



OPEN SOCIETY INSTITUTE  
EU MONITORING AND ADVOCACY PROGRAM



OPEN SOCIETY INSTITUTE  
MENTAL HEALTH INITIATIVE

# Rights of People with Intellectual Disabilities

## Access to Education and Employment

THE NETHERLANDS

Monitoring Report

NEDERLAND

Toegang tot onderwijs en arbeid  
voor mensen met een  
verstandelijke beperking

Monitoring Rapport

2005

*Published by*

OPEN SOCIETY INSTITUTE

Október 6. u. 12.  
H-1051 Budapest  
Hungary

400 West 59th Street  
New York, NY 10019  
USA

© OSI/EU Monitoring and Advocacy Program, 2005  
All rights reserved.



TM and Copyright © 2005 Open Society Institute

EU MONITORING AND ADVOCACY PROGRAM

Október 6. u. 12.  
H-1051 Budapest  
Hungary

*Website*

<[www.eumap.org](http://www.eumap.org)>

Copies of the book can be ordered from the EU Monitoring and Advocacy Program  
<[eumap@osi.hu](mailto:eumap@osi.hu)>

*Printed in Gyoma, Hungary, 2006*  
*Design & Layout by Q.E.D. Publishing*

# Rights of People with Intellectual Disabilities

Access to Education and Employment

The Netherlands

## Table of Contents

Acknowledgements .....	5
Preface .....	9
Foreword .....	11
I. Executive Summary and Recommendations .....	13
1. Executive Summary .....	13
2. Recommendations .....	17
II. Country Overview and Background .....	21
1. Legal and Administrative Framework .....	21
1.1 International standards and obligations .....	21
1.2 Domestic legislation .....	23
2. General Situation of People with Intellectual Disabilities .....	24
2.1 Definitions .....	24
2.2 Diagnosis and assessment of disability .....	25
2.3 Guardianship .....	26
2.4 Statistical data .....	27
III. Access to Education .....	30
1. Legal and Administrative Framework .....	30
1.1 The right to education .....	30
1.2 Structure and administration of schools .....	33
1.2.1 The mixed system .....	34
1.2.2 The special education system .....	35
1.3 Diagnosis and assessment of disability for educational purposes .....	40
1.3.1 The mixed school system .....	40
1.3.2 The special education system – RECs .....	41
1.4 Early intervention .....	43
2. Government Education Policy .....	45
2.1 The EU and Government education policy .....	45

2.2 National programmes .....	46
3. Education in Practice .....	50
3.1 Resources and support .....	50
3.1.1 Curriculum and support .....	50
3.1.2 Teacher training .....	52
3.2 Inclusive education .....	53
3.2.1 The mixed education system .....	54
3.2.2 The special education system .....	60
3.3 Education outside the school system .....	64
3.3.1 Home schooling .....	64
3.3.2 Education of children in institutions .....	64
4. Transition from Education to Employment .....	65
4.1 Vocational training .....	65
IV. Access to Employment .....	69
1. Legal and Administrative Framework .....	69
1.1 Equal opportunities and the prevention of discrimination .....	69
1.2 Diagnosis and assessment for employment and benefits purposes .....	73
1.3 The role of the social welfare system .....	76
2. Government Employment Policy .....	80
2.1 The EU and Government employment policy .....	80
2.2 National employment policy .....	81
2.2.1 Development of employment programme(s) ..	81
2.2.2 Government requirements and incentives .....	84
3. Employment in Practice .....	86
3.1 Statistical information .....	86
3.2 Employment on the open market .....	88
3.2.1 Supported employment on the open market ..	89
3.3 Sheltered employment .....	92
3.4 Employment-like activities in adult day care centres ..	96
V. Conclusions .....	99

Annex 1. Tables .....	102
Annex 2. Legislation cited in the report .....	104
Annex 3. Bibliography .....	106

