

Complaints Procedure

Esprit Association of Schools
For Primary and Secondary Education

Amsterdam,

last revised and approved by the Executive board on 23 May 2016

The competent authority of Esprit Association of Schools, in view of the provisions of the Primary Education Act, the Expertise Centres Act and the Secondary Education Act;

having consulted the Participation Council/Joint Participation Council;

has adopted the following Complaints Procedure for primary and secondary education.

Chapter 1 Definitions

Article 1

1. The following definitions apply to this procedure:

- a) school: a school as defined in the Primary Education Act, the Expertise Centres Act and the Secondary Education Act;
- b) complaints committee: the external National Complaints Committee for Education (LKO) (info@onderwijsgeschillen.nl) as defined in Article 4;
- c) the external complaints committee: the committee as defined in Article 1 under b);
- c) complainant: a(n) (ex-)student, a parent/guardian/carer of a minor (ex-) pupil, (a member of) staff, (a member of) the management, (a member of) the competent authority or a volunteer who carries out tasks for the school, as well as a person who in some other way is a part of the association of schools, who has submitted a complaint;
- d) complaint: a complaint about behaviour and decisions or the failure of the alleged perpetrator to act or to make decisions;
- e) the internal confidential advisor: the person as defined in Article 2;
- f) the external confidential advisor: the person as defined in Article 3;
- g) alleged perpetrator: an (ex-)pupil, parent/guardian/carer of a minor (ex-) pupil, (a member of) staff, (a member of) the management, (a member of) the competent authority or a volunteer who carries out work for the school, as well as a person who in some other way is a part of the association of schools, against whom a complaint has been submitted;
- h) appointments advisory committee: a committee created by the competent authority, that is made up of members designated by all parties (parents/pupils, personnel and competent authority).

Chapter 2 Dealing with Complaints

Section 1 The Internal Confidential Advisor

Article 2 The appointment and the task of the internal confidential advisor

1. At each school, there is at least one internal confidential advisor. Student and parents can consult the internal confidential advisor. The internal confidential advisor refers members of staff to the external confidential advisor who functions exclusively for staff members.
2. The competent authority appoints, suspends and discharges the internal confidential advisor. The appointment takes place on the recommendation of the appointments advisory committee.
3. The internal confidential advisor will firstly check whether the complainant has tried to discuss the problem regarding the alleged perpetrator with the Director or a member of the school management of the school concerned. If this is not the case, then this route can be followed first. This complaints procedure only applies if the complaint cannot be addressed elsewhere.
4. The internal confidential advisor assesses whether a solution can be realised by discussing the matter and can, if necessary, make a proposal for mediation. The internal confidential advisor assesses whether the event warrants submitting a complaint. If so desired, he/she guides the complainant during further procedures and if desired provides assistance in reporting a crime to the police or the judicial authorities.
5. If and insofar as necessary or desirable, the internal confidential advisor refers the complainant to other authorities that are specialised in care and after-care.
6. The internal confidential advisor takes the utmost care in carrying out his/her tasks. The internal confidential advisor is obliged to observe secrecy regarding all matters which he/she encounters in his/her capacity as internal confidential advisor. This obligation does not lapse after the tasks performed by the internal confidential advisor have ended. This obligation to observe secrecy does not apply with regard to the complaints committee, the competent authority, the school management and police/judicial authorities.
7. The internal confidential advisor provides the school management with an annual written report of his/her activities.

