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FROM COMPULSORY EDUCATION TO RIGHT TO EDUCATION

Advisory report about guaranteeing the right to education
following the investigation of truants

Research team

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Children have rights. These rights are, among others, defined in the Convention on the Right of the Child and apply to everyone under the age of 18. The Ombudsman for Children assesses whether the Dutch government respects these children's rights. The Ombudsman also assesses organisations in education, childcare, youth care and health care. The Ombudsman for Children has diverse tasks.

Research

The Ombudsman for Children investigates subjects that have to do with the violation of children's rights. He may also start an investigation following complaints that concern individual cases.

Advice

On the basis of signals and investigations he will provide –solicited and unsolicited- advice to the parliament and diverse institutions.

Awareness children's rights

It is important that everybody knows there are children's rights and what they mean; children, young people, their parents, schools, the government and institutions. For this reason the Ombudsman for Children spreads awareness among adults, children and young people.

More information, reports and opinions can be found on www.dekinderombudsman.nl

CONSIDERATION

On March 21, 2013, the Compulsory Education Day, the Ministry of Education, Culture and Science, published the actual figures of the number of reports of unauthorised absenteeism for the school year 2011-2012. These figures show that also during this school year still thousands of children did not receive education for over four weeks or have been sitting at home (known as truants). This generally concerns children with diverse and often complex problems. All parties within the education system are working to reduce these figures. In addition, a new adequate education system is introduced on August 1, 2014. This system requires schools to provide a suitable place of education for children who need special educational needs for additional support. With this, the duty of care is guaranteed in education in the laws and regulations.

Are all these measures sufficient to ensure the established right to an adequate education in the provisions of Articles 28 and 29 of the Convention on the Rights of the Child? For what to do if a child after prolonged (un) lawful school absenteeism wants to return to education, but cannot handle full school education? Or if the child wants to return to school, but needs more attention or challenges than can be provided in the classroom?

By law, a child must have a school attendance of a minimum number of hours, five days a week. And the funding of education for this child is only paid to the school where the child is registered, which means no home schooling can be financed with this amount. School boards and school attendance officers must look beyond their formal responsibilities to come to an appropriate solution for these children, and have the possibility to deal pragmatically with rules and procedures. Parents are also expected to take the effort to come to a realistic solution. The starting point must be that children go to school. Although for children for whom this really is not feasible, we need to find a flexible - possibly temporary – solution to ensure that children receive the education they are entitled to.

I am aware that education is already being thought of as customised solutions. With appreciation I look at the creative ways in which school attendance officers, schools and parents sometimes meet the specific educational needs of the child. But more is needed to realise adequate education. A shift needs to happen in the Netherlands in thinking about education. A shift from compulsory education to right to education: primarily seen from the child's perspective. Only by acting from the right to education perspective, can the Convention on the Rights of the Child sufficiently ensure this right in the Netherlands.

I thank all the children, parents and professionals for their cooperation in this study. Thanks to their information we were able to realise this report.

Marc Dullaert
The Ombudsman for Children

SUMMARY

Motive

Every child has the right to education, which is aimed at the fullest possible development of its personality, talents and mental and physical abilities. This right follows directly from Articles 28 and 29 of the Convention on the Rights of the Child (CRC). Despite this law, thousands of school-age children are still not participating in education in the Netherlands for longer periods during the year. Since his appointment in 2011, the Ombudsman for Children has received regularly signals, complaints and questions concerning this matter. This particularly concerns children who want to go to school, but for whom this is not feasible due to special educational needs in medical, social, intellectual or emotional areas. The question is why it does not seem possible for these children to participate in adequate education. To answer this question, the Ombudsman for Children decided to do a field study on its own initiative. The study focused on the issues that stakeholders in the education sector, including parents and children themselves, experienced towards solving the problem of truants. The Ministry of Education, Culture and Science (OCW) and the Education Inspectorate were also questioned.

Outcomes study Ombudsman for Children

The Ministry of Education indicated during the study that it identifies the truants problem and sees the solution to this problem mainly in the legislation on adequate education. The concomitant duty of care, which requires schools to provide children with additional support needs adequate education, would provide a solution. The most striking bottleneck from the educational sector, however, is the lack of flexibility to meet the support needs. Education that is based on the specific educational needs of the child requires customisation, and within the current educational system there is not enough room to provide this customisation. According to the education sector, the creation and implementation of customised education is hampered by the following problems:

- laws and regulations and the ensuing education are mainly based on compulsory education and schooling; therefore lacking room for customisation. This also means that the funding for a child cannot be divided between several forms of education and that separate funding streams for education / care combinations clash;
- there is insufficient flexibility with school boards and teachers regarding the creation and application of customisation. Education Inspectorate monitoring plays an important role, because of its focus on income and graduation rates;
- parents, schools and school attendance officers are deficient in early expert support and advice regarding customisation;
- school attendance officers often focus on enforcement of the Compulsory Education Act and too little on the initiation of customisation; they therefore do not think along enough to come up with any suitable solution;
- legal power is often missing in the education sector so that customisation can come to fruition;

Conclusion

All children are equal, but not identical. They each have their own qualities and abilities to which they should be addressed and challenged. Instead of labelling and stigmatisation, the education sector must respond flexibly. The right to education demands to bring out the best in every child. For this reason, customised education must be supplied to children with special educational needs. The right to education demands to bring out the best in every child. Customisation must therefore be supplied to children with special educational needs. However, the field of education experiences too many problems to meet this customisation. Even with the by the ministry said introduction of the system for adequate education and the related duty of care, these problems are not solved. More is needed. To make customisation possible a shift should be made in thinking about education, a shift from compulsory education to the right to education be introduced. In education, the focus should not be on

the supplier of education, but on the child's perspective, what does the child need! Only then the question should be asked as to how this can be realised. The needed customisation of adequate education can only be delivered by considering education from this approach. Only this way, the rights of the child can be met.

Recommendation: Make customisation possible!

To make customisation possible, the mental shift from compulsory education to right to education should be done within the Dutch educational system. The Minister and the State Secretary to take the following measures to do so:

- allow such an interpretation of laws and regulations, that it leaves room for customisation within the educational system. The Compulsory Education Act was created to protect the right to education and should not form an obstacle. For children with special educational needs it should therefore be possible to derogate from the requirement of physical presence in school, making (combinations of) other forms of education legally possible. Ensure de-compartmentalisation and distribution of financial flows, so that customisation can be financed;
- encourage education to create and implement customisation. Stimulate school boards and teachers to make the mental shift to right to education and make sure they are adequately equipped in terms of competencies, information and time to provide this customisation. Give them their trust and adjust the method of supervision by the Inspectorate of Education in such a way that customisation is rewarded.
- make it possible that the expertise of the education consultant in the field of customisation by parents, schools and school attendance officers can be used early, before an indication or before the child is sitting at home;
- make sure that the right to education perspective is incorporated in the process of compulsory education officials so that they focus more on customisation. Then encourage them to unite, for example in regional offices, so that quality, continuity and uniformity are increased and guaranteed;
- appoint per region a right to education director with legal power allocated by the government, to whom a case can be "scaled up" if the search for customisation still leads to a deadlock. This right to education director must be an independent experience expert in the educational field. He should review the case with a fresh approach and take charge of chain management. Then he must be passionate, call on parties to fulfil their responsibility and, if necessary, take binding decisions concerning the required customisation.

Execution: truants Agreement

In order to implement these measures, the Ombudsman for Children, the Minister and the State Secretary for Education recommend to come to an agreement with parties within education including the PO council, the Secondary Education Council [PO Raad], the MBO council [MBO raad] the Work Conduct project, Education Consultants Agency (+) [Bureau Onderwijsconsulenten(+)], the Association of Dutch Municipalities and branch association Ingrado, possibly supplemented with National Health Authority [GGD], mental health care [GGZ] and youth care, in which the following is agreed:

- the central government and the education sector interpret laws and regulations in such a way that there is room for customisation. Flows of funds are de-compartmentalised and divisible, in order to finance this customisation;
- school boards and teachers make the mental shift to right to education to initiate and implement customisation. They are sufficiently equipped in terms of competencies, information and time to provide this customisation. The manner of supervision by the Education Inspectorate is adjusted accordingly.

- parents, schools and school attendance officers can utilise the expertise of the consultants ahead of time, and not only after four weeks of sitting at home or after indexation of the child;
- in cooperation with Ingrado, municipalities integrate the right to education perspective in the methodology of compulsory education officials and unite them at regional level so that quality, continuity and uniformity can be jointly increased and guaranteed.
- within their region, school boards jointly deploy a right to education director with legal power allocated by the government, to whom a case can be "scaled up".

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Elle (18)

"I've been officially at home for six months. But actually I haven't been to school that much for years. I am lagging far behind. Especially mathematics is a problem. I kept up with language by reading a lot on the Internet.

From the second year of pre-vocational school [vmbo], I was often sick. I just did not feel good, I had pain in my muscles, was tired and nauseous. Nobody could find anything and I was told that I was a poser. I had to go to a psychologist and a psychiatrist. Because there was no evidence that there was something wrong with me, I had to deal with the attendance officer and the judge, who gave me a community service order and an education order. Compulsory education also found that my parents did too little, so I got a family guardian. She threatened to remove me from my home if I didn't do what she said. I'm glad I'm rid of her.

