

Educational governance

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A number of developments in education have led to changes in governance relationships. Increases in school size, deregulation, enhanced awareness of the social function of education, and the wish to further professionalise services are developments that have incentivized institutions to review their governance arrangements. Changes have also been instigated by a series of scandals and developments such as changed funding streams, financial risk management, unclear legislation and uncertainty over existing oversight arrangements. These changes in governance relationships have prompted educational institutions and the Ministry of Education, Culture and Science to clarify the relationship between governing boards, oversight bodies and external stakeholders.

In the private sector and other semi-public sectors, the governance issue is the subject of continued debate. The discussions have provided governing boards and internal oversight bodies with many concrete recommendations. The education sector stands to benefit from these recommendations. All sectors are still exploring the accountability issue.

Principles of educational governance

The Education Council has formulated two principles for educational governance, which – depending on the situation – may be elaborated in different ways. In light of the national government's legal obligation to provide compulsory education and the wide variety of governance arrangements across the primary and secondary sectors, these principles will play out differently in these two sectors than in the so-called *BVE* sector (vocational education and adult education) and the higher education sector. The education freedom enjoyed by primary and secondary schools is an important factor here. In addition, there are more significant funders of the *BVE* and the higher education sectors than of the primary and secondary sectors. Regional Training Centres (*ROC*s) and higher education institutions have a public responsibility but are partly privately financed. Though government-funded, these institutions also carry out income-generating activities: contract education and contract research. This important difference between the *BVE* sector / higher education sector and the primary and secondary sectors creates differences in governance relationships.

The Council holds that sound governance is primarily the responsibility of the proper authorities. Each educational institution should develop effective self-regulatory arrangements and appropriate accountability arrangements in the fields of governance and internal oversight. These arrangements may be set out in good governance codes to be formulated by the educational professions. Thus, the Council's recommendations are primarily aimed at educational institutions and the educational professions. The Council would expect the national government to play a facilitative role and create the right conditions, for example by amending existing education laws.

Principle: separation of governance and internal oversight

The Education Council holds that a core principle of sound governance in the education sector is the clear separation of governance and internal oversight. The Council recognises two distinct situations: in the primary and secondary sectors and in the *BVE* and higher education sectors. In denominational primary and secondary schools, the division of responsibilities is laid out in statutes and regulations. In the *BVE* and higher education sectors, governing responsibilities and oversight responsibilities are legally separated and assigned to two bodies: the governing board and the oversight board.

Recommendations for the primary and secondary sectors

The Education Council holds that primary responsibility for the separation of governance and internal oversight rests with the proper authorities. Statutes and other regulations should lay down the rules for the separation of governance and oversight (two separate bodies or one body with responsibilities shared among different persons) and for the allocation of responsibilities and powers. The legislator should determine the powers of the oversight board. The Council recommends that these stipulations be observed if the oversight board model is adopted. In addition, it should become legally possible for a governing board to delegate powers to the school management.

The creation of a separate oversight body provides opportunities to improve internal oversight arrangements within foundations for denominational education. Foundations do not have members, or a body that represents members, or a formal oversight body. In associations and non-denominational schools, the General Meeting and the local authorities are legally obliged to exercise internal oversight. Nevertheless, the Council makes suggestions for strengthening the oversight functions of the General Meeting and the local authorities. It should become possible for the local council to delegate its oversight powers. Moreover, the General Meeting should be able to make a (statutory) decision to delegate its oversight responsibilities to a commission, provided this is not prohibited by law.

In view of the restrained approach to be adopted by the national government, the education sector itself is well placed to play an important role in fostering good governance. Codification of the principle of separation of governance and internal oversight and of the responsibilities and powers of the oversight body may promote sound governance in schools. On both counts, the draft code for the primary sector needs to be tightened up. In accordance with the apply-or-explain principle, school boards should be required to indicate how they have separated responsibilities and to justify their choices /decisions in their annual reports. A newly-to-be-created professional organisation would be required to do the same. The good governance code may be incorporated into an agreement between this newly-to-be established organisation and the Ministry of Education, Culture and Science. Furthermore, the Council recommends that oversight bodies should seek to improve their professional performance. It is to be expected that national school board organisations will take on the exercise of oversight as their primary role. After all, separation of governance and oversight at the institutional and local levels will impact on national-level organisations.

Finally, the Education Council recommends that there should be recourse mechanisms in the event of mismanagement. At stage one, complaints committees and dispute resolution committees (i.e. committees that deal with disputes between boards and employee representative bodies) assess whether governing boards adhere to the principles of good governance. At stage two (the ultimate recourse), an assessment is made of whether mismanagement by the legal entity requires rectification. Some form of redress is already available via the court system and the Minister. Also, an oversight panel may be appointed or created, to be invoked by specific stakeholders in the event of serious oversight problems. The panel would be an avenue for redress once all other procedures have been exhausted. Its remit would cover all semi-public institutions that deliver public services (housing corporations, hospitals and educational institutions).

