

Developments in the position of parents in primary and secondary education in the Netherlands

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In this contribution, developments that have occurred in the Netherlands in the last three years concerning the position of parents of education participants in primary and secondary schools, will be examined.¹ Relevant developments in legislation are described as well as jurisprudence in connection to the (legal) position of parents. In particular will be paused at recent developments around the assumption of a 'educational agreement', by which parents see possibilities to call on the school to fulfill their obligations. The practice of publication of education results in the media and the 'quality card' in secondary education will come up (for discussion). Attention will be spent at developments within the government policy, especially in the form of the note 'Parents and school: reinforcement of partnership'.²

Introduction

The government wishes to lend schools to an increasing degree autonomy, determining their education policy. Furthermore the legislator seeks a way between the concern of the government and the schools' own responsibilities.

Also the government wishes to bear in mind the rights and obligations of the participant or his legal representative (parent or guardian of a minor) and reckon with the part that the participant can have in the quality control.

Against this background the government has asked to be advised by the Advisory Council of Education about the position of the participant.³ An exploratory report has been published in July 1998 under the same title by the ministry of Education, Culture and Science. The conclusion

of the Council reads that in the sectors primary and secondary education no improvements need to be made in the position of the participant. The cabinet however disassociates slightly of this final conclusion: the coalition agreement of 1998 after all contained intentions of the cabinet to pay more attention to the position of the participant by reinforcement of the authority of parents and pupils in the school and the emphasizing of the equal position of all parents, who should not be excluded on basis of identity out of a council or board of representative advisory. These developments affect the position of the parents in different ways: on one side they influence their position as 'joint-designers' of education, on the other side on their position as consumers of education.

In the following, where not by the schools themselves performed measurement, evaluation and publication of the quality is at stake, the last perspective will be emphasized.

Legal measures

Over the last few years various legal measures have been taken that aim to improve the position of parents: the Quality law, the regulation of participation in decision-making and participation in the board of the (public) school.⁴

Quality law: school plan, school prospectus and complaint procedure

The Scheveningen agreement on administrative renewal 1993-1994 contained worked out proposals for quality and information services to parents and pupils.⁵

The Quality law, a consequence of this agreement, units the - in this agreement still distinguished - internal quality care of the school and the external responsibility by introducing on the first of august 1998 the school plan, the school prospectus and complaint procedure in primary and secondary education. This law obliges schools to - next to what schools already do on their own initiative in the way of supplying information by school magazines, open house and information meetings - inform parents about the school on prescribed subjects. There has been a stiff discussion over the introduction of the Quality law: by the discussing of the bill was put forward that the law may not infringe on the freedom of education, that the government should confine to the necessary and that the principles of justice of proportionality and subsidiarity should be regarded.

The school plan, that the school board determines at least once every four years, is the quality document of the school. The school plan contains for instance the policy concerning the acceptance of sponsorship. The use of financial support can contribute to the upgrading of the quality of education. Regarding this subject as well as regarding the decision on the height of the parental contribution, parents have recently got more say in the matter.

The school prospectus, that the school board determines every year, contains for parents, guardians and pupils information on objectives, contents and methods (of working) of the school (article 14 Primary Education Act and article 24a Secondary Education Act). This information is meant for parents and guardians who already have a child in the school, but also for parents and guardians that consider registering their child at that school. Here also has been determined by law about which subjects the guide should contain information. These subjects concern on one side the responsibilities of the school concerning the educational point of view and on the other side the rights and obligations of the parents, guardians, pupils and school boards. The complaint procedure gives parents the

possibilities to call on the school to account for its functioning (article 14 Primary Education Act and article 24 b Secondary Education Act).

In secondary school apply roughly speaking the same rules as drawn up for primary education concerning the school plan, the school prospectus and the right of complaint. Separate mentioning deserves the condition that the school prospectus in secondary school has to give information on the results that the school has reached with pupils: the percentage of pupils that moves on to a higher grade or different kind of education, the percentage of pupils that leaves the school without a certificate and the percentage of pupils that passes the final exams (article 24a Secondary Education Act).

School board and participation in decision-making

Parents can take part in an administration of the school for primary or secondary education. There are no legal regulations that lay down the minimum number of administration seats occupied by parents. An exception is being formed by the legal regulation that came into force on February 1997 and that requires that at least one third, but not a majority of the members of a public corporation or foundation that maintain public schools, is appointed on binding recommendations of the parents of the pupils that are registered on the school or schools in question.

The Participation in decision-making Act 1992 provides with a regulation of shared participation council (parents and staff). This law makes it possible to practice by right of approval and by right to be consulted concerning different aspects of education - among which the quality policy - and provides with a regulation to take a matter up with the arbitration board. Among other things for the determination or alteration of the specific use of the funds that have been received from the parents without the existence of a legal obligation, does the competent authorities need preceding approval of that part of the participation council that was chosen out of and

by the parents or pupils (article 9 sub of the Participation in decision-making Act 1992). That means for example that a decision of the competent authorities to reserve these funds to take an extra teacher into employment considering class-reduction and the thereto linked, expected quality improvement - as sometimes happened in the passed period - needs the approval of the parents. Approval is also required on the point of settlement of the student statutes. Recently the Lower House, after a discussion for years on and started by the trade union the AOb, decided that in primary education the participation council remains to exist, secondary education, professional and adult education will have a company council.

Otherwise does it seem that in the passed years undiminished continuing administrative increase in scale not to have led to an increase of influence of parents on the factual decision-making. If that means that - regarding the way in which administrative organization in mainlines looks like - further rules must be agreed on is doubtful. In the last years a situation has occurred in primary and secondary education in which the variety is so big that it is hard to determine how the local government can substantiate that for staff and parents a realistic involvement in the school will be possible.

Protection personal particulars Act

Not an education act, but indeed of importance for the position of the parents is this new act, that appeared on July 2000 in the Bulletin of Acts and came into force on September 2001. This Act regulates the privacy and privacy protection and applies to all organizations in the Netherlands, so on schools too. In this law the protection of personal particulars of pupils and parents is given an explicit chance. In regard to all computerized processing of personal particulars a duty applies to report to the Board of Protection personal particulars. A personal particular is every particular reducible on an individual (therefore too for example a class photograph). A separate

rule applies to divorced parents: only if a pupil has not yet reached the age of sixteen the legal representatives can exercise the right of inspection of the by the school laid down particulars.

In principle both parents are the legal representatives. By divorce the parental rights are usually granted to both parents. Only in special situations will be deviated.

The Lower House has also agreed to the introduction of using a number for every individual member in education. This number is similar to the National Insurance Number. The educational acts indicate to what purpose these numbers may be used and to whom they may be supplied. Otherwise Protection personal particulars Act is practiced. Introduction is anticipated for 2002 in secondary education and in 2004 for primary education.

Publication of school achievements in the media and the 'Quality card' in secondary education

The inspectorate has been collecting data on performances of pupils on school level for the last few years. At the end of 1997 the newspaper 'Trouw' acquired these data (by a procedure based on the Publicity of administration Act) and published them in adapted form (namely after awarding marks per school) in the newspaper. This course of events has stepped up the discussion about the Quality card for secondary education to be issued by the inspectorate. The Quality card is a document that holds quantitative specifications about the school, whereby is taken into account the student characteristics and the school characteristics.

Quality cards were first published by the inspectorate at the beginning of the term 1998/1999, in the form of 16 regional guides and sites on the Web. This card is meant for parents as well as for schools. Parents and children in secondary education can verify how the school of their child performs. The card is also meant for parents, who have to choose a school for their child in group 8 of a primary school. Among

highly trained parents the familiarity with the regional guide is better known than among parents with a lower education.

Only ten percent find the guide useful for the selection of a school for their child; information meetings and advertisement by mouth-to-mouth advertisement give more to hold on to. Forty percent of the parents is convinced of the reliability of the specifications. They find more attention for less 'hard' criteria, like the atmosphere at school and student supervision, important.

Education policy

In the coalition agreement and in the two successive policy letters by the education budget the reinforcement of the position of the parents has been announced. Building on recently introduced instruments like the school prospectus, complaint procedure, Quality cards and public inspection reports, new steps will be taken for improvement of information, communication and participation. The cabinet takes as a starting point in the memorandum 'Parents and school: Reinforcement of partnership', that parents are primarily responsible for the upbringing of a child and that the school has a specific responsibility for the educational training of a child. For the development of a child it is important that parents and school understand each other well. It is a matter of 'partnership', based on equality and mutual rights and obligations. Parents need to be informed well about the quality of educational institutes. This enables them to make a balanced selection of a school and enter better equipped into the dialogue with the school. That is why information facilities to parents will be improved as follows:

- The inspectorate will - within the framework of the regular school supervision and the integral school supervision - also make reports that are intended for parents. The comparability between schools is in addition an important element.
- There will be a 'quality site' for parents with all relevant information about schools. For that

purpose information from different sources, under which the inspectorate, will be compiled and made mutually comparable.

- There will be one national advisory center, where parents individually can call on for information and advice about matters that affect their relation with the school. With the cooperative national parents associations - at this moment especially active for members of parents councils and participation councils - will be spoken about the set up and lay out of the advisory center.

Concerning the communication between parents and school a lot of material and expertise is available. Distribution of material and exchange of expertise is however not common, by which there is a fragmentation in the supply. As announced in the memorandum 'To work with educational chances' a publication will be made in which schools can acquaint themselves with success and failure factors where it concerns the relation with parents. Furthermore a parents campaign will start that means to involve more the parents of children in disadvantage situations, in pre and early school education.

The national pedagogical centers link up in their activities for parents to this approach. Also in training and continuing education of teachers attention will be paid to the importance of a good communication between school and parents. In connection to participation the cabinet has emphasized in the coalition agreement the importance of an equal position of all parents of to the school admitted children, regardless of their ideology. That is why it is suggested to lay down by law that schools may not exclude parents - on grounds of ideology - out of the participation structure. With periodical evaluations will be considered in how far this regulation will be of influence in real terms on the admittance policy of schools. The opportunity of parents to practice influence on the foundation of the school will be strengthened by the way of participation council (or the future school council) will get a legal approval right about a basic decision of the

competent authorities to alter the foundation (the so called color fading or discoloring). This legal consent right will replace the present right to advise. Besides that - as a reinforcement of the influence of parents by participation - the power of initiative right of the parents section in the participation council, will be strengthened. This happens by declaring the arbitration regulation for participation applicable for initiative-proposals, that are submitted by the parents section to the school administration. On the pretext of 'The school to the parents' there has been pleaded for the possibility of parents to enforce change in the foundation of the school (the so called color fading or discoloring) before. In the first Kok-cabinet this viewpoint was introduced in the memorandum 'The identity of the school in a multiform society'. The cabinet wanted to strengthen the position of the parents in the school administration, a viewpoint that was later confirmed in cabinet statements. At that time was already explicitly stated that parents may not be excluded from administration or participation bodies on grounds of ideology. Maybe also by the constitutional impediment to intervene in the administrative structure of private schools there has not been concretely acted upon these statements.

Changes within the educational supervision

In continuation on the policy document 'Variety and Guarantee' named 'To a stimulating supervision' the minister formulates as one the basic assumptions of education: education is primarily there for parents and participants. The educational institutes must be positioned in society in a way that all parties, parents, participants, teachers, management and administration can realize their responsibilities. Drastic developments within the educational supervision occurred and still are occurring. The inspectorate makes an evaluation report of every individual school that, says the inspectorate, should be as brief as possible and clearly written for use of different target groups. The evaluation report is public, which means that parents who are

interested may take note and take their advantage: they can determine if their child is going or will be going to the right school. The element of benchmarking in the report enables parents to make their choice for a school in a comparable situation, one that succeeds better in realizing aspects of the definition of quality. Over what is measured by the inspectorate is however a discussion: on the one hand there are measurable factors, on the other hand there are issues that are more difficult to grasp, like the atmosphere at school and the way teachers and students treat each other.

Many parents will disagree with the inspectorate in the respect of handling criteria to determine the quality of a school. When the legislator in the Act on educational supervision lays down that the inspectorate has the task and the qualification to develop an examination frame and that this will happen in consultation with parties concerned and in a professional manner, than it is advisable to regard parents also as a party concerned. It should be mentioned that concrete developments already show that the freedom to search for 'the best schools' in practice can lead to a unwanted division. An alarming phenomenon is for example that autochthonous parents divert to schools with less foreign pupils. In 1999 questions were asked by a Lower House member at the state secretary for Education, Culture and Science and the minister for Big Cities and integration policies about 'black' schools and actions that should be taken to stop segregation. The questioner referred to an opinion poll, that showed that thirty percent of the parents would choose to send their children to a 'white' school twelve kilometers further on instead of to a black school in the neighborhood, which means a white flight. Overregistrations for schools with a good reputation led to having to dictate admittance criteria by those schools (like the criterion of the distance of the school to the residence of the parents). Consequently parents had to experience that they had to fall back on schools that were not on their priority list. When parents have chosen a school, they may then be confronted with the admittance policy of that

school. Public schools are accessible for all children without distinction between religion or ideology. Nevertheless public schools can refuse children on a few limited grounds, for example because the school is 'full' and educational considerations do not permit further growth. This situation occurs frequently in big cities. Parents have to fall back on a school of second, even third choice. Depending on the regional situation schools may pursue a more or less selective policy, at the expense of certain groups of students. In short: by use of the own policy space, schools can lay down their own admittance policy and that policy may frustrate the choice of school of parents on the base of quality judgment by the inspectorate. A matter that may also play a part in the choice of a school 'of superior quality' are the costs that are involved concerning the costs of transportation to such a school. The legislation and jurisprudence concerning article 4 Primary Education Act make compensation of traveling expenses possible if objections exist against the foundation or the public character of nearby situated schools. Objections only against the quality of school situated nearby are however not honored. That means, that if parents let themselves be led by quality reports they will have to pay for the costs of transportation for their child to a school situated further on. In secondary education a general regulation does not exist for compensation of costs of student transportation. Only parents with the lowest income qualify for a (often not sufficient) subsidy based on the Act subsidy study expanses.

Summarizing it is conceivable that parents cannot realize their 'quality choice' by the concrete offer of schools, the admittance policy and the costs or other private considerations.

Jurisprudence

Next to developments in legislation and policy judicial decisions in the past period are determined for the developments in the position of parents and education participants. A selection out of the colorful series of statements.

The four day schoolweek

July 1999 the president of the Court in Amsterdam (AB 2000, 106) decided that the decision of an administration of a few schools for public education whereby was determined that the pupils of elementary school starting the new school year would have a day off every other week was not against the law and neither against the motivation - and trust - principle. The relevant request of the parent was subsequently refused.

Freedom of choice of school

In the judgment of the Council of State, department administrative jurisdiction, of October 1999 was stated that there was no conflict with the right from parents to choose freely education regarding First Protocol, article 2 European Treaty for protection of the rights of mankind and fundamental liberties (EVRM). It concerned the refusal to grant a scholarship for the benefit of traveling costs to the Steiner school in B. This refusal was based on the order, regulating the award of scholarships in the municipality H and on the guidelines that are employed at the execution of the Order. By the stipulation of the costs of studying one is supposed to go the cheapest and closest institute, regardless of the religious foundation and the educational system of the institute. Traveling costs are not compensated in regard to an education given in H, neither in regard to a comparable education given in an institute outside H, which has been chosen because of personal preference with regard to the religious foundation on of the system of education. The department is of the opinion that the Order nor the guidelines are in conflict with article 2 First Protocol at the EVRM. There is no question of denial of the possibility to follow the desired education at the Steiner School in B, so desired by the parents. The stipulation does not extend so far that the (lower) government, if she by local acts offers the possibility for granting a scholarship to follow secondary education, where it comes to a deliberate choice in a certain direction, is held tot compensate traveling costs.

The department is furthermore with the court of the opinion that what the parent has pleaded concerning the circumstances in which she finds herself and the different education that is given at the Steiner school does not have to be a reason to enforcement of the so called hardship clause.

Educational agreement

In a judgment of the Court of Amsterdam in 1999 J.O. 1999/83 (Schaapman), there has been stated that there was a question of shortcoming of the competent authorities in legal obligation resulting from the articles 8 and 9 of the former Primary Education Act by the behavior of the director of the school. The judge confirmed the sentences of the cantonal magistrate in the matter of the payment of compensation by the competent authorities to the parent because of costs of putting her son tot the test and extra lessons given to her son. The case Schaapman has made clear that parents based on existing educational agreements between them and competent authorities of the school can claim on qualitative good education: the cantonal magistrate has put the parent in the right, who called to account the municipality as competent authorities of the school because of unsatisfactory fulfillment of the educational agreement, and this decision has been confirmed in a court of appeal. Never before in jurisprudence has been determined that a competent authority is compelled to pay compensation because of insufficient quality of education. The court has assumed that for the school exists an 'effort agreement', which means that at least the teaching material should be dealt with that is included in the program.

This duty to provide for has also been included in article 10 Primary Education Act, where is determined that the competent authorities cares for the quality of the education at school, which means in any case: the execution of the school plan, in such a way that the legal and own assignments will be realized.

As clearer assignments are appointed in the school plan parents can claim more fulfillment. This case makes clear that when a parent has

plain indications that the quality of education at the school of his child is unsatisfactory he can go to court. If this case on a large scale will be followed, has to be seen. Before a parent appeals to the court, other ways can be followed. A badly functioning competent authority and a ditto management can be called on to account by the participation council. Also the internal complaint commission and the inspectorate can first be called in, when it comes to realizing qualitative good education.

The freedom of the school to organize the education surpasses wish of parents

The presiding judge Amsterdam (July 29th 1999, JO 1999, p. 136) dismissed the demand of a parent to have a pupil skip one group. The president took as a basic principle that the school board has in principle the competence to organize the education as they wish. The rules that defendant applies for skipping a class has to be respected by the prosecutors.

Admittance disabled pupil to a regular elementary school

The department of administration of justice of the Council of State (July 26th 1999; the challenged judgment of the Court Haarlem July 21st was confirmed, J.O., 1999, p. 139) went into the refusal of admitting a multiple disabled pupil to a (public) elementary school. The department decided that - taking into account the already existing high work pressure of the teachers - not can be excluded that further increase of the work pressure shall have considerable negative consequences for the other pupils. It cannot be stated that Burgomaster and Aldermen by assessment of all involved interests could not have come to their decision.

School responsible for safety

In the verdict of the Court Utrecht (October 9th 2000, J.O. , 2001/1) was stated, that the negligent acting of swimming instructors and teachers, because of which a pupil died, can be attributed to the competent authorities.

The swimming as part of the curriculum belongs to the ordinary school activities; the conduct of the teachers falls therefore within the range of influence of the competent authorities. This case with sad determination is supposed to lead to the necessary consultation between school and swimming pool concerning the safety of the children, that are entrusted to them in the frame of swimming as part of the curriculum.

Direct measurement

Direct measurement is a method to probe the wishes of parents concerning the foundations of a new to establish school directly and can consequently do more justice to these wishes, than the indirect method, that acts on by passing on the historically grown situation. Recognition of direct meeting means also more direct influence of parents on the stock of schools.

About the article 75 Primary Education Act goes the verdict of the department of Administration of Justice of the Council of State (January 26th 1999, J.O. 1999/3, p. 59) This department states: direct measurement is a supplementary method to submitted prognosis as an indirect measurement gives insufficient details for the stipulation of the demand. A higher percentage of interest in a outside of the input area situated district is not relevant. The supplementary character of direct measurement also came forward in the verdict of the department of administration of justice of the Council of State (January 28th 1999, J.O. 1993/3, p. 62; Two Islamic elementary schools in The Hague). The department decided that has been chosen for the possibility to include data from

direct measurement in those cases in which the municipal interest percentage cannot be calculated or cannot be considered representative. This is moreover the case in new housing developments where the population construction considerably deviates from the municipality as a whole.

Finally

The increasing independence of schools related to the freedom of education has led to legal regulations that offer a frame for the quality policy of schools. Moreover a greater involvement for parents has been provided than before. Generally speaking can be said that parents have at their disposal a maximum of information about the quality of the school. The school prospectus and the school card fulfill a function concerning the output of the school. Because of the changing relations between government and institutes, the position of the participant has also changed. The idea is - by lesser guidance of the government of educational institutes - that the participant can perform as a 'countervailing power' towards the more autonomous institutes. There will be judged that in real terms the strengthening of the position of the participant is restricted in spite of the taken regulations. Just like other actors in the environment of the school who will be presented as a countervailing power, the educational participant stands in a dependent position in relation to the school, which hinders its functioning as countervailing power.

Notes

- 1 There are also schools for ‘special’ education (*speciaal onderwijs*): children with learning difficulties or behavior problems who cannot be taught in ‘ordinary’ primary schools can attend a special school for primary education. Ordinary and special primary schools now work together so that as many children as possible can remain in ‘ordinary’ schools. This is actively promoted by the government under the slogan ‘going to school together’. In other words, special schools are intended only for those children who really cannot manage at an ordinary school, even with special help. There are also special schools for children with impaired hearing or vision, children with serious speech defects, physically disabled children, children who are chronically sick, children with serious learning difficulties, severely maladjusted children and children at school attached to pedagogical institutes (for children with psychological problems).
Plans for the future: more and more children with disabilities are now going to their local school instead of a special school because their parents are keen for them to mix with non-disabled children. This means that they can go to a school near their home, in familiar surroundings, and be with friends. The current method of funding schools was not designed for this. A new system is therefore being planned, which will involve allocating children with disabilities a personal budget that travels with them (back-pack).
- 2 Kamerstukken II 2000-2001, 27 680, nr. 1.
- 3 The Advisory Council of Education (*Onderwijsraad*) is the national advisory body that advises the government on the broad outline of educational policy and educational legislation. For more information see: www.onderwijsraad.nl.
- 4 Public-authority schools (*openbare scholen*): approximately one third of all children go to a public-authority school, i.e. a school governed by the municipal council or by a governing committee appointed by the council. Public-authority schools do not identify with a particular religion or outlook on life. They are open to children of all religions and beliefs. If parents would like their children to receive instruction in a particular faith or belief, this can be arranged.
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Private schools (*bijzondere scholen*): about two third of all children attend a private school. There are many different types of private schools. Most are Roman Catholic or Protestant, but there are also Jewish, Muslim, Hindu, Humanist and Steiner schools as well as non-denominational private schools. Private schools are governed by an association (which parents can join) or a foundation.
- 5 *Schevenings akkoord*: an agreement between the ministry for Education, Culture and Science and the local authorities and the association of private schools.

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