My mentor sent me assignments for Dutch and mathematics only in the beginning when I got sick. After a while, this stopped. Being at home all the time is no fun. Without distraction you constantly notice that you're not feeling well. And I lost my friends. I have little structure, but try to get up early. My school thought I was a burden, but changing schools failed. A new school did not want me after they had been in touch with the old school. Since I had no indication, I could not get home schooling. Since last year I have proof that I am not a poser. By chance, the pediatrician found out that I have the disease Addison Biermer. My mother gives me vitamin B12 injections and I'm doing better.

I would like to follow training for animal care, but I can't with just a few years of pre-vocational schooling. I now have my own guinea pig care at home and I work together with my mother at the animal ambulance. The supervisor of the education order So-Cool, the only one who really helped me, advised me to gain experience through volunteering. Maybe I'll end up in animal care this way.

If I were the boss of a school, I would show more interest in children who are often ill. I would give more homework and keep in close contact. I'm quite happy right now, especially because I'm eighteen years old and do not have a guardian and compulsory education anymore."

READING GUIDE

This is the advisory report of the Ombudsman for Children on guaranteeing the right to education in law and practice. This report was written in response to research into truants. Chapter 1 contains the recommendation of the Ombudsman for Children to the Minister and the State Secretary of Education. Chapter 2 provides an introduction to the study. Chapter three presents per paragraph the findings and conclusions on which the recommendation is based. It also considers the new system for adequate education. The following is a final conclusion.

Between the chapters you will read true stories of parents and children, who have contacted the Ombudsman for Children. The names of these children are fictitious. Some good examples are also provided.

In Annex 1 you will find the accountability of the research. Finally, in Annex 2 there is a brief overview of children's rights relating to the right to education [annexes are only in Dutch]

Cees, 10

"I have been home from school for nine months now. It all started with meningitis. I get tired very quickly and I need a lot of help for example with dressing and washing, but also to ensure that I take enough rest and to see how I will do that day.

In the beginning I still went to school twice a week for an hour and a half. That was very nice. I saw my friends and I learned difficult things. I like that. I also had a teacher at home twice a week for a one-hour lesson. But now I don't go to school anymore. It isn't that I don't want to go to school, but I need a lot of help and, according to the government, you are then not allowed to go to school. The help that I need has to be paid out of a PGB¹ and I only receive this if I don't go to school. My parents had to choose: help the whole day or a few hours to school and no help.

I do not like it at all that I can't go to school and that the teacher does not come to our house anymore. The school also wants me back. I hardly see my friends. I do not have the lessons my friends have and I do not learn the same things. My brother and sister go to school and I find that very difficult. It's like I'm being punishment. I was sick and now I can't go to school, while I haven't done anything wrong?! The government is wrong and I am angry and sad about it. Anyone who is helping me out does so well, but we cannot ignore the rules.

I'm also bored. To fill the days I read a lot. My mom gets information books from the library. If I'm not too tired, I play with Lego for example, or I make construction works of wood. Sometimes I work on the computer. In the beginning I also played with friends from school sometimes, but because I'm no longer in school, I almost never see my friends.

It's a stupid rule that you can't go to school if you need a PGB. If I were a director of a school, I would ensure that children like me could still come to school. Then they can learn and make new friends and they do not have to feel alone. When I think about my future, I'm not happy. I would like to high school, do experiments with chemistry and physics, get a diploma and get a job. But this is not possible if the government does not change the rules.

If I had to give up a wish list, it would be my wish that I could just go to school, that I could learn, because I'm pretty smart! I would also like to have enough lesson that I will be able to high school and get a diploma."

¹ PGB: personal budget. In the case of Cees this is a PGB under the Exceptional Medical Expenses Act indication daytime activities.

1. RECOMMENDATION

MAKE CUSTOMISATION POSSIBLE WITHIN EDUCATION! AND SUPPORT THIS WITH A TRUANTS AGREEMENT

The following is recommended to the Minister and the Secretary of Education, Culture and Science:

Come to an agreement with the relevant parties in the education sector, such as the PO council, the Secondary Education Council, the MBO council, the project Conduct Work, Office of Educational Consultants (+), the Association of Dutch Municipalities and branch association Ingrado, possibly supplemented with Health Care, Mental Health Care and Youth Care, in which the following is agreed:

- The central government and the education sector interpret laws and regulations in such a way that there is room for customisation within the educational system. Compulsory Education was created to protect the right to education and to this end should not be an obstacle. For children with special educational needs, it should therefore be possible to derogate from the requirement of physical presence in school, allowing (combinations of) other forms of education or care to be legally possible. Funding streams will be de-compartmentalised and divisible as much as possible, so that customisation through multiple forms of education can be financed.
- School boards and teachers make the mental shift from compulsory education to right to education to create customisation and implement it. They are sufficiently equipped in terms of competencies, information and time, to provide this customisation. They are given trust and the method of supervision by the Education Inspectorate is adjusted in such a way that schools are rewarded for customisation.
- Parents, schools and school attendance officers can use the expertise of the consultants ahead of time, even before the indication of the child, or before it stays home.
- In cooperation with Ingrado, municipalities integrate the right to education perspective in the methodology of compulsory education officials and unite them at regional level so that quality, continuity and uniformity can be jointly increased and guaranteed.
- Within their region, school boards jointly appoint a right to education director with legal power allocated by the government, to whom a case can be "scaled up" if the search for customisation still leads to a deadlock. This right to education director must be an independent experience expert in the education sector. He should review the case with a fresh approach and take charge of chain management. He is passionate, calls on parties to fulfil their responsibility and, if necessary, take binding decisions concerning the required customisation.

Nina, 14

“Because I needed little sleep, I taught myself to read at night when I was three and a half years old. With my older sister’s type case. I really looked forward to going to school. There I proved to be a quick learner and, although after much struggle, skipped two classes. I have had many physical complaints during my school because I was bored and had to adapt. A hospital test on my sixth year showed that I was highly intelligent. Now I’m fourteen years old and I’ve been at home for more than a year. I visited six different schools in total. I always found the explanation in classrooms unnecessary: I wanted to start right away. All schools promised me some extras. At the last school I was going to develop a cool computer game. But it turned out to be so simple, one boy even explained to me what a ‘background’ was. They did not believe at that school that I was highly intelligent. I had then lost interest and my grades went down. I was not allowed to go to 3VWO [3rd grade pre-university education] while I could easily handle it. The coordinator of the school failed to honour the commitments and stopped me from going to another school, while the director had just given my father permission.

I was sick a lot, had headaches and pain in my legs. The Mental Health Care [GGD] doctor made it worse with a notification towards the AMK.² My parents had to go through the whole process and my sister was not allowed to go to school for thirteen weeks during the investigation.

And so I ended up at home, with exemption from compulsory education to recover. I now follow the last years of secondary education through correspondence courses at my own tempo. That suits me well and my physical symptoms are gone. My parents and grandparents pay for the education. My grades are much higher than in school and I skipped a class again. I’m going to do final exams in 2014. I don’t miss school, I’m happy with how things are right now. My dream is to go to college in New York.

My two sisters are also highly intelligent and we had to move for their schools. We now have little money and live in a small cottage for the time being. Our old house has not been sold yet. A solution for me would have been a good mentor with knowledge of giftedness and a Montessori school for secondary education. There you can determine your own pace as a highly gifted person.”

² Advies-en Meldpunt Kindermishandeling [Advice and Support Centre Child abuse]

2. INTRODUCTION

2.1. THE RIGHT TO EDUCATION

Every child has the right to education. This right follows directly from Articles 28 and 29 of the Convention on the Rights of the Child (CRC). Under this Convention, the emphasis should be on the right to education. Education should be seen from this perspective and it should always be possible to claim the right to education. This is a right of a child to fully develop his personality, talents and mental and physical abilities. Right to education means that adequate education should be available, or education matching the capabilities of a child with attention to both cognitive development and the development of other talents. The starting point is a class and inclusive education for everyone, including children with disabilities. The government is responsible for ensuring that this can be achieved on the basis of equal opportunities.

Schools need to provide a safe and humane environment with suitable staff. Parents are responsible for the upbringing of a child and for personal care. They should also make sure that the child goes to school. They share that responsibility with the government. The government must ensure the conditions, so that education for every child is possible. This means available and accessible education, also for children with special educational needs, that meets the capacities of the child.

2.2 COMPULSORY EDUCATION AND COMPULSORY SCHOOLING

The right to education under the CRC is not explicitly included in the Dutch constitution. Education is regulated by the Compulsory Education Act and the resulting sector laws in the Netherlands. The Compulsory Education Law was introduced more than a hundred years ago to protect children from environmental influences, such as having to work early, which may prevent them from exercising their right to education. This law was replaced in 1969. Much has changed in the last hundred years.

Through time, learning as a privilege has been taken over by compulsory education, and now applies to the age of eighteen. Compulsory education in the Netherlands is equivalent to compulsory schooling; Parents should make sure their children are enrolled in school and that they regularly attend this school. The rules for school attendance are defined. And from the age of twelve, children themselves are also responsible for regular school attendance. Only in exceptional cases, the child may (temporarily) be exempted from compulsory education.

