case, in these rules for 'the competent authority' should read 'the supervisor'.
2. If the report or the explanation of a written report is made verbally, the receiver will draw up a report and submit it to the reporter for approval and signature.
3. The employee can also report the suspicion of wrongdoing via the confidential adviser.
4. In consultation with the employee, the confidential adviser forwards the report to the competent authority.

Article 4. Recording internal report

The competent authority shall record the report in writing, together with the date on which it was received, and shall provide the reporter with a copy.

Article 5. Confidentiality of the report and identity of the reporter

1. The competent authority and/or the confidential adviser will ensure that the information about the report is stored in such a way that it is physically and digitally accessible only to those involved in the handling of the report.
2. No one involved in the handling of a report will reveal the identity of the reporter without the explicit written consent of the reporter and the information about the report will be treated confidentially.
3. If the suspicion of malpractice has been reported through the Trusted Person and the person reporting the suspicion has not given permission to reveal his or her identity, all correspondence about the report will be sent to the Trusted Person and the Trusted Person will immediately forward it to the person reporting the suspicion.

Article 6. Research

1. The competent authority, following the report of a suspicion of wrongdoing, starts an investigation without delay 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 wrongdoing.
2. If it is decided not to investigate, the reporter will be informed in writing within two weeks of receipt of the report. The reasons why no investigation will be carried out will be stated.
3. The competent authority entrusts the investigation to one or more independent or impartial investigators³. The reporter shall be informed in writing that an investigation has been initiated and who the investigator is or who the investigators are. The reporter shall be given an opportunity to be heard. The investigator may also hear others. The hearing shall be recorded in writing and submitted for signature to the person who has been heard.
4. The competent authority shall inform the person(s) concerned by the report, unless this could harm the interests of the investigation.
5. Within the organisation of the competent authority, the investigator may request and inspect any documents he deems reasonably necessary for the conduct of the investigation. Employees may provide all documents within the organisation to the investigator.
6. The investigator shall prepare a draft investigation report and give the reporter the opportunity to comment on it. The reporter is obliged to maintain the confidentiality of the draft report.
7. The investigator shall prepare the investigation report and provide it to the competent authority. The reporter will receive a copy of the report.

Article 7. Position

1. Within a period of six weeks from the moment of receipt of the internal report, the competent authority will inform the reporter in writing of the substantive position regarding the reported suspicion of an abuse. The steps to which the report has led are indicated.
2. If the point of view cannot be given within six weeks, the reporter will be informed of this and will be informed in writing, stating the reasons, within which reasonable period of time the reporter can expect a point of view.

³ You may decide to entrust the investigation to three investigators, by analogy with the committee on integrity issues in the whistleblowing regulations of the VO raad and the VOS-ABB. which also consists of three persons.

Article 8. Hearing in relation to the study report and opinion

1. The competent authority shall give the reporter the opportunity to comment on the investigation report and position.
2. If the reporter indicates, with reasons, that the suspicion of malpractice has not been adequately investigated or that the report or position contains errors, the competent authority shall respond to the content of the report or position. If necessary, an additional investigation shall be carried out.
3. Articles 6, 7 and 8 shall apply mutatis mutandis to this additional investigation.

Article 9. External notification

1. The employee can report the suspicion of wrongdoing externally after an internal report:
 - a. he does not agree with the position referred to in Article 7;
 - b. he has not received an opinion within the period referred to in the first and second paragraphs of article 7.
2. The employee may immediately report externally if he cannot reasonably be expected to make an internal report first. This shall in any case be the case if this arises from any statutory provision or if
 - a. the period referred to in Article 7 is unreasonably long in view of all the circumstances and the employee has objected to this to the competent authority but has not indicated a shorter, reasonable period;
 - b. the suspicion of malpractice concerns a director or supervisor;
 - c. it concerns a situation in which the employee can reasonably fear for countermeasures as a result of an internal report;
 - d. a previous internal report in accordance with the procedure of essentially the same malpractice, which malpractice has not removed;
 - e. there is a clearly identifiable threat of embezzlement or destruction of evidence.
3. The employee may make the external report to an external body, which in the employee's reasonable opinion is the most appropriate. The reporter takes into account, on the one hand, the effectiveness with which that external body can intervene and, on the other hand, the educational organisation's interest in minimising the damage as a result of that intervention. An external body is understood to mean in any case:
 - a. a body responsible for investigating criminal offences;
 - b. a body responsible for monitoring compliance with the provisions of or pursuant to any statutory provision (Inspectie SZW, Onderwijsinspectie); and
 - c. any other competent authority where the suspicion of wrongdoing can be reported, including the Investigation Department of the House of Whistleblowers.

Article 10. Legal protection of the reporter and other persons concerned

1. The reporter of a suspicion of wrongdoing who has made a report in good faith and properly internally or externally is protected in his legal position. This means that the person reporting a suspicion of wrongdoing will not be disadvantaged in any way by or because of the report of a suspicion of wrongdoing⁴.
2. There is a question of disadvantage if the reporter is treated worse in connection with making a report than he would have been if he had not made a report.
3. Adverse treatment also exists if there are reasonable grounds for addressing the reporter on his or her functioning or for taking an adverse action, but this is not in reasonable proportion to that ground.
4. If the competent authority imposes an injurious measure on the reporter within a reasonable period of time after the report has been made, the competent authority will state the reasons why it considers this measure to be necessary and that it is not related to the report.
5. If the reporter is of the opinion that he or she has been harmed, the reporter may request the Investigation Department of the House of Whistleblowers to investigate the way in which the competent authority has behaved towards him or her in response to the report of a suspicion of wrongdoing.
6. The competent authority will not disadvantage the adviser, the confidential adviser, the investigator(s) and possibly also other persons involved, who are employed by the competent authority, in the performance of the tasks described in these regulations. Paragraphs 1 up to and including 5 of this article apply by analogy.
7. The competent authority shall ensure that the manager(s) and colleagues of the reporter refrain from any form of disadvantage due to reporting a suspicion of wrongdoing which interferes with the functioning of the reporter⁵. He or she will address employees who are guilty of harassment to the reporter and may impose a disciplinary measure on them.

Article 11. Final provisions

1. On 21 January 2021, the (joint) co-determination committee gave its written agreement to these rules⁶.
2. The competent authority adopted the rules on 21 January 2021.
3. The arrangements will enter into force on 1 February 2021.
4. This scheme will be made public and can be found on the HSV website⁷.

⁴ Detriment is in any case understood to mean the taking of a detrimental measure such as, among other things, dismissal, taking a disciplinary measure, rejecting leave of absence, transfer.

⁵ this includes: bullying, ignoring, excluding, making accusations, intimidating the reporter, imposing a ban on speaking or contact on the reporter or colleagues of the reporter.

⁶ The (g)mr has a power of consent to the whistleblower scheme on the basis of Section 10 under e of the Participation in Schools Act.

⁷ It is a legal obligation to provide the whistleblowers regulation in writing or electronically to employees via intranet or via the website, and to make it public to (former) employees via the website.