

Set limits, allow freedom

Make clear what must form part of education, and what is and is not permitted in terms of freedom of education; do this within the normative framework of the democratic society. That is the advice given by the Dutch Education Council on Article 23 of the Dutch Constitution in its report 'Set limits, allow freedom' (Grenzen stellen, ruimte laten). Schools must adhere to the framework set by the democratic society, contribute to that society and not undermine it. The same applies for the government, which must make clearer where the limits to the freedom of education lie and enforce them more rigorously. Setting those limits is important in order to future-proof freedom of education and the freedom of schools to expound their own beliefs and vision of man and world view in a democratic society.

Freedom of education has long been a characteristic of the Dutch education system and is rooted in Dutch society, as is the government's responsibility for education. Freedom of education allows for diversity within the education system and honours the rights of parents and groups in society with a particular view of education, ideology/beliefs or religion. In this report, however, the Education Council stresses that there are limits to freedom of education and that it is conditional. Where do those limits lie precisely? How can they be identified? And how can they be enforced? In this report the Education Council addresses the question: 'How can the limits to freedom of education and government responsibility be defined more clearly?' This report follows on from the Information Memorandum concerning Article 23 of the Dutch Constitution, which was published by the Council at the end of 2019.

In this report the Education Council offers a guide to what central government should require of schools and what limits to freedom of education the government should safeguard. Those limits are twofold. It describes what all schools must do, what they may not do and where they are free to work from the basis of their own vision. The Council also describes the limits that must be respected by government itself.

Advice: Give democratic society a more emphatic role at the heart of freedom of education and government responsibility

The Council recommends that the principles of the democratic society be given a more central role in determining the limits of freedom of education and government responsibility. The democratic principles offer a framework with rules that are necessary and conditional in allowing people to live together in an open and free society; in diversity, peacefully and on the basis of equality. Schools have a duty to adhere to this framework, make a contribution to it and not undermine it. At the same time, the Council stresses that the principles of the democratic society must also serve as a guide for government agencies. Central government must indicate clearly where the limits to freedom of education lie, enforce those limits and set a good example.

Recommendation 1: Define the mandatory common core more clearly in terms of democratic society

The space in which schools are free to make their own choices is limited in the first place by the things that every school is required to do. These obligations form the common core of education within the publicly funded system.

The principles underpinning democratic society require that the legislator should make it mandatory for all schools to strive for educational content and targets which fall under the banner of 'democratic citizenship'. Those principles form part of the mandatory common core, and operate alongside rules that are needed on the basis of other considerations, such as guaranteeing educational quality. It is the mission of every school, state and private, to teach pupils to develop their own ideals, norms and values as a basis for functioning in an open and free society, and to contribute to that society. That mission is the same for all schools, regardless of their pupil profile or the school's philosophical or ideological basis. The Education Council argues that the narrative of a unique outlook based on the philosophy of the school is something that schools can add to this mandatory common core – not the other way around.

Education in democratic citizenship in the Netherlands can and must improve, be more carefully thought through and more systematic. The Council has pointed this out previously, as have others. It is very concerning that research and numerous international comparisons repeatedly expose the limited knowledge among young Dutch people regarding constitutional democracy.

The mission of schools to work on improving democratic citizenship needs to be enshrined clearly and prominently in legislation. The new statutory mission to teach democratic citizenship provides a useful basis, but in the Council's view needs further work. The things that schools should be devoting attention to need to be more precisely defined in the core objectives and attainment targets, examination programmes, formulation of subject profiles and generic qualification requirements. This should serve as a means for the government to ensure that democratic citizenship has a place in the curriculum of every school.

Recommendation 2: Define the outer limits clearly on the basis of the democratic society

The space within which schools are free to make their own choices is also limited by what is not permitted within a school. These rules form the outer limits of the freedom of education.

The principles of the democratic society form the basis for defining those outer limits. Based on those principles certain situations, practices and statements within schools are prohibited. Important values here include non-discrimination, equality, tolerance, not inciting to violence and the absence of coercion between citizens.

Freedom of education is not only limited by the education laws, but also by equality legislation, the law on legal entities, the penal code and civil liability laws. The Council believes it is key that central government oversight is tightened up to ensure that schools and school boards comply with this legislation and that the government enforces and takes measures if the outer limit is exceeded.

Three principles in the event of frictions

An inherent feature of a free and open society is that it can lead to conflicts of interests, rights and freedoms. Friction can thus also arise in relation to schools. The Council cites three principles which can be used in the event of friction to assess whether a school is acting within the limits of the freedom of education.

1. Schools must always devote attention to democratic citizenship as part of the compulsory common core as prescribed in legislation and regulations.
2. Schools also have scope to allow their own philosophy and views to be expressed in their teaching. A school may add its own narrative to the compulsory common core and configure the school policy and organisation accordingly. A private school can derive its own narrative from a religious or other ideological basis.
3. The freedom of schools to incorporate their own philosophy and views into their teaching is limited by the prohibition on discrimination and the duty of schools to avoid coercion and indoctrination. The latter also includes a duty to respect the freedom of pupils, and especially their right to accept or reject a particular philosophy or ideology. It is not permitted to convey philosophies or ideologies in school teaching which are irreconcilable with the principles of a democratic society or which run counter to those principles.

In this report the Council applies these principles to recent questions about distinctions made based on religious or ideological views in admissions policy, sexuality and male/female relations in teaching materials, separating pupils by sex before or during lessons, and rules on religion-related clothing in schools.

Recommendation 3: Also use the principles of the democratic society as a guideline for government responsibility for education

The framework of the democratic society also serves as a guide for how the government should interpret its responsibility for education. It implies tasks for the government in establishing the compulsory common core and defining where the outer limits lie, and enforcing them, in taking an active stance. In a democratic society, the government is the only party which has the legitimacy and authority to force all schools to include certain content in their teaching, and the only body which can set and safeguard enforceable limits. The Council believes the government should actually do this in practice. In the Council's view, this could be done with the existing tools available under current legislation. When enforcing the outer limits, the Council believes that the Inspectorate of Education need not always be the (only) resource considered: other government agencies also have the requisite powers to identify and stop the exceeding of boundaries.

The principles of the democratic society also impose limitations on government. The Council recommends that the setting of boundaries be left to the formal legislator, lower-level regulations, and to the courts. Setting standards is not a task for the executive, supervisory or enforcement government agencies. This means that government agencies may only hold schools accountable for targets that are recognisable and set in advance. Above all, government agencies must themselves always set a good example by observing the principles of the democratic society and respecting freedom and diversity.

The full advisory report “Grenzen stellen, ruimte laten” (in Dutch) can be found at www.onderwijsraad.nl/grenzen-stellen-ruimte-laten

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