According to the Compulsory Education Act, education should be followed in schools that meet the quality requirements. Education at home or in places other than school does not meet these requirements. The main reason is that, according to the Compulsory Education Act, children should be enrolled in a school within the meaning of that Act and they should visit that school regularly.

Compulsory education may also be performed at a private school, provided it is recognised by the Ministry of Education. These private schools are, however, not funded by the government.

Over time, the rules regarding truancy have been increasingly tightened and guidelines are established to prevent early dropouts. In the Netherlands, children need to obtain their basic qualification. This is a HAVO, VWO or MBO (level 2) degree [secondary education, pre-university education or vocational education]. Achieving such a degree means a stronger position in the labour market and therefore less likely to be unemployed or involved in crime, says the Minister of Education.³

³ www.rijksoverheid.nl

2.3 MOTIVATION RESEARCH OMBUDSMAN FOR CHILDREN

Since his appointment in 2011, the Ombudsman for Children regularly receives signals, requests for help and complaints from parents and children about the fact that the child is unintentionally at home and the parties concerned fail to ensure that the child receives education. This particularly concerns children who have special educational needs in the medical, social, intellectual or emotional areas. The parents and children indicate that there is often no suitable school or other education services available to them, so the child ultimately ends up at home. Parents feel powerless in their search for a school that meets the educational needs of their child and insufficient cooperation from the authorities they are dealing with. They also describe situations escalated between them and the school, and they complain about too much enforcement-oriented behaviour of the attendance officer to come to an appropriate solution. Because of these signals, the Ombudsman for Children decided in August 2012 to do a field study on its own initiative, to determine whether the right to education defined in the ICRC is sufficiently guaranteed for these children in Dutch law and practice.

2.4 METHOD OF RESEARCH

In August 2012, a hotline was opened for reporting experiences regarding truancy of children. Approximately five hundred responses were received. Many of these callers, including professionals in the field, were contacted to further discuss their experiences. Two expert meetings also took place. In addition, employees of the Ombudsman for Children talked to children, parents, schools, parents' associations, government and other experts. They talked about problems they experienced in finding adequate education for children with special educational needs in the medical, social, intellectual or emotional areas. And what is needed, according to them, to provide appropriate education for these children within the current educational system.

The study also looked at which expectations the introduction of the system for adequate education creates at this point. In addition, written questions were asked to the Ministry of Education and the Education Inspectorate, and surveys and annual reports were studied.⁴ Based on all this information it is analysed what problems from practice are experienced in establishing adequate education for children with special educational needs in the medical, social, intellectual or emotional areas. Subsequently, it was concluded what could be done in order to solve these problems. Appropriate examples from practice were considered here.

The findings and conclusions described in the next section have led to the recommendation to the Minister and the State Secretary of Education to establish a truants agreement.

⁴ See appendix 1 for accountability of the research

3. OUTCOMES AND CONCLUSIONS

3.1. LAWS AND REGULATIONS AND FINANCING

Findings

Reaction of the Ministry to questions about the truants issue

The Ministry of Education recognises the problem of children at home with additional support needs, and sees the need for a simpler, more effective and efficient system of support for those children. For a solution, the Ministry relies mainly on the future introduction of adequate education and the concomitant duty of care for schools to make an appropriate offer to children with additional support needs.⁵ That may be at their own schools, but possibly at another school. With this, the duty of care concerning education for these children is guaranteed in the laws and regulations. With the introduction of adequate education, school boards also need to align the educational support with youth care, which will soon be implemented by the municipalities. Furthermore, parents and teachers will have a say in the policy of the partnership structure of the deployment of additional support. The school will have to base this on the need of supporting the child, with whom the educational programme can be completed, according to the ministry.

To combat and reduce truancy until the introduction of the Adequate Education Act, a number of facilities are organised and (legal) actions are taken, according to the Ministry of Education. A regional approach was chosen in recent years. In addition to financial measures for the professional development of teachers, the ministry also mentions the importance of a proper compulsory education function and effective reporting and recording of truants. Furthermore, the Ministry mentions the currently existing temporary facilities, such as Rebound and On the rails, which are created for to provide education to children who cannot temporarily be in their regular classroom. The point of this is that children can return to school after a brief programme. The Ministry also refers to the educational provision Restart [Herstart], which aims to guide children at home back to education. In addition, plus provisions are created in secondary schools and vocational schools. This is a combined range of offerings of education, health care and, where necessary, preparation for employment to children who are - because of accumulation of problems – at high risk of dropping out of school. The ministry also points out the Conduct Work project⁶ which, in collaboration with Ingrado⁷, supports the partners involved in a region to create a structured approach to guide as many pupils as possible back to education. Finally, the ministry also indicates that the current care and advisory teams, in which several parties align the support to a child, can contribute to the prevention of children sitting at home.

Obstacles from the educational field: tight legislation and funding

In the reporting and in the numerous discussions that employees of the Ombudsman for Children have held with children sitting at home, parents and professionals mainly focused on children who have special educational needs in the medical, social, intellectual or emotional areas. According to them, their needs cannot be met within the educational system. The temporary facilities specified by the Ministry cannot fill that gap either. These children do not attend school, while they are able to follow education. Remarkable are the many reports on highly gifted children. Because of their high intelligence and associated learning and/or behavioural problems, they cannot find a decent place

⁵ For Adequate education and duty of care see paragraph 3.6.

⁶ The project 'Conduct Work' is made possible by the Ministry of Education and aims to promote cooperation in tackling pupils with behavioural problems with the desired result to reduce the number of pupils who do not receive adequate education to which they are entitled. See also www.gedragswerk.nl

⁷ Ingrado is the national branch organisation for school attendance officers and regional reporting and coordination centres (RMCs). See also www.ingrado.nl

within mainstream education, but they cannot find a decent place within special education either. And if there are schools with a suitable offer, they are far away or there are long waiting lists. Discussions were also held with an advocate of highly sensitive children, who, because of their sensitivity to stimuli have learning and/or behavioural problems that are not recognised within the educational system. Additionally, a number of children reported that, because of physical and / or psychological violence, they no longer dared to return to their school, and also children who excel in certain subjects, but do not keep as well in all subjects, experience problems. These are, for example, children with dyslexia. Furthermore, children with anxiety disorders were often mentioned, they usually end up at home initially under authorised absence. If the child does not go to school for a long time, but no specific medical causes can be found, the school attendance officer will then regard the truancy as unauthorised absenteeism. The education sector - including parents and children themselves – also learned that some kids just are not able at all to participate in the current educational system. They are not able to cope with school attendance for various reasons, and withdraw in such a way that schooling is more harmful than that it does them well. Because the Compulsory Education Act assumes the obligation to attend school, there is actually no solution for these children within the law. Finally, there are several reports about hidden truants. These are children who do go to school, but do not participate in regular education due to behavioural problems in the classroom.

Static educational system

Almost all parties were of the opinion that the educational needs of the child are too much determined by the current curriculum, but this offer is too much “compartmentalised”. In this static educational system it is very difficult to find a dynamic solution for the child, causing it to sometimes end up in an education that does not fit. Due to the problems that arise, a child may, with or without exemption from compulsory education, get stuck at home without education. The education sector indicates that the child must be the focus and not the provider of education. Only when the child's needs are clear, the schools and the attendance officer are able to examine if these needs can be met, and not vice versa.

Creative solutions through combinations of multiple forms of education

Sometimes the attendance officer works with the child and the school towards a creative, appropriate customised solution that meets the specific needs of the child. An example is the story of a child that failing in school, but with the use of a good social network is able to easily handle secondary education through the LOI [Remote education] or Wereldschool [World school] and blossoms. With the permission of the school attendance office, it is decided in consultation with the school that the child remains enrolled in the school, but completes education at home. The school now provides a portion of the funding it receives for the child to the parents to pay for home schooling. Another example is the story of a child who cannot handle classroom teaching in a regular school because of increased sensitivity to stimuli, but flourishes in a smaller group with additional guidance. The child is now enrolled in a regular school, but goes to an accredited private school with smaller classes. The regular school that receives money for the child transfers the money to the private school in order to keep the costs manageable for the parents. Yet another example is the story of a child with great fear of going to school. After consultation with the parents, school and the school attendance officer it was decided to gradually bring the child back to school through home visits by the teacher and education via the World School. This means that the child temporarily does not meet compulsory education, but has the time to adjust slowly and finish her assignments at home.

All these customised solutions are, however, in violation of the Compulsory Education Act, which assumes a compulsory school attendance; basically education at home is not possible. Just as private education is not funded, education at home and child-related budgets cannot be financed.

Furthermore, funding for a child is paid to the school where the child is enrolled. This amount is in principle not divisible across multiple forms of education. As a result, the above solutions in the current educational system depend entirely on the willingness of the school board and the school attendance

officer, and are not accessible to every child who needs it. The legislation on adequate education will not change this.

Combination care and education, and funding streams

Also, many reports were related to the problems that can occur with a child who is best served by a structural combination of care and education. Creative solutions or special education/care combinations, however, prove to fail frequently because of legislation and conflicting financial flows. A common complaint is that for children who receive AWBZ [Exceptional Medical Expenses Act] day activities, it is not possible to also be enrolled in school and vice versa. School is in fact seen as an existing provision, and the AWBZ has a different purpose, namely a meaningful daily activity, other than work or education. AWBZ day activities are therefore only possible with complete exemption from compulsory education. However, with full exemption no claim at all can be made on education. For children with severe developmental disorders, for whom special education because of the great need for care is not feasible, but could benefit from some education, this may lead to undesirable situations. Parents must choose between education and care. An example is the story of Cees, which is included in this report as a case. Until April 2012, he was granted an indication of daytime activities for the sessions that he could not go to school. After this date, this indication was - due to a change in the arrangements for the care indication as of 1 January 2012 - not granted because he was registered at a school. Because the child needs care all the time, his parents had to decide to apply for an exemption from compulsory education, so that the day care was guaranteed. As a result, he could not go to school. Another example is a child staying at a day care centre for four days a week with an AWBZ day activity, because of blindness and multiple psychiatric disorders. A teacher of a cluster 3 school (special education), where the child was enrolled, taught him privately at this centre. In 2012, however, no indication for more day care was granted to the child because he was registered at the cluster 3 school. The parents were now forced to apply for exemption from compulsory education. The exemption was granted, but the child does not receive education anymore.

Other sources

This study also examined previous studies and reports from the education sector. The report 'Stand up against sitting at home' from the Kohnstamm Institute in 2011, already recommended to provide customisation and flexibility in special education care to students (risking) sitting at home. Furthermore, there needed to be sufficient supply of (new) education / care arrangements within and between schools that integrate education and care, according to the report.⁸ Just as in this study, the report of the Agency Education Consultants (+) 2010-2011 shows that regulations and financing in education hinder tailored solutions.⁹ According to education consultants, creative solutions or special education/care combinations sometimes fail because of the laws and regulations. Laws and regulations should be applied flexibly on a number of points, to realise solutions for groups of pupils with special needs that would otherwise remain deprived of education. It was also indicated by the education consultants that funding has always been a concern. The changes in the allocation of personal budgets and other arrangements (AWBZ) may impede the realisation of education/care arrangements. According to the educational consultants, it also often appeared that education and care are still not speaking the same language. Especially with the expected increase in the problems with school-age children this needs extra attention, says the 2010-2011 report. The education consultants elaborate this issue in their report, particularly problems regarding the combination of care and education.¹⁰ Education consultants indicate that children, who for various reasons cannot attend

⁸ *Opstaan tegen het thuiszitten* [stand up against sitting at home] Sardes and Kohnstamm instituut, October, 2011

⁹ Report SOSO / Education Consultants (+) 1 August 2010-1 August 2011. The Hague, November 2011. See www.onderwijsconsulenten.nl

¹⁰ Report SOSO / Education Consultants (+) 1 August 2010-1 August 2011. The Hague, November 2011. See www.onderwijsconsulenten.nl

full-time education, because of changes in legislation since January 2012, do not get an indication for daytime activities for the remaining hours. According to the education consultants, this leads in some cases to parents having to choose between care and (partial) exemption from compulsory education through the school attendance officer. Schools often make it very clear that care students without 'pocket money' cannot be enrolled. The same would apply in the mirror opposite for daytime activities, while a certain group of students continues to benefit from the combination of care and education, according to the reports of the Agency Education Consultants (+).

Day of compulsory education in 2013

On the Day of the Compulsory Education, March 21, 2013, the State Secretary of Education presented in a letter to the Lower House the actual figures of the number of reports of unauthorised absenteeism, including the number of truants.¹¹ "Truants" in this letter refers to children of school age (five to eighteen years old), who have been registered but were absent for more than four weeks without valid reason and without exemption from compulsory education. These are often children who at this time do not have an adequate place within (special) education, according to the Secretary of State. He did not go into the reason why such places are missing.

At the beginning of the 2011-2012 school year, there were 1,533 truants (in 2010-2011: 2,296). This number increased during the school year to 4,143 (in 2010-2011: 5,436). 2,443 children sitting at home went back to school that year, so the number at the end of the year totalled 1,700 (in 2010-2011: 2,155). 661 of these children have been at home for more than six months, with still no solution (in 2010-2011: 662 and in 2009-2010: 1,375). These figures do not count the relative absence. According to the Secretary of State there is a relative absence if a school-age child is enrolled in a school, but fails to attend lessons or practice time without a valid reason. This involves the unauthorised absence from at least sixteen hours of lessons or practice time for a period of four consecutive weeks. Relative absenteeism is further subdivided into luxury and signal absenteeism. Luxury absenteeism occurs when the child goes on vacation during school without permission. The number of reports of relative absenteeism in the 2011-2012 school year, in which there was no luxury absenteeism, was 77,570 (2010-2011: 73, 243). How this number relates to the number of truants is unclear. In addition, figures about the absolute absenteeism on the 2011-2012 school year still need to be provided. The absolute absenteeism concerns not-enrolled children without basic qualifications. The reason for this absolute absenteeism is not elaborated in the letter. They were 6,430 children (in 2010-2011: 8,098), according to the published figures. Finally, the letter did not announce figures on children who are exempt from compulsory education, because this is not unauthorised absenteeism.

The Secretary of State said that the number of truants in the 2011-2012 school year was reduced by 20% for the first time in three years. Especially at the start of the school year, there were fewer truants. The increase was also less during the school year, and nearly 60% of the cases resulted in a solution. The sharp drop in reducing the number of long-term truants (over six months) that was observed last year did not continue, according to the State Secretary. According to the State Secretary, the progress in the figures would be especially due to the initiated measures such as the improvement of the registration, the professionalisation of the school attendance officer, the monitoring of the Education Inspectorate at schools and better cooperation with the partners. But the State Secretary considers the number of truants with specific problems still alarming. According to him, the focus needs to continuously be on keeping the discussions open in the region concerning this problem. The State Secretary wants more insight into this absenteeism to be able to tackle the problem of truants better. He has therefore asked everyone in the chain to put in extra effort. According to the Secretary of State this starts with the triangle parents, school and attendance officer. He also has also asked the Inspectorate, Ingrado, the project Conduct Work and education

¹¹ TK 2012-2013, 26 695, no. 90

consultants to put in extra effort. It is not clear from the letter what is meant by extra effort. What is clear is that, despite all temporary facilities and other measures, thousands of children are still sitting at home for a long time without education.

Summary and conclusion

The truants in this study are mainly children with special educational needs in the medical, social, intellectual or emotional areas. They want to follow education, but the education they need requires customisation, for example in schooling, guidance, the offered curriculum and/or funding. They have found that the current education system does not provide for their specific needs. The temporary facilities specified by the Ministry to reduce truants apparently provide no outcome (in the long run) for these children.

From the education sector several bottlenecks were identified that hinder finding such a suitable place for these children. The first bottleneck showed that the laws and regulations and the ensuing education policy are mainly based on compulsory education and schooling, allowing no flexibility to achieve customisation. The current educational system, including physical school accountability and separated funding streams, is too static to provide appropriate solutions to these children and/or to finance these. To solve this bottleneck, there should be a change in thinking about education: a mental shift from compulsory education to right to education. The needs of the child should be considered and not the capabilities of the supplier. From that perspective, laws and regulations should be interpreted in such a way that room for customisation is created within the educational system. The Compulsory Education Act and sector laws are indeed intended to protect the right to education, and to this end may not be an obstacle.

It should be recognised that some children (temporarily or not) are not able to (fully) participate in the current educational system. For children with special educational needs, it should therefore be possible to derogate from the requirement of physical presence in school, making (combinations of) alternative forms of education legally possible. These children would then not have to be exempted from compulsory education. In this way (partial) public funding may also be possible, regarding alternative forms of education inspection and supervision. These children must continue to participate as much as possible and not get the feeling of being excluded. In addition, funding should be adjusted accordingly so that customisation can be paid for. De-compartmentalisation of financial flows of education and care is first urgently needed so that more combined education/care arrangements are possible. It must be considered per child whether these financial flows can be used together in the specific situation, so that the child who needs care does not lose his right to education. Special attention should be paid to children with AWBZ daytime activities. These children should not be excluded by this clash of financial flows of education. Also, more room should be created to be able to fund education for a child across multiple forms of education.

Children, for whom this is necessary, can then receive education partly in other places or possibly at home. The amount received by a school for a child has the goal to provide adequate education, which (if possible) leads to obtaining a qualification. The money must be used for this purpose.

As long as there remains a shortage of customisation, introducing a new system for adequate education is not a solution either for these children. Without sufficient customisation, adequate education offerings will continue to fail, despite the duty of care for the schools. After all, if a child is enrolled in a school it does not mean it actually goes to school. And when it does go to school, it does not necessarily mean that it is receiving adequate education.

Luc (15)

"My days are almost all the same. I only get up at noon because I fall asleep very late. I often have pain and suffer from the ringing in my ears. If I am dressed and had breakfast, I go watch TV or play on Playstation or I do something on the computer. Always with the sound off, I really can't stand it. I hardly go out. I've been at home for three years without education. I find it terrible and not normal. I went to elementary school and really looked forward to going to secondary school. But then I got sick. It began with an ear infection by a virus. Which caused damage to my nerves. It is terrible that my concentration to read is also gone.

My mother does everything for me; she figures things out and always takes sound into account. She is the only one who helps me. I want to give her a really big compliment. My father is not in the picture, but he helps where he can. The caregivers do nothing. First there was a doctor in Antwerp who treated me, but showed me fall when nothing seemed to work. The attendance officer does not understand my problem.

I would really like to learn, because I lag behind in everything. Home schooling with a special computer programme could help me. Only after two years, I received an indication for special education. It took so long because first they did not know exactly what was wrong with me. There always was someone else who thought of something else I couldn't do.

The special education school suggested that I would check it ten times when it was quiet. But after ten times they would like to have me in the classroom with the other children. That's impossible due to the noise. I thought that was a stupid idea. They don't understand my disability or they don't want to understand it.

Now nothing is happening again, while my mother has always said that home schooling has to happen. I think my life will still look the same two years from now. But I would like to change everything and I'd really like to read again. The Ombudsman for Children has to listen to the children, not only to the parents. And in finding solutions, people need to look beyond what's 'normal'."

3.2. FLEXIBILITY SCHOOL BOARDS, TEACHERS AND EDUCATION INSPECTORATE

Findings

Reaction of the Ministry to questions about school boards, teachers and supervision of schools

Regarding these subjects, the Ministry of Education pointed out that the Education Inspectorate supervises absenteeism policies of schools. When the inspection receives signals that absenteeism often occurs in a school, this may be a reason to tighten supervision. With the introduction of adequate education, the partnership will gain many tasks. For this reason, the inspection is currently developing a separate monitoring framework for the partnership. The Inspectorate will also note the number of truants, as one of the indications for the performance of the partnership. If performance of the partnership falls behind, this could be a reason for further actions. For individual problems with children sitting at home, the Inspectorate only has a mediating role. The Inspectorate does not take decisions in individual cases, according to the ministry. Furthermore, the Department believes that it is important that schools and teachers will be better equipped in dealing with children who need extra support. For this reason the ministry invests extra in the professionalisation of teachers and school leaders, in parallel with the introduction of adequate education. According to the ministry, 150 million Euros is structurally made available as of 2013. How this money will be spent exactly, was not specified by the ministry.

Inspectorate response to questions about its manner of supervision

The Education Inspectorate informed during the investigation that it is in favour of customisation and is strongly committed to ensure that its method of monitoring does not put pressure on the right to education. The supervision is precisely aimed at contributing to the improvement of education, and to ensure that every child receives the education it deserves. The Inspectorate analyses each year for all schools if there may be risks in the quality of education. The revenues are an important target, next to (year) documents and signals. To do justice to the specific situation of a school, the Inspectorate includes in its analysis the composition of the student population and the presence of students with support needs, those who cannot achieve the ultimate goals of the school. The Inspectorate uses the risk analysis to determine whether it is necessary to do further research involving aspects of the educational process and the specific context factors of the school. Otherwise certain information will not be considered in the analysis. The results are corrected on the basis of pupil characteristics. Having weak students, therefore, does not mark a school as 'weak'. The inspection wants to encourage schools, where necessary, to improve their overall quality, not just their income, according to the Education Inspectorate. The inspection recognises the existence of the idea that it is better not to take on weak students as a school, for a better score. The inspection is trying to improve this by adjusting the assessment in such a way that the added value of the school can also be determined. This refers to the value that schools add to the level of the students during a school term. The inspection itself is still not satisfied with the role that the earnings play in the risk analysis and assessment of the schools.

Not considering certain data reduces the risk of low results, but does not in itself generate a reward or positive valuation. Therefore, the inspection is looking for opportunities to give schools more room for weak students and appreciate this explicitly positive. In this context, the inspectorate sees it as its mission to do schools justice and convey this as clear as possible. Therefore, the risk model used for the work is constantly evolving, says the inspection.

Obstacles from the educational field: no positive return on customisation for special needs pupils

Reports and many conversations that employees of the Ombudsman for Children have held with parties from the education sector have shown that schools are often anxious to accept children with special educational needs. Here the method of supervision by the inspection appears to play a major role. During the discussions it was pointed out that the inspection would only oversee graduation rates and grades, but would not reward individual customisation; it does not yield positive returns for the schools. For this reason, many children with special educational needs are not accepted at a school or are difficult to place if they were removed from another school due to reticence. It was suggested that schools should be actively held accountable for their role and duty to accept children with special needs and to provide adequate education. Because according to some parties from the education sector, some schools want to get rid of children with special educational needs as soon as possible. The school care coordinator would have to monitor this better, but some have so little time for their work, that they would rather get rid of troublesome files as soon as possible. In addition, there are also schools that are plainly unwilling to seek a solution, according to signals from the educational field. The study also responded positively to schools and care coordinators that seek solutions together with the attendance officer. The care coordinator then looks at the role of the school, and the school attendance officer to the role of the parents and other partners. However, this method would yield no return, especially since it does not pay for the care coordinator or school to put in the effort to find a suitable solution. It would mean a great deal of time, little effect/result and no reward. It would help the schools to have more time and expertise for 'difficult cases', but this takes time and costs money, and this is missing in education, according to several involved in the education sector.

Schools and teachers also indicated that the many periodical mandatory language and mathematics tests and hour standards make it difficult to realise adjustments for students with learning disabilities. Because of all these tests, the focus is mainly on the cognitive performance. It is often unclear who is responsible for what with regard to children with a need for customisation. Classes are large (sometimes around 30 pupils), and include children with additional support that need to receive education as well. This makes it even harder to deliver customised solutions. Inspection should assess schools not so much by the results of those tests, but more by adequate education and matters such as proper dyslexia policy, says the educational field.

Investing in teachers

Parents and experts from the education sector also spoke a lot about the competence of teachers and schools. Schools would not create or apply sufficient customisation, because they have difficulty finding qualified personnel to meet the (intensive) care needs of the children. Schools would also not make enough use of the knowledge and expertise of parents and professionals concerning the child, or collaborate with them. Schools themselves also encounter difficulties in offering customisation; there still is room for learning difficulties within the partnership, but this is often more difficult with behavioural problems. A combination of these two problems in a child would really make it difficult to place him. Additionally, you cannot have too much differentiation within one class; it is not workable, the schools say. Furthermore, there is a great demand from the educational field for investing in the quality of teachers. The quality of education and therefore the ability to achieve good solutions for children with special educational needs stands or falls with the teacher. These teachers should have the possibilities to develop the more complex skills needed to provide adequate education, according to the educational field. The teachers themselves have also indicated that it is difficult to meet the specific educational needs of each child in the classroom. The mandatory tests and the accountability take a lot of time, and it gives them the feeling they are being checked constantly. They become wary and insecure, which has a negative effect on their motivation. The education sector found it good to hear that, as of this year, the Ministry of Education makes 150 million Euros structurally available for

investment in the professional development of teachers and school leaders. Although the question did arise as to how this amount is spent exactly. In addition to financial resources, there is a particular need for teachers in time and room to actually be able to follow the training. It has been indicated several times that supervised practice in the classroom or at school by a (ortho) pedagogue could be very effective. According to teachers, it is not the substantive knowledge, but the pedagogical skills and experience that can make the difference.

Day of compulsory education 2013

In his letter to the Lower House, of March 21, 2013, the State Secretary indicated that the figures showed progress. This was partly due to supervision of the Education Inspectorate. Since last year, the Inspectorate is responsible for monitoring absenteeism policies at schools. The inspection may impose administrative fines to the school if it fails to report absenteeism (on time). The purpose of this is that schools improve the reporting of absenteeism. The Inspectorate works closely with municipalities to gain a clear picture of school absenteeism and combat it effectively. The Inspectorate also has closed agreements with seven municipalities or inter-municipal partnerships, making it possible for school attendance officers to address the schools faster if reporting is not done (on time). They can also conduct an investigation themselves rather than just send a signal to the inspection, according to the State Secretary. It remains unclear in the letter, however, how this enhanced monitoring of the inspection has an effect on the figures regarding truants, who at this time do not have an adequate place within (special) education.

Summary and conclusion

The second bottleneck that was revealed by the study was that actions of the school boards and teachers often lack flexibility regarding customisation. It was indicated that the supervision of the Education Inspectorate plays a major role. To solve this bottleneck, school boards and teachers should be encouraged to make the mental shift from compulsory education to right to education and have sufficient tools in dealing with pupils with special educational needs, and creating and applying customisation.

Encourage the dedication of the teachers by giving them room and trust. Teachers should be well informed and need to be consulted about which instruments they believe they need to realise customisation. Part of the 150 million Euros made available by the Ministry of Education could be used for this purpose.

More emphasis on the right to education, however, also calls for a different method of monitoring education. While supervising, the inspectorate should pay more attention to the commitment and capacity of schools to include pupils with special educational needs and provide a development perspective in an appropriate manner. This concerns the added value of a school. If school boards are to be encouraged more to provide adequate education in the form of customisation, this added value should be rewarded.

As long as insufficient flexibility for customisation persists with school boards and teachers, the introduction of the new system for Adequate education will not solve the occurrence of truants. As long as schools are not properly encouraged and supported in providing additional care to special needs pupils, they will mostly refer children with complex problems to other schools within the partnership. Despite the duty of care - under which the original school remains responsible for the student until another school is found - it can still take a long time before a school with adequate education is found for the child. This can lead to children sitting at home.