Section 2 The External Confidential Advisor

Article 3 The Appointment and Task of the External Confidential Advisor

1. The competent authority currently has two external confidential advisors. The external confidential advisors function exclusively for members of staff. In the case of complaints, the complainant is free to contact one of the external confidential advisors. The alleged perpetrator can contact the other external confidential advisor.
2. The competent authority appoints, suspends and discharges the external confidential advisor. The appointment takes place on the recommendation of the appointments advisory committee.
3. The external confidential advisor assesses whether a solution can be realised by discussing the matter and can, if necessary, make a proposal for mediation. The external confidential advisor assesses whether the event warrants submitting a complaint. If so desired, he/she guides the complainant during further procedures and if desired provides assistance in reporting a crime to the police or the judicial authorities.
4. If and insofar as necessary or desirable, the external confidential advisor refers the complainant/alleged perpetrator to other authorities that are specialised in care and after-care.
5. If the external confidential advisor only receives evidence, but no concrete complaints, he/she can inform the complaints committee or the competent authority.
6. The external confidential advisor provides solicited or unsolicited advice on the decisions to be taken by the competent authority.
7. The external confidential advisor takes the utmost care in carrying out his/her tasks. The external confidential advisor is obliged to observe secrecy regarding all matters which he/she encounters in his/her capacity as external confidential advisor. This obligation does not lapse after the tasks performed by the external confidential advisor have ended.
8. The external confidential advisor provides the competent authority with an annual written report of his/her activities.

Section 3 The Complaints Committee

Article 4 Complaints committee's establishment and tasks

1. All schools of the competent authority have a complaints committee which examines complaints and advises the competent authority on these matters.

2. The complaints committee provides the competent authority with advice, both when asked and on its own initiative, about:
 - a) (lack of) merits of the complaint;
 - b) measures to be taken;
 - c) other decisions to be made by the competent authority.
3. The external complaints committee takes the utmost care in dealing with a complaint, in order to protect the interests of all those directly involved. Members of the complaints committee are obliged to observe secrecy regarding all matters with which they are confronted in their capacity as members. This obligation does not lapse after the person concerned has ceased his/her task as a member of the complaints committee.
4. The complaints committee provides the competent authority with an annual written report on its activities.

Section 4 The Procedure Before the Complaints Committee

Article 5 Submitting a complaint

1. The complainant submits the complaint to:
 - a) the competent authority; or
 - b) the external complaints committee: the external National Complaints Committee for Education (info@onderwijsgeschillen.nl)
2. The complaint must be submitted within one year after the behaviour or decision, unless the complaints committee decides otherwise.
3. If the complaint is submitted to the competent authority, the competent authority refers the complainant to the confidential advisor or the complaints committee, except where the fourth section applies.
4. The competent authority can deal with the complaint itself, if it feels that dealing with the complaint is a simple matter. At the request of the complainant, the competent authority informs the complaints committee that it dealt with a complaint in such manner.
5. If the complaint is submitted to a different authority than that named in the first paragraph, the recipient immediately refers the complainant to the complaints committee or to the competent authority. The recipient is obliged to observe secrecy.
6. The competent authority may make a provisional arrangement.
7. The date of receipt of the complaint will be recorded on it.

8. After receipt of a complaint, the complaints committee informs the competent authority, the complainant and the alleged perpetrator, in writing, within five working days, that they are investigating a complaint.
9. The competent authority informs the principal of the school involved, in writing, that the complaints committee is investigating a complaint.
10. The complainant and the alleged perpetrator can be assisted or represented by an authorised representative.

Article 6 Withdrawal of a complaint

If the complainant withdraws the complaint during the procedure before the Complaints Committee, the Complaints Committee will inform the alleged perpetrator, the competent authority and the principal of the school concerned accordingly.

Article 7 Contents of the complaint

1. The complaint must be submitted in writing and must be signed.
2. The recipient, as referred to in Article 5(1), must immediately draw up a report of an oral complaint, which must be signed for approval by the complainant and of which he/she will receive a copy.
3. The complaint contains at least:
 - a) the name and the address of the complainant;
 - b) the date;
 - c) a description of the complaint.
4. If the provisions of the third paragraph have not been complied with, the complainant will be given the opportunity to rectify the default within two weeks. If even then the provisions of the third paragraph have not been complied with, the complaint may be declared inadmissible.
5. If the complaint is declared inadmissible, notification of this is sent to the complainant, the alleged perpetrator, the competent authority and the principal of the school involved.

Article 8 Preliminary investigation

In connection with preparations for dealing with the complaint, the complaints committee is authorised to obtain all the required information. To this end it can call upon experts and if necessary, invite them to the hearing. If there are costs involved, prior authorisation from the competent authority is required.

Article 9 Hearing

1. The chair determines the location and time of the hearing at which the complainant and the alleged perpetrator are given an opportunity to be heard at a

meeting that is closed to the public. The hearing will take place within four weeks after receipt of the complaint.

2. The complainant and the alleged perpetrator will not be heard in one another's presence, unless the complaints committee determines otherwise.
3. The complaints committee can determine, whether or not in response to a request by the complainant or the alleged perpetrator, that the confidential advisor will attend the hearing.
4. The hearing of the complainant may be waived if the complainant has declared not to wish to make use of the right to be heard.
5. A report of the hearing is drawn up. The report contains:
 - a) the names and positions of those present;
 - b) a brief summary of what was said on both sides.
6. The report will be signed by the chair and the secretary.

Article 10 Advice

1. The complaints committee deliberates and decides on its advice behind closed doors.
2. The complaints committee reports its findings in writing to the competent authority within four weeks after the hearing took place. This period may be extended by four weeks. The complaints committee informs the complainant, the alleged perpetrator and the competent authority about the reasons for such an extension.
3. In its advice, the complaints committee provides a substantiated opinion about whether the complaint is well-founded or not and informs the complainant, the alleged perpetrator and the principal of the school involved, in writing, about this opinion.
4. In its advice, the complaints committee may also make a recommendation about measures to be taken by the competent authority.

Article 11 Decision on advice

1. Within four weeks after receiving the complaints committee's advice, the competent authority notifies the complainant, the alleged perpetrator, the principal of the school involved and the complaints committee, in writing, and with grounds, as to whether it shares the opinion on the merits of the complaint and whether it feels measures should be taken - and if so, which measures - based on that opinion. The notification is accompanied by the complaints committee's advice and the report of the hearing, unless compelling interests advise against this.
2. This period can be extended by four weeks at the most. The competent authority informs the complainant, the alleged perpetrator and the complaints committee about the reasons for such an extension.

3. The decision as defined in the first paragraph is not taken by the competent authority before the alleged perpetrator has been given the opportunity of putting forward a defence, verbally and/or in writing, against the proposed decision of the competent authority.
4. In accordance with Article 8(2)(e) of the Participation in School Decision-Making Act, the competent authority will inform the Participation Council of any complaint that has been judged well-founded by the complaints committee and of any measures that the competent authority will take in response to that opinion.

Chapter 3 Final Provisions

Article 12 Public nature

1. The competent authority makes this procedure available for inspection at each school.
2. The competent authority makes sure all interested parties are aware of this procedure.

Article 13 Evaluation

The procedure will be evaluated within four years after coming into force by the competent authority, the internal and external confidential advisor, the complaints committee and the (joint) participation council.

Article 14 Amendments to the regulations

This procedure may be amended or withdrawn by the competent authority after consultation with the confidential advisor and the complaints committee with due regard to current provisions.

Article 15 Other provisions

1. In cases that are not covered by the procedure, the competent authority will decide.
2. The explanatory text is an integral part of the procedure.
3. This procedure can be cited as the 'Esprit Complaints Procedure'.
4. This procedure came into effect on 01-08-1998

The procedure was revised and adopted following the approval of the joint participation council on 8 April 2008 and 23 October 2014.

General explanation

Educational legislation was amended on 1 August 1998 to take account of the introduction of the school plan, the school prospectus and the right of complaint, also referred to as the Quality Act (legislative proposal 25.459).

The entry into force of the Quality Act meant, among other things, that school boards have been obliged to adopt and implement a complaints procedure no later than 1 August 1998. According to the proposed legislation, parents and pupils can submit complaints about behaviour and decisions (or failure to act or to make decisions) on the part of the competent authority and the staff. The right of complaint has an important warning function in relation to the quality of education. The complaints procedure is a simple way for the competent authority and the school to pick up on signals that can support them in improving education and the proper course of affairs at school.

An agreement has been reached on the procedure currently being presented, between the national parents' organisations, the professional organisations and the executive organisations¹.

The intention of the procedure is to deal with complaints meticulously, thereby serving the interests of those involved, but also the interests of the school (a safe school climate). The model procedure acts as a guide that can be amended if necessary.

The procedure currently being presented is broader than prescribed by the Quality Act. Quite a few school boards have approved procedures for sexual harassment and are currently busy taking measures, for instance, for the prevention of bullying. In order to avoid education becoming involved in various different complaints procedures, a national platform was chosen to arrive at a single model for complaints procedures for primary and secondary education. In addition to parents and pupils (Quality Act), anyone who is involved in the school community can submit a complaint. Such complaints could relate to the behaviour and decisions - or lack thereof - of the competent authority and staff and also to the behaviour of others who are part of the school community.

The current complaints procedure only applies when no other options exist for lodging a complaint. The majority of complaints about how things are run within schools will be dealt with efficiently and in joint consultation between parents, pupils, staff and the school's management. However, if this is not possible due to the nature of a complaint, or if a person

¹ These organisations are: ABBNO, AOB, AVS, BPCO, LOBO, NKO, Educational Unions CNV, Ouders en Coö, PCSO, VBKO, VBS, VNG, VOO, VOS and VVO.

feels it was not dealt with satisfactorily, that person can make use of this complaints procedures. With regard to the nature of the complaints for which this scheme is intended, reference is made to the article-by-article explanation of Article 1, under d and Article 5, first paragraph.

Furthermore, complaints for which separate procedures and procedural options involving a committee exist must be dealt with via that route. For instance, a complaint that should be submitted to the Examination Appeals Board may not be submitted via the complaints procedure for education. The same applies to a complaint that can be submitted to a disputes committee.

This procedure was drawn up for primary and secondary education but may also be used for other forms of education.

The procedure refers to a competent authority. Depending on the division of tasks regulated in the management rules and the division of powers between the principal and the competent authority, in relevant cases, the competent authority should instead be interpreted as 'the principal'. There is no need to amend the procedure because in that case the principal will act on behalf of the competent authority.

Instead of setting up one's own complaints committee, a competent authority can participate in a regional or national complaints committee. In that case, too, the procedure presented here can be adopted.

The legislature grants the (Joint) Participation Council a right of consent in realising the complaints procedures. Furthermore, the (Joint) Participation Council will be granted right of consent regarding the procedure to be adopted by the executive board for appointing an internal and external confidential advisor, and the procedure for participating in a complaints committee or creating a committee of one's own, respectively.

The internal confidential advisor, the external confidential advisors, and members of the complaints committee will be appointed by the competent authority on the recommendation of the appointments advisory committee. The competent authority may deviate from this recommendation. However, this possibility will have to be used very cautiously. The committee's advice should be regarded as important.

The procedure involves maximum periods of time. Naturally, everyone benefits from complaints being dealt with conscientiously but also as rapidly as possible.

Article by article explanation

Article 1 under d

An ex-pupil is also competent to submit a complaint. As the time lapse between a complaint being submitted and the facts based on which it is submitted grows, it will become increasingly difficult for the complaints committee and the competent authority to arrive at an opinion. Furthermore, Article 5(2) states that a complaint should be submitted within one year after the behaviour or decision, unless the complaints committee decides otherwise. This could involve (extremely) serious complaints about sexual harassment, aggression, violence and discrimination.

Examples of other persons involved in the school community are trainees and student teachers.

Article 1 under e

Complaints may concern, for example, guidance of pupils, use of punitive measures, assessment of pupils, the organisation of the school, sexual harassment, discriminating behaviour, aggression, violence and bullying.

Sexual harassment is defined as: unwelcome sexual attention in the form of verbal, physical or non-verbal behaviour. The person subjected to this behaviour, irrespective of their gender and/or sexual preference, perceives it as unwelcome, or it is regarded as unwelcome by the parents, guardians or carers of a pupil where a minor pupil is involved. Sexual harassment can be either intentional or unintentional.

Discriminating behaviour is defined as: every form of unjustified distinction, as defined in Article 2 of the Equal Treatment Act, every exclusion, limitation or preference that intends to or could result in causing damage or detriment to the recognition, the enjoyment or exercising, on an equal footing, of human rights and fundamental freedoms in political, economic, social or cultural fields or in other fields of public life. Discrimination may be either intended or unintended.

Aggression, violence and bullying are defined as: acts and decisions, or failing to act or make decisions, that involve intentional or unintentional mental or physical abuse of a person or group of persons who are members of the school community.

Article 2

All persons involved in the school have access to the internal confidential advisor. It is important that all parties involved in the school have confidence in this person. He/she is

solely accountable to the competent authority for how he/she carries out his/her task. The internal confidential advisor may not be disadvantaged in the performance of his/her duties.

Article 3

It is advisable to appoint an independent external confidential adviser per board and an internal confidential adviser per school. The external confidential advisor must have insight into education and those who participate therein and be competent in providing assistance and making referrals. When appointing the external confidential advisor, the competent authority takes into account the diversity of the school's population. All persons involved in the school have access to the external confidential advisor. It is important that all parties involved in the school have confidence in him/her. The external confidential advisor has skills that enable him/her to manage counselling interviews. Consideration can be given to the option of having two confidential advisors: a man and a woman. In some circumstances, having to complain to a person of the opposite gender can have a threshold-raising effect.

Article 3, paragraph 2

The confidential advisor is solely accountable to the competent authority for how he carries out his task. The Confidential Advisor may not be disadvantaged in the performance of his duties.

Article 3, paragraph 3

The external confidential advisor will firstly check whether the complainant has tried to discuss the problem regarding the alleged perpetrator with the principal or a member of the school management of the school concerned. If this is not the case, then this route can be followed first.

The external confidential advisor can advise a complainant to consider, depending on the seriousness of the case, not submitting a complaint, or submitting the complaint to the complaints committee, to the competent authority, or to report a crime to the police/judicial authorities. The assistance of the complainant also means that the external confidential advisor will check whether the submission of the complaint does not lead to repercussions for the complainant. Lastly, he/she makes sure that the cause of the complaint has actually been removed.

If so desired by the complainant, the external confidential advisor assists him/her in submitting a complaint to the complaints committee or to the competent authority and, if required, provides assistance in reporting a crime to the police or judicial authorities.

If the complainant is a minor pupil, the confidential advisor informs the parents/carers, with the full knowledge of the complainant, unless the confidential advisor is of the opinion that this would be contrary to the interests of the minor.

Article 3, paragraph 7

The obligation to confidentiality does not apply in respect of the complaints committee, the competent authority and the police/judicial authorities.

Article 4

The complaints committee functions jointly for all schools of the competent authority. The Committee ensures that the competent authority is provided with timely and sound information on the progress of the processing of a complaint submitted.

It goes without saying that the competent authority will enable the committee to perform its duties properly.

Article 4, paragraph 3

This obligation to observe confidentiality does not apply in respect of the competent authority, the secretary of the complaints committee, the complainant and the alleged perpetrator, the advisors of the parties, nor the police/judicial authorities.

Article 5, paragraph 1

The complainant decides for himself/herself whether he/she will submit the complaint to the competent authority or the complaints committee (a complaint may not be submitted to the confidential advisor). A complaint will not always be submitted to the complaints committee; for instance, if the complainant feels that a less serious complaint is involved. This does not diminish the fact that, in the latter case, the complainant still has a right to submit his/her complaint to the complaints committee if he/she feels this is warranted. On the other hand, it is important to safeguard against jeopardising the position of the alleged perpetrator by not making use of the complaints committee. In complicated situations, or where the competent authority is considering drastic measures, it is advisable to first obtain advice from the complaints committee. In cases of reasonable doubt too, or if a serious complaint is involved, it is recommended to first obtain advice from the complaints committee. This ensures that maximum care is taken and avoids giving rise to the impression that the complaint is being settled 'behind closed doors'.

Article 5, paragraph 4

If the complainant so wishes, the competent authority must inform the complaints committee that it has dealt with a complaint independently.

Article 5, paragraph 6

If required, the competent authority may make a provisional arrangement. This could involve suspending teaching staff, suspending students or determining that the alleged perpetrator may not have any contact with the complainant. At the same time, the competent authority must determine up to which time the provisional arrangement will remain in effect. This will generally be up till the moment that the competent authority has decided on the complaint.

Article 5, paragraph 8

In the interests of the investigation, and/or in the interests of the position of the complainant, the complaints committee can send the complaint - whereby no mention is made of the complainant's address - to the alleged perpetrator. After all, this detail is not of any direct relevance for the alleged perpetrator. In that case, it is sufficient to include the written statement: 'address details known to the committee'. Naturally, the committee must then have this information at its disposal.

Article 5, paragraph 10

The complainant and the alleged perpetrator have the right to be assisted or represented by an authorised representative at any moment during the procedure.

Article 6

If the complainant withdraws his/her complaint, the committee can decide whether or not to continue the procedure. The complainant, the alleged perpetrator and the competent authority will be informed of this decision as quickly as possible.

If there are indications that pressure was put on the complainant to withdraw the complaint, then it would be logical to continue the procedure. In that case, the committee will send advice to the competent authority on its own initiative.

Article 7, paragraph 4

An anonymous complaint will not be dealt with, unless the complaints committee or the competent authority decides otherwise.

Article 8

Members of staff in the service of the competent authority are obliged to provide information requested by the committee and to observe secrecy regarding that request and the information provided. These obligations also apply to the competent authority.

The investigation may require witnesses or experts to be heard by the committee. This raises the question as to how the committee should deal with the information obtained in

respect of the complainant and the alleged perpetrator. The committee determines which information will be included in the report to the competent authority.

In respect of confidentiality, parents and pupils involved must also be asked in advance to observe confidentiality in this way.

Article 9, paragraph 2

The complaints committee may decide that the complainant and the alleged perpetrator will be heard in one another's presence. If one of the two parties requests otherwise, the complainant and the alleged perpetrator will be heard separately.

Article 11

If the competent authority declares the complaint unfounded, the latter can determine, when requested by and in consultation with the alleged perpetrator, a suitable rehabilitation measure, possibly after receiving advice from the complaints committee.

Article 11, paragraph 3

If the decision includes a measure relating to a person's legal status, the current provisions relating to the principle of hearing both sides of the argument will be observed.

For special primary education, other provisions apply that relate to the certificate of appointment. The provisions of the collective agreement for secondary education (CAO-VO) must be observed in relation to publicly-run and special secondary education.

The competent authority for publicly-run education is obliged to report an offence to the public prosecutor or to one of their assistant public prosecutors.

School boards are obliged to contact the confidential educational inspector if it is suspected that a member of staff has committed a sex crime with a minor pupil. If consultation with the confidential educational inspector indicates a reasonable suspicion of a punishable crime, the competent authority is obliged to report this to the police/judicial authorities.

Where a punishable crime is involved, the competent authority is explicitly advised against awaiting the outcome of the criminal proceedings before taking measures against the alleged perpetrator. The competent authority has its own responsibility in this matter.

Article 12

Information about this procedure will be included in the school prospectus. Names and telephone numbers of the chair and the secretary of the complaints committee, the external confidential advisor and the internal confidential advisor can be included in the school prospectus. These matters can also be published in a brochure.

Complaints Procedure

Complainant - Alleged perpetrator

- Internal confidential advisor
- External confidential advisor (*)
- Complaints committee
 1. (within five working days after receipt of the complaint) a notification must be sent to;
 - a. complainant
 - b. alleged perpetrator
 - c. competent authority
 2. A hearing takes place within four weeks after receipt of the complaint
 3. Advice is sent to the competent authority within four weeks after the hearing
- Competent authority (**)
- 4. Decision on the advice within four weeks after it was received (including the opportunity for the alleged perpetrator to respond) and notification of the decision to:
 - a. complainant
 - b. alleged perpetrator
 - c. complaints committee
 - d. school management

(*) External confidential advisor can solve a complaint via mediation

(**) Competent authority can deal with the complaint independently