Recommendations for the BVE and higher education sectors

The Education Council recommends creating two layers of governance in BVE and higher education institutions: a governing body and an internal oversight body. This would imply that the oversight function should be regulated by sectoral laws. The apply-or-explain principle embodied in Article 9:51 of the Higher Education and Research Act (*WHW*) should apply here ('an oversight board,

unless'). The Council recommends that the powers of the oversight board be regulated by law. The oversight boards of public universities pose a special problem since their members are appointed by the Minister. To ensure that oversight boards do not wear two conflicting hats (internal and external oversight) the Council recommends granting public universities foundation/association status under private law. The Minister and the Netherlands Flemish Accrediting Body (NVAO) should continue to exercise oversight of funding and quality.

The Council recommends that the governance arrangements should be set out in educational governance codes to be drafted by the *BVE* and higher education sectors. In accordance with the apply-or-explain principle, institutions should justify their actions and decisions in their annual reports. Professional organisations should be required to adopt the same approach. The codes may be incorporated into the agreements to be made between the Minister and the professional organisations. Oversight boards of *ROCs* and higher education institutions should seek to enhance their oversight role by joining a national oversight panel that (ideally) would cover the entire semi-public sector.

As for the primary and secondary sectors, there already exists a mechanism to assess if boards abide by the principles of educational governance: complaints committees and dispute resolution committees. The Council recommends that complaints committees in the *BVE* sector should take an active role on educational governance issues. Here too a national oversight panel whose remit covers the entire semi-public sector would be an avenue of redress when all other redress mechanisms fail.

Principle: balance between horizontal and vertical accountability

Accountability is about accounting for your actions to a relevant forum. Educational institutions are answerable to the national government for their performance and the expenditure of funds. They are also accountable for their performance and use of public funds to other stakeholders.

The Education Council holds the view that there should be a balance between vertical and horizontal accountability. Amongst other things, this means that horizontal (or non-hierarchical) accountability (i.e. accountability to stakeholders) should never replace vertical (or hierarchical) accountability (i.e. accountability to the national government). This principle should apply to all educational sectors. The national government should always have a part to play in safeguarding the public interest by protecting aspects such as quality, accessibility and freedom of choice. As long as most educational institutions are publicly funded, they should be answerable to government for the effective and proper use of public funds.

Furthermore, the Council is of the opinion that accountability contributes to the responsiveness of educational institutions, thus reinforcing the public's support. An institution's ability to learn is critical, and tools such as self-assessment and monitoring may prove helpful. An institution's ability to learn (i.e. its ability to improve its structures as well as its culture) will enable it to enhance its performance.

Recommendations for the primary and secondary sectors

The Council sees no reason to alter the (financial) accountability arrangements in the primary and secondary sectors. In the coming years, schools will need to become more responsive to pupils' different learning needs and thus to diversify provision. This means that governing and oversight boards should be able and ready to deal with this increased diversity.

At present, schools have sufficient arrangements in place to ensure that they are financially accountable to parents. Also, preparations are being made to give parents a greater voice in decisions such as school fees. In addition, there are arrangements in place to ensure that schools

are accountable to community stakeholders through, for example, the school prospectus and the annual report. The Council recommends that the Minister should define accountability to the wider community as a school's legal duty of care and that information about accountability activities should be introduced into school annual reports. For the remainder, it is up to the schools to decide what type of accountability model they wish to adopt and who they identify as their community stakeholders.

Recommendations for the BVE and higher education sectors

The Education Council sees no reason to change the (financial) accountability arrangements in the BVE and higher education sectors. However, it is obvious that the BVE sector too needs to develop different types of oversight arrangements. The Council recommends that the new funding system should contain clear rules to reduce bureaucracy. The evaluation of the accreditation system in the higher education sector should look at the effects of bureaucratisation; and a cost-benefit analysis should be conducted.

In terms of accountability to other stakeholders, the Council notes a shift in sources of institutional funding away from public sources to individual funding sources, i.e. to contracts between education providers and (fee-paying) students, sponsoring companies, or funders such as the Netherlands Organisation for Scientific Research (NWO) and the European Union. Accountability with regard to payment of tuition or research fees will be achieved through contracts between the two parties involved. The question is if the student's position towards the institution is sufficiently safeguarded. If (market-based) tuition fees are to be based on services rendered, it would make sense to give students financial control over the spending of their contributions, as specified in the institutional budget (on the analogy of accountability to parents for the voluntary parental contribution in the primary and secondary sectors). An alternative would be to develop a legal framework for regulating these two-party contracts.

With regard to public accountability, the Education Council recommends that in the execution of self-governance BVE and higher education institutions should establish (pro)active relationships with societal bodies in the area. These relationships may take different forms, but should be formalised at the institutional level. The Council outlines four different models: a light-touch arrangement under which accountability information is included in the annual report; a more robust arrangement under which the institution and its stakeholders jointly define societal goals; an arrangement under which the institution and its societal partners enter into an agreement defining the goals to be achieved; and an arrangement under which a consultation forum, advisory council or legal entity is established.

The Education Council recommends monitoring and assessing experiences with regard to the above-noted arrangements. The process of assigning powers to societal bodies that allow them to express their education wishes should be closely monitored for workability. In conclusion, the Council recommends that the Minister should formulate targets instead of detailed regulations. That is, the Minister should not prescribe how public accountability responsibilities are to be carried out but formulate targets to measure the degree of involvement of societal bodies.