From bad practice to good practice: a story from someone reporting their son Frits

When our son Frits turned four (2008), he went to a regular school several mornings per week under professional supervision. Soon he got expelled for his sluggish speech, he could not sit still in his chair, and also listened insufficiently to the instructions from the teacher. He could, however, already read, recognise multiple numbers and was also a sweet, nice boy. Even before Frits reached the compulsory school age of five years, we had signed him in for research in the Regional Expertise Centre to provide him admission to special education Cluster 2. However, the Commission for Indication decided he could not be admitted to this type of education, mainly because there was no diagnosis. Because we had tried both special education as well as mainstream schools without result, the attendance officer decided to grant an exemption from compulsory education, pending diagnostic study at a university hospital where Frits was placed on a waiting list (which ultimately lasted two years and which we later no longer used). The attendance officer also indicated that in the current educational system a small group of children can fall through the cracks and that these children can benefit from guidance at the home. Then we continued the home visits we already offered Frits from January 2008, in particular to stimulate his speech and to better regulate his restlessness.

When Frits turned six, he had made good progress both with speech and behaviour. We went looking for a regular school again. This search was without result; Frits was rejected unseen in the schools we visited. We have always had the feeling that exemption from compulsory education was partially responsible for this. Because Frits had now shown to have a good intellect, he started to work on the regular curriculum of group 3 and later group 4 through the World School under the remote guidance of a teacher. He completed the two years successfully and quite easily.

In November 2011, when Frits was seven, we invited the attendance officer to come to our house to get to know Frits and show the developments in education. Then we presented him our plan; entering into a regular school would be best for Frits, but, for a long entrance period and under the guidance of his mother in the classroom. The attendance officer was not immediately enthusiastic because the plan was unusual, but in late March 2012 he announced that he had found a school that was open to me guiding Frits in the classroom. We then made a number of agreements with this school and gradually involved the teaching staff. In September 2012, Frits gradually joined group 5 of the local school. Today, he can attend classes almost independently and I hardly have to be present in the classroom. We believe that by working closely with the school, the enrolment was a success. It was of great importance that the school trusted that the parents knew their child the best and followed the advice of their parents. All in all a united force resulted in a beautiful and special solution.”

3.3 SUPPORT FROM THE EDUCATION CONSULTANT

Findings

Reaction of the ministry to questions about support for parents

The Ministry of Education believes that communication with parents is very important. Parents can obtain information in different ways about their rights and obligations regarding education for their child. Their first point of contact for this is the school, which is legally obligated to provide information via the school prospectus. Schools are expected to know the rights and duties provided to them by law or condition. Parents, however, may be expected to also take responsibilities regarding information and expectations and, if necessary, enter into dialogue with the school. Parents can also seek information on public sites like www.rijksoverheid.nl and the digital school guide. They may also call the main number of the national government 1400 and the parent information point 5010. In addition, parents who have questions can also contact the partnership and the municipality, says the ministry. If parents are not satisfied with the range of adequate education offered to their child by the school, they can turn to an educational consultant, according to the ministry.¹² The tasks of education consultants are to advise, support and mediate in tough school placements of students with an individual pupil funding¹³, or students who have been at home for more than four weeks without any prospect of school placement. Education Consultants are independent. Parents, schools and school attendance officers can turn to them free of charge. The ministry believes that education consultants have a very constructive way of working and is therefore considering ways to strengthen that role.

Bottlenecks in the education sector: lack of early support and guidance with customisation

The reports and discussions with the education sector showed that parents and children feel little support if problems arise with the school in the search of adequate education. Several parents believe that schools decide without them, and these decisions are incomprehensible to them. They only have the need to be included in the process. Many parents indicated that they feel the school does not take them serious. They do not know where to go for advice or support regarding the needs of their child. Statements from the complaints committees are not binding and, moreover, the situation usually already escalated in such a way that the problem is now between kids, parents and school and cannot be resolved by a decision from the complaints committee. Also, as long as the child has not (yet) been indicated, or has not been home for four weeks without the prospect of school placement, no appeal can be made to the educational consultant. Precisely at this stage, they have a strong need for help. By the time the educational consultant can be used, the situation is often jammed, the parent says. Schools say they sometimes get stuck with parents concerning the borders indicated by a school to provide adequate education. If a child, possibly with extra help, can handle mainstream education, then that should be the case. Sometimes this is not possible however, and the child then needs extra care. This can be offered through special education, but parents often disagree here; they want the school to adapt in such a way that the child can remain enrolled in the school. According to the schools, education consultant could make a good contribution at this point by mediating early between parents and schools to break the power struggle that often arises, and work towards the same goal. This expertise is needed here regarding the possible customisation within the school and when, for

¹² To support the Individual Pupil Funding in 2003, the minister of Education deployed education consultants to advise parents and schools and assist in educational issues concerning a child with a disability, illness or disorder (a child with a cluster indication). This involves problems of placement, suspension, removal, use of Individual Pupil Funding or disagreement about the treatment plan. Education consultants also aim to find solutions for children who have been sitting at home for a long time without any prospect of an educational place. As of August 1, 2009, the Education Consultants are part of the Support Schools and Parents Foundation (Stichting Ondersteuning Scholen en Ouders (SOSO)).

¹³ Individual Pupil Funding [Leerlinggebonden financiering (LGF)] is a budget that schools receive for teaching pupils with a disability or impairment who cannot receive regular education without additional amenities. The money can be used for, for instance, additional guidance or modified materials. This budget is also called 'het rugzakje' [the backpack]. To qualify for LGF students must have a cluster indication.

example, special education could be an option. Communication concerning this issue is often difficult, according to the schools.

Other sources; the annual reports of the education consultants

The report of the education consultants 2010-2011 shows that parties now quickly find their way to the education consultants. For example, there are attendance officers who regularly contact education consultants to discuss files with which they need help. Sometimes the education consultant gives tips to help the attendance office. If necessary, they can be referred to the office for registration as a (mini) case. Care coordinators from schools, parents and fellow education consultants appear to have an increasing need to first submit an 'exploratory' question to an education consultant. An education consultant can advise the following steps, and quickly determine whether the problem justifies a (mini) case. Extending the work of the education consultants would meet the growing demand for advice and mediation at an early stage. Even a regional telephone consultation one or two mornings a week could limit the number of (mini) cases, says the report. The report of educational consultants 2011-2012 refers to this point once again.¹⁴

Summary and conclusion

The third bottleneck revealed during the study is that there is a great need for early expertise in customisation with parents, schools and school attendance officers. This need included support, advice and mediation. The report also shows that the education consultant can provide for this need, but can only be deployed after the child has been indicated or has not been to school for four weeks or longer. Therefore, by making it possible for the parties involved to do an early appeal to the education consultant, this bottleneck could be solved. This means that the education consultant can be consulted when there is a need for his assistance in the search of an adequate place for the child with special educational needs. Independent and expert guidance is essential at this point, in order to guide the process and prevent or break the escalating pattern that can arise between parents and schools. Furthermore, the education consultants, with their knowledge and experience, can think along (exploratory) about the specific needs of the child and the early customisation as early as possible. As a result, indication or sitting at home could in some cases even be prevented. The registration criteria for cluster indication and four weeks of sitting at home should therefore be abandoned. This is especially important in the run-up to the Adequate Education Act. It can be expected that this will lead to more consultation requests, especially because from that moment the national indication system will be abandoned.¹⁵

¹⁴ See note 9 and 10

¹⁵ See paragraph 3.6

3.4. SCHOOL ATTENDANCE OFFICER

Findings

Reaction of the Ministry to questions about the role of the school attendance officer

The Ministry of Education indicated during the study that the attendance officer plays a central role in the chain to combat school absenteeism. He mediates problems between parents, students and school management in the field of compulsory education. When parents fail, the attendance officer may draw up an official report, and then through the prosecution the case can be brought to court. To strengthen enforcement for schools, the monitoring of compliance with the Compulsory Education by schools rests with the Education Inspectorate since January 1, 2012. The Inspectorate may impose administrative fines if schools fail to comply with the Compulsory Education Act. The attendance officer has a signalling role towards the Inspectorate when it comes to school absenteeism. The role of the school attendance officer is therefore complementary to the supervisory role of inspection in schools. If a child comes to sit at home it is, according to the ministry, of importance that the school reports this as soon as possible to the attendance officer and/or the RMC coordinator,¹⁶ so that ways can be sought to get the child back in school. Secondary schools and vocational schools must report absenteeism with the absenteeism counter of DUO.¹⁷ Primary schools should report it to the municipality. In addition, municipalities report annually in the form of compulsory education reports, in which school attendance officers register and report in accordance with the definitions used by DUO. The purpose of this is to get a better idea of the number of truants and to take action, according to the ministry.

Reaction of the inspection to questions about the cooperation with the attendance officer

The Education Inspectorate reported having regular consultations with the attendance officers. This concerns in particular the implementation of the cooperation agreements that the inspection has concluded with a number of municipalities, and the framework for municipal assessment that was established in that regard in close consultation with the school attendance officers. The attendance officers are increasing their expertise to make the implementation of the cooperation agreements successful. The inspection also takes part in the Policy Consultation attendance officers (BOL). This consultation concerns a multitude of topics, from legislative changes to effects and effects, but also about relationships with the prosecution, said the inspection.

Bottlenecks from the education sector: school attendance officer too focused on enforcement

The reporting and the conversations that employees of the Ombudsman for Children have held with children sitting at home, parents and professionals showed that there is a big difference in the way school attendance officers approach their work. These differences were put forward both by the schools and the parents. For instance, a parent reported that in two similar cases the attendance officers had acted differently. One allowed home schooling through the World School, while the child stayed enrolled in a regular school, while the other did not allow this and wrote a report due to the failure to comply with compulsory education. Furthermore, significant differences in quality between the school attendance officers were identified. Some barely had legal expertise and hung close to (the opinion of) the school, while others were specialised in truants problems in children with special educational needs and actively sought customised solutions. Schools also experienced contacts with school attendance officers differently. One school had regular contact with a steady attendance officer, while another school could not name a specific name of an official. As a result, the school did not quickly report a student with a school attendance officer, because of the idea that the student's problem would not be resolved anyway. The school attendance officers showed different ways of

¹⁶ The coordinator of the Regional Registration and Coordination Points

¹⁷ DUO is the executive agency of the government for education. See www.duo.nl

acting among themselves as well. Some interpret their task as very strict and try to act from the compulsory education perspective. Others have a broader view of their task and try to act from the perspective of the right to education. Legally authorised or not, their goal is to achieve a customised solution, so that the child can still receive education.

Furthermore, many parents felt that the attendance officer made decisions behind their backs without consulting them, and only informed them afterwards about the measures that would be taken regarding their child. However, positive stories were also heard from the education sector, such as school attendance officers who, despite legal restrictions, found practical solutions together with the parents and school. Or, attendance officers who urged schools to take appropriate measures to allow the child to receive education at that school.

A frequently heard comment was that an attendance officer should position himself as a co-thinker, not only as a controller. In addition, it was reported several times that school attendance officers exempt a child with problems from compulsory education too quickly, simply because of the 'hassle'. Although the parents and the child wanted adequate education, the only solution that was put forward was exemption because no one could find a suitable offer. The feeling that prevailed was to be sent from pillar to post without any prospect of education.

It was also reported several times that in some municipalities officials conduct the monitoring of compulsory education next to their regular work. Also, if a municipality has only one attendance officer, it happens that in the event of a temporary illness or vacation there is no school attendance officer available at all to consult, according to the education sector.

Criminal prosecution or care report to the AMK

Furthermore, for many parents of children sitting at home and professionals in the field, it is a thorn in the flesh when an attendance officer eventually proceeds to the preparation of an official report. This, while the parents had indicated to be benevolent but had no solutions either for their child who, because of special educational needs, is difficult to place. Drawing up a report in these cases is, contrary to what the Secretary of State says, often not the solution, with an additional adverse consequence that parents and/or their child with the sentencing of the judge also get a criminal record. Furthermore, the parents lose faith in the school attendance officer, who first appeared as an ally, but then proceeds to prosecution.

It was also often heard that school attendance officers eventually made a care report to the AMK. This, however, did not lead to any improvement, because the AMK or family guardian could not find a suitable school either for the child, which made the problems for the parents even bigger and more complicated.

Little attention to absenteeism

Another problem that was raised is that school attendance officers are too little engaged in permissible absenteeism, while this absenteeism often has the same underlying problems as signal absenteeism and in the end often leads to unauthorised absence. Schools and school attendance officers should be more aware of this, so that there could be early intervention, possibly in cooperation with a pediatrician. Often these children are only in the picture when they fall behind with the curriculum.

Day of the Compulsory Education 2013

As mentioned above, the State Secretary indicated in his letter of March 21, 2013 to the Lower House that the figures showed progress. This was also thanks to the professionalism of the school attendance officers. With a grant from the Ministry of Education in 2012, Ingrado had developed exams for the special investigating officers (BOA), where in the renewed BOA structure for school attendance officers, continuing education was provided. A further important change was that additional competence requirements for school attendance officers, introduced on January 1, 2013.

The State Secretary also indicated that the official report with the compulsory education enforcement proved to be an effective tool. The attendance officer had made use of this 4% more in the 2011-2012 school year said the State Secretary. However, given the bottlenecks that have emerged in this study, the Ombudsman for Children wonders whether the preparation of these records has been effective in trying to get the children with special educational needs to go back to school.

Summary and conclusion

The fourth bottleneck that was revealed during the study was that the attendance officer focuses too often on enforcement of the Compulsory Education Act and too little on the initiation of customisation. They therefore do not think along sufficiently to find a suitable solution. To solve this problem, every school attendance officer should act from the perspective of the right to education, and not only from his role as enforcer. This task has to mainly have a social care character, whereby it is very important to identify risk and protective factors among children, parents and the school. The evidence also shows that proper information, communication and early intervention are key components, as well as creative thinking with parents and the school to still come up with an appropriate solution. Only this way, it can be ensured that customised solutions can be found to keep the child with special educational needs in education or guide them back to education.

To integrate the right to education perspective in the work method of school attendance officers, there should be a better investment in expertise in the area of customisation and its possibilities within the (practical) training and retraining. The attendance officers should also have the room to follow this training.

Additionally, the attendance officers should work together more often. By organising the monitoring of compulsory education at regional level, especially in smaller communities, quality, continuity and uniformity are further enhanced and safeguarded. In an organised context, the school attendance officer also acts as a bigger player in the provision of signals to the inspection or to the Ministry.

Good practice

The Hague approach Within the municipality of The Hague, six attendance officers are structurally available for children who are at home or are likely to end up at home come with a complex issue. This is how they differentiate in tackling different types of absenteeism and underlying problems. With ten days of absence from school, the child is already indicated as a truant. For this reason, attention will be paid to the problem at an earlier stage and an intensive approach can be used. Furthermore, the attendance officer has consultations every six weeks at schools for secondary education, so that there is structural contact and they can regularly point out to the schools what they should do, namely: register and report absenteeism. The attendance officers will then actively work with a truant and visit the school. It is expressly agreed with the care coordinator of the partnership who does what. The school attendance officer also addresses the school if a student is wrongly expelled. The special primary schools are connected to permanent committees of pupil care, and there is a BOVO present to facilitate and guide the transition to secondary education.¹⁸ The approach of The Hague works. The new system has halved the number of truants. That is also because the municipality is on top of it. If you do not have such a municipality or there is only one attendance officer for all educational cases, then the possibilities are much less.

Good practice

Holland Rijnland approach

The Regional Office Compulsory Education Holland Rhineland is responsible for the performance of compulsory education tasks for all municipalities in the Leiden region and Duin- en Bollen area since 2002. The mission of the office is to ensure the right to education from 5 to 23 year olds. The agency carries out this mission by focusing on the student and from that position reminds all concerned of their responsibilities. The agency proposes to deliver customisation, wherein it searches within the framework of regulations to find solutions to (imminent) school absenteeism. Whether it is signal absenteeism, absenteeism with underlying problems, or a search for a suitable place of education, the Office always uses an integrated approach of one attendance officer, one student, one family and one plan. In this methodology, the parties involved make arrangements together with the parents. Compulsory Education does not talk about students but with students and their parents. By documenting agreements, parties can hold each other accountable to fulfil those commitments. Each party carries out what lies within its (final) responsibility, although it is sometimes a search to find out who is actually responsible. The office has to balance its role and position per situation. The interests of the child and the right to education are paramount here.¹⁹ The dropout in Holland Rhineland fell for the fourth consecutive year. Preventive measures and customised guidance prove to be important conditions to keep the children 'on board'. The Office can offer this through regional organisation and cooperation. Collegial consultation takes place regularly and there is constant search for 'short lines'. Also, because of the regional organisation, compulsory education is much less vulnerable to dropouts. They work together with education consultants, with Conduct Work and Youth Work and are part of the municipal cooperation, and guide, in addition to the student, the parents as well in a return to school. All this increases the quality and effectiveness of compulsory education.

¹⁸ For more information, see www.bovohaaglanden.nl

¹⁹ For more information, see www.hollandrijnland.net

3.5. LEGAL POWER

Findings

Reaction of the Ministry to questions about the enforcement of the right to education

As mentioned under 3.4, the Ministry of Education indicated during the study that the attendance officer plays a central role in combating school absenteeism. He mediates between parents, children and school, but when parents fail the attendance officer may draw up a report and bring the matter before the courts. The attendance officer is complementary to the supervisory role of inspection in schools. The Ministry sees no reason for an additional provision for supervision and enforcement.

Reaction of the inspection to questions about the need for legal power

The Education Inspectorate does not see a role for itself in individual cases. If cases lead to an impasse, parents can seek the assistance of the education consultant. The attendance officer may also proceed to enforcement, if parents do not enrol their child. The Inspectorate has no particular desire to play a role in these individual cases, but indicated that more generally in the best interests of the child could be explored whether it is necessary to realise (more) legal power and how this could be best achieved.

Bottlenecks from the education sector: lack of ultimate responsibility and legal power

The Ministry focuses formally on enforcement of the Compulsory Education Act and outlines the closed system, which starts working if it is violated. The Inspectorate refers to the education consultant, but then also points to the attendance officer, who must make an enforcing decision if a case is stalled. However, the reports and the interviews conducted with professionals show that problems can arise at that very moment and cannot be solved by persuasion. In the search for adequate education, the situation may lead to a prolonged impasse because subsequent steps are not taken and it remains unclear who has the final responsibility and takes that responsibility. The report indicated that this impasse often occurs after a child has been discussed in a care and advice team. While discussing a child in this team should lead to finding a suitable place²⁰, it is often not pursued to actually implement the suggested solutions.

Parents do not know to whom to turn, and the attendance officer feels ultimately powerless, because both his powers to prosecute and exempt from compulsory education will not lead to the desired solution. In finding a solution, a final responsibility is often missing: someone to whom the attendance officer can turn to and 'scale up' the case, after having tried everything possible within his power. Someone who takes over the case and brings the parties together to achieve a definite decision. The education sector also stated that the establishment of an action table could be a good way to expose the problem and discuss the bottlenecks. However, if it should be decided which road to choose, there is often no one who takes the final lead in the chain so that certain measures are actually taken. This may lead to everyone pointing the finger at each other, without being translated into action. As a result precious time is lost; time the child spends at home, often without education. An example of this is the story of a solution that was found for the child in consultation with the education consultant, but could not be realised because the municipality denied the school transport. As a result, lengthy objection and appeal procedures often have to be started with the municipality, time is lost and the solution cannot be executed. Another example is that, after consultation between the school attendance officer, school and education consultant, a suitable solution is found for the child, but stopped because of colliding financial flows. As a result the process may come to a standstill where the child ultimately becomes the victim. In both these cases, the solution could be a practical intervention by someone

²⁰ See reaction Ministry of Education in paragraph 3.1.

with persuasion and legal power. This should be someone who does not believe in limits, but in opportunities and assigns the responsibilities where they belong.

Are final responsibility and legal power already being provided for?

The attendance officer shall be deemed to act from the right to education, and observe the situation from the needs of the child. He has a central role in combating school absenteeism. His powers are, however, limited; he may maintain compulsory education or exempt the child from education. He lacks the authority to make binding decisions about which option should be pursued. Additionally, situations may arise where he can act insufficiently independent in a case because he has an enforcement role as well. The education consultant is, by contrast, an independent expert who can think along about possible customisation that can be deployed. But this education consultant also does not have the necessary legal power.

Parents can also submit their dispute to the national complaints committee, but this committee also has no legal power with its non-binding statements. Finally, a dispute may be submitted to the court, although the case was usually already escalated and the child cannot go back to the old school. Moreover, the court assesses marginally and does not make substantive decisions about which customisation needs to be deployed.

The inspection also does not take on this task; for individual problems with children sitting at home, the inspection only has a mediating role. The inspection does not take decisions in individual cases. However, the possibility exists for parents and school attendance officers to seek assistance from the project 'Conduct Work'. However, Conduct Work only exists on a project basis so far, its future is therefore not assured. Also, the employees of Conduct Work are sparring partners alongside parties and they have no legal power allocated by the government to enforce the required customisation.

Summary and conclusion

Finally, the fifth bottleneck showed that legal power is regularly missing within the education sector to allow the required customisation to really come to fruition.

Appointing a right to education director for each region with legal power allocated by the government solves this problem. Cases are well discussed within the region at the action tables with the responsible parties, but if the situation nevertheless leads to an impasse, the attendance officer, the child, the parent and/or educational consultant should be able to "scale up" the case to an independent experience expert in the educational field, who looks at the case with fresh eyes. This right to education director should focus on customisation and proceed in a practical and creative manner. He is in charge of chain management and has sufficient powers of persuasion to bring parties together. He must also be able to press ahead and, if necessary, take binding decisions on the necessary customisation. If the case is scaled up, the compulsory education director will have the final responsibility for the child. To ensure the independent position of the person, it is advisable to let the school boards within the region designate a right to education director whom they all trust. When appointing the right to education inspectors the Conduct Work project could play an advisory role.

Good practice

The Hague approach

In the previous section, the The Hague approach was described as a good example. If an attendance officer in The Hague does not succeed, however, he can 'scale up' the case to the youth director. He has a position above all chain partners and has more legal power. Because the youth director cannot commit schools to accept a child, the success is mainly dependent on his person, knowledge, tactics, skills and goodwill if a placement is successful. Yet it appears that in practice every case that was submitted to the youth director could be solved so far.

The Hague abolished the action tables, because their operation was not found to be sufficient. The action tables produced good plans but these were, due to the lack of a driving force with specific final responsibility, inadequately implemented and monitored. The newly installed system with only one youth director does work.

3.6 ADEQUATE EDUCATION: THE SOLUTION FOR TRUANTS?

Adequate education

With the introduction of appropriate education schools are, as of August 1, 2014, required by law to provide a suitable place of education for children who need extra support. The school will have to arrange this extra support in the classroom. If the school cannot provide this support, it must find (within the partnership) another school that can make a suitable offer. If it is not feasible to place the child within mainstream education, an offer may then be made in special education. This is called the duty of care for schools, and means that parents no longer have to go through a complicated indication procedure. The national indication system and the pupil funding are abolished. The budget remains fully available, but now goes directly to the partnership. The partnership divides the budget between the schools that are within the partnership. At least once in every four years, the partnerships establish agreements in a support plan. This should include how schools organise the adequate education in their region, how they spend the money for additional support, how they refer students to special education and how parents or guardians are informed. The Education Inspectorate will include this support plan in the monitoring²¹.

²¹ See www.rijksoverheid.nl and www.passendonderwijs.nl for more information

The solution for truants?

As described under 3.1, the Ministry of Education has indicated during this study that the introduction of the new system for adequate education will contribute to the reduction of truants in education. This is because the duty of care for children with additional support needs is secured. The school boards have the responsibility to then find a suitable offer for each student with a need for support. The school should do so in consultation with parents, and where necessary with Youth Care and other partners, based on the support needs of the student who will be going through the curriculum.

Like the education sector, the Ombudsman for Children questions the expectations of Adequate Education. The introduction of Adequate Education alone will not solve the issues raised in this study, causing it to fall short continuously. As long as school boards, teachers and school attendance officers are not encouraged in the creation and application of customisation, and the Inspectorate does not adjust its supervision, there will be no change in the new system. Also, the physical compulsory school attendance still applies: an obligation that is not feasible for some children.

Hidden truants

Chances even are that because of the duty of care, the number of hidden truants (in this study the children who go to school, but do not participate in the regular curriculum) will just increase. This is because no suitable place can be found for the child in the other schools, where the intended customisation can be delivered. And it is indeed the customisation, which can ensure that every child will find a place within education where it can develop to the fullest.

3.7 FINAL CONCLUSION: CUSTOMISATION AND TRUANTS AGREEMENT

Bottlenecks

All children are equal, but not identical. They each have their own qualities and abilities to which they should be addressed and challenged. Instead of labelling and stigmatising, education must respond in a flexible way. The right to education demands to bring out the best in every child. To make this possible, customisation should be provided to children with special educational needs. The Ombudsman for Children concludes on the basis of the findings from this study that, from the education sector, including parents and children, in laws and regulations, but especially in the implementation thereof, too many bottleneck are experienced within the current education system to meet this customisation. Even with the introduction of the new system for adequate education and the associated duty of care, these problems are not solved. This means that children with special educational needs in the medical, social, intellectual or emotional areas, come to sit at home and are deprived of education.

Customisation as a solution

To arrive at a solution of these problems, it is necessary for the central government and the education sector to change the way they think about education: a shift from compulsory education to right to education. The accent will not be on the supplier of education, but on the child's perspective, what the child needs! Only then the question must be asked as to how this can be made possible. By looking at education from this perspective, the flexibility can be created wherein customisation can be delivered. Only then can adequate education be established that meets the children's rights in the CRC, namely the right of a child to have access to education that is aimed at the fullest possible development of its personality, talents and mental and physical capabilities. From this right to education perspective, measures should be taken to solve the problems. For example, there should be such an interpretation of laws and regulations that there is room for customisation in the education system. The education sector should also be encouraged to create and implement this customisation and the supervision by the Education Inspectorate should be adjusted in such a way that customisation is rewarded. Teachers also need to be informed and consulted. Early support and advice from the education consultant to parents, schools and school attendance officers is of great importance. Furthermore, attendance officers need to integrate the right to education perspective more in their practices and share their knowledge about initiating customisation. Finally, it is advisable to appoint a right to education director per region with legal power allocated by the government, to whom a case can be "scaled up"

Truants Agreement

In order to implement these measures and jointly make the shift from compulsory education to right to education a step further, the Ombudsman for Children recommends the Minister and the State Secretary to come to a Truants Agreement with the parties from the education sector including the PO council, the Secondary Education Council, the MBO council, the project Conduct Work, Office of Educational Consultants (+), the Association of Dutch Municipalities and Ingrado, possibly supplemented by municipal health, mental health care and youth care. For the contents of the recommendation refer to Chapter 1.

Finally,

The Ombudsman for Children points out that the school boards and school attendance officers have to continue to involve parents in the process. Although the provision of adequate education is primarily a task of the government, parents are often fully aware of the capabilities of their child; they have

expertise regarding their own child. However, parents can be expected to fulfil their primary tasks of parenting and personal care, and think along from their side and contribute to a solution that is realistic to achieve adequate education for their child. Sometimes the solution can only be achieved step by step, and the right to education cannot always be implemented at the school of their first choice.