## Index of Tables

Table 1. Transfers from special schools for primary education to other school types .....	39
Table 2. Integration of children with disabilities in primary and secondary schools, by year .....	55
Table 3. Children in special education and mainstream primary education, 2002–2003 .....	55
Table 4. Placement of students completing vocational training, six months after graduation .....	68
Table 5. Income levels per month, specified for degree of disability and living situation .....	78
Table 6. People with intellectual disabilities in sheltered work and care .....	88
Table 7. Statistics as of mid 2002 for SEA employees .....	96
Table A1. Overview of structure of educational system (not disaggregated for type of disability) ..	102
Table A2. Number of students receiving ambulatory support from schools for special education .	102
Table A3. Demographic information on people in sheltered work and care .....	103

## List of Abbreviation

AWBZ	General Act for Extraordinary Care ( <i>Algemene wet bijzondere ziektekosten</i> )
ESF	European Social Fund
FvO	Federation of Organizations of Persons with Intellectual Disabilities and their Families ( <i>Federatie van Ouderverenigingen</i> )
REC	Regional Expertise Centre (Regionaal expertise centrum)
RTC	Regional Training Centre
SCP	Social and Cultural Planning Bureau
SEA	Sheltered Employment Act
UWV	National employee benefits administration ( <i>Uitvoeringsinstantie werknemersverzekeringen</i> )

## Acknowledgements

The EU Monitoring and Advocacy Program of the Open Society Institute and the Open Society Mental Health Initiative would like to acknowledge the primary role of the following individuals in researching and drafting these monitoring reports. Final responsibility for the content of the reports rests with EUMAP.

<b>Bulgaria</b>	Slavka Kukova	<i>Bulgarian Helsinki Committee</i>
<b>Croatia</b>	Ljiljana Pintarić Mlinar	<i>University of Zagreb, Faculty of Special Education and Rehabilitation</i>
<b>Czech Republic</b>	Jan Šiška	<i>Charles University, Faculty of Education</i>
<b>Estonia</b>	Agne Raudmees	<i>EVPIT - Estonian Mentally Disabled People Support Organization</i>
<b>Greece</b>	John Tsiantis, and Harris Asimopoulos, Stavroula Diareme, Dimitra Giannakopoulou, Gerasimos Kolaitis, Kouri Georgia, Eugenia Soumaki, Konstantinos Thiveos, Evangelos Zacharias	<i>Association for the Psychosocial Health of Children and Adolescents (APHCA)</i>
<b>Hungary</b>	Emese Kővágó	<i>Salva Vita Foundation</i>
<b>Latvia</b>	Ieva Leimane-Veldmeijere	<i>Latvian Centre for Human Rights and Ethnic Studies</i>
<b>Lithuania</b>	Dovile Juodkaitė and Klementina Gečaitė	<i>Lithuanian Welfare Society for People with Intellectual Disability – Viltis</i>
<b>Netherlands</b>	Jacqueline Schoonheim	<i>University of Maastricht, Faculty of Law</i>
<b>Poland</b>	Ewa Wapiennik	<i>Maria Grzegorzewska Academy of Special Education, Warsaw</i>
<b>Romania</b>	Raluca Nica	<i>Romanian League for Mental Health</i>
<b>Slovakia</b>	Alexandra Bražinová and Viera Zahorcová	<i>League for Mental Health Inclusion Slovakia</i>
<b>Slovenia</b>	Darja Zaviršek and Špela Urh	<i>University of Ljubljana, Faculty of Social Work</i>

<b>United Kingdom</b>	Stephen Beyer	<i>Welsh Centre for Learning Disabilities, Cardiff University</i>
	Pauline Banks	<i>Strathclyde Centre for Disability Research, University of Glasgow</i>
	Roy McConkey	<i>School of Nursing, University of Ulster</i>
	Edyth Dunlop	<i>Northern Ireland Union of Supported Employment</i>
	Hazel Morgan	<i>Foundation for People with Learning Disabilities</i>

We would also like to thank the following organisations for their invaluable contribution to the reports through their partnership throughout the process of developing the reports:

Bulgarian Association of People with Intellectual Disabilities, Open Society Foundation – Sofia (Bulgaria); Association for Promoting Inclusion (Croatia); Inclusion Czech Republic (Czech Republic); Open Estonia Foundation, EVPIT – Estonian Mentally Disabled People Support Organization; (Estonia); Association for the Psychosocial Health of Children and Adolescents (Greece); Salva Vita Foundation (Hungary); Latvian Centre for Human Rights and Ethnic Studies, Soros Foundation – Latvia (Latvia); Lithuanian Welfare Society for People with Intellectual Disability – Viltis (Lithuania); Federation of Parents Organisations (Netherlands); Polish Association for Persons with Mental Handicap (Poland); Association Pentru Voi (Romania); YHD – Association for Theory & Culture of Handicap (Slovenia); League for Mental Health, Inclusion Slovakia (Slovakia); Foundation for People with Learning Disabilities (UK).

For this report on the Netherlands, we would like to also particularly acknowledge the following people for their contribution to the reports by being available for interviews, providing information or research, or reviewing and critiquing drafts of the report:

Wim van Minnen, Pauline de Graaf, Cris Bergmans and Hillie Beumer at the Federation of Societies of Persons with Intellectual Disabilities and their Families; Professor L.M.G. Curfs of the Gouverneur Kremers Center of Maastricht University, Tanja van der Meer of Maastricht University for her help with the draft translation, Labor Party MP Jose Smits for facilitating the Round Table discussion in the Hague and the many people who were interviewed and who generously provided reactions, corrections and additions to the information gathered for the final report.



**ADVISORY BOARD**

Lyubka Alexandrovna	<i>BAPID – Bulgarian Association of People with Intellectual Disabilities</i>
Camilla Parker	<i>Mental Health and Human Rights Consultant</i>
Geert Freyhoff	<i>Inclusion Europe</i>
Laila Onu	<i>Pentru Voi</i>
Borka Teodorović	<i>Association for Promoting Inclusion</i>

**EUMAP**

Penelope Farrar	<i>Program Director</i>
Miriam Anati	<i>Deputy Program Director</i>
Katy Negrin	<i>Project Manager</i>
Alphia Abdikeeva	<i>Website Manager</i>
Joost Van Beek	<i>Website Manager</i>
Andrea Gurubi Watterson	<i>Program Coordinator</i>
John Kowalzyk	<i>Editorial Consultant</i>
Barbara Zatlokal	<i>Editorial Consultant</i>

**MHI**

Judith Klein	<i>Program Director</i>
Kathryn Vandever	<i>Program Officer</i>
Camilla Parker	<i>Mental Health and Human Rights Consultant</i>
Mona Nicoara	<i>Advocacy and Networking Development Consultant</i>



## Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and non-governmental actors on issues related to human rights and the rule of law. In addition to its reports on the Rights of People with Intellectual Disabilities, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, and Equal Opportunities for Women and Men. Reports on the Regulation and Independence of the Broadcast Media were released in 2005. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organizations and other stakeholders, the recommendations aim to ensure that the report findings directly impact on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Open Society Mental Health Initiative (MHI)**, part of OSI's Public Health Programs. MHI seeks to ensure that people with mental disabilities (mental health problems and/or intellectual disabilities) are able to live as equal citizens in the community and to participate in society with full respect for their human rights. MHI promotes the social inclusion of people with mental disabilities by supporting the development of community-based alternatives to institutionalisation and by actively engaging in policy-based advocacy.

Throughout Europe people with intellectual disabilities still face serious stigma, prejudice and significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is key to ensuring their social inclusion, and enabling them to live and work in the community as equal citizens. The EUMAP reports focus specifically on these two areas because of their importance to people with intellectual disabilities and because of the existence of international standards, and national law and policy, relating to these areas.

Monitoring of the rights of people with intellectual disabilities was based on a detailed methodology (available at [www.eumap.org](http://www.eumap.org)), intended to ensure a comparative approach

across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), Bulgaria and Romania, expected to join in 2007, one candidate country (Croatia), and three older EU member States (Greece, the Netherlands, and the United Kingdom).

The preparation of reports on both member and non-member States highlights the fact that international human rights standards apply equally, and provides an opportunity to comment on general trends in the development and the policy application of these standards. The States selected represent a geographical spread and illustrate a spectrum of policy, practice and implementