

## **Policy regulation regarding sexual offences against minors**

### **Higher Education and Academic Research Act (*Wet op Hoger Onderwijs en Wetenschappelijk Onderzoek, WHW*)**

#### **Article 1.20 of the WHW**

1. In the event that the board of the institution is made aware in any way that a person responsible for carrying out duties on behalf of the institution may be guilty of committing or has committed a sexual offence as referred to in Title XIV of the Criminal Code (*Wetboek van Strafrecht*) against an under-age student of the institution, the competent authority will immediately enter into consultation with the confidential inspector, referred to in article 6 of the Education Inspection Act.
2. In the event that discussions, referred to in the first paragraph, lead to the conclusion that there is reasonable suspicion that the person in question has committed an offence as referred to in the first paragraph against an under-age student of the institution, the board of the institution shall immediately file a report with a investigating officer as referred to in article 127 in conjunction with article 141 of the Code of Criminal Procedure (*Wetboek van Strafvordering*). The board of the institution shall make this known to the confidential inspector without delay. Before the board of the institution proceeds to make a report, it will notify the parents of the student concerned and the relevant person responsible for carrying out duties on behalf of the institution, respectively.
3. In the event that a staff member becomes aware that a person responsible for carrying out duties on behalf of the institution may be committing or have committed a sexual offence as referred to in the first paragraph against an under-age student of the institution, the staff member will make this known to the board of the institution without delay.

#### **Introduction**

With the implementation of the Law on Enforcement of Management, the Executive Board has the legal obligation, in the event that it is made aware of a possible sexual offence against an under-age student, to notify the confidential inspector thereof. Such a situation must also be reported to the police. This obligation is laid down in article 1.20 of the Higher Education and Research Act (WHW) and is effective from 1 September 2010.

In light of the serious nature of sexual offences against minors, the details of any case that arises must be handled with the utmost care and confidentiality. In addition to the student involved, the concerns of other persons involved must also be borne in mind. The Executive Board is the designated body to implement the obligations.

This policy regulation aims to help ensure that the Executive Board acts in a careful, responsible and verifiable manner in formulating its eventual decision.

### **Under-age student**

The obligations only hold in the event that the offence is committed while the student has not yet reached 18 years of age and therefore is a minor. In the event that the Executive Board becomes aware of the offence after the student has reached 18 years of age, the obligations still hold.

### **Sexual offence**

The article pertains to sexual offences as referred to in Title XIV, articles 239 up to and including 253, of the Criminal Code. In the event that the Executive Board is notified of an incident, it will need to be assessed whether the conduct falls under one of the articles named in Title XIV. This title covers, among other things, acts of indecency, child pornography, rape and intercourse with a person under 16 years of age. Intercourse with a person older than 16 years of age is in principle not punishable.

### **A person responsible for carrying out duties on behalf of the institution**

The - suspected - offence must be committed by a person responsible for carrying out duties on behalf of the institution. This includes, in any case, employees within the meaning of the Collective Labour Agreement for Dutch Universities (CAO NU), agency staff, interns, volunteers and other persons carrying out work for the university concerned.

### **Consultation with the confidential inspector from the Inspectorate of Education**

In the event of notification of a possible sexual offence against an under-age student, the Executive Board will enter into consultation with the confidential inspector as referred to in article 6 of the Education Inspectorate Act. This confidential inspector is employed by the Inspectorate of Education, which comes under Our Minister of Education, Culture and Science. The Inspectorate of Education is currently based in Utrecht.

The consultation with the confidential inspector is obligatory if there is a possibility that a sexual offence has been committed. If it is entirely clear that the conduct does not constitute a sexual offence, the consultation can be waived, but not otherwise.

It must be made clear during the consultation whether or not there is reasonable suspicion that the person in question has committed an offence. If it is concluded that this is not the case, then no report need be made. The Executive Board may, if it so wishes, still make a report, although this is no longer an obligation under article 1.20 of the WHW.

If there appears to be reasonable suspicion of an offence, a report must be made. After making a report, the confidential inspector will be notified accordingly. The confidential counsellor is otherwise released from the obligation to file a report as referred to in articles 160, first paragraph, and 162, first paragraph, of the Code of Criminal Procedure.

### **Reporting**

The report must be filed with investigating officials as referred to in article 127 in conjunction with article 141 of the Code of Criminal Procedure. Police officers, among others, fall under these articles and it is therefore most practical to file the report at the police station. The report must be filed according to article 9.2 paragraph 3 of the WHW by the chair of the Executive Board or by a person authorised by the chair.

In accordance with article 1.20, second paragraph, prior to filing a report, the Executive Board must notify the parents of the affected student and the person in question responsible for carrying out duties on behalf of the university, respectively. This paragraph appears not to take into account the cases where, at the moment of reporting, the affected student has reached the age of majority. If circumstances warrant, the Executive Board can decide to inform the affected student, or otherwise the parents, of the report.

### **Notification by members of staff**

In accordance with article 2.10, third paragraph, members of staff of the University who have become aware that a person responsible for carrying out duties on behalf of the institution may have committed an offence named in the first paragraph must make this known to the Executive Board without delay. The Executive Board will ensure that this obligation is made known to the members of staff. This obligation is included in the code of conduct for teachers and students. In day-to-day practice, information about a possible case of sexual abuse or sexual intimidation will typically be reported to the direct line manager or supervisor. This person shall, directly upon receiving such information, immediately make it known to the Executive Board.

This policy regulation has been amended by the decision of the Executive Board of 15 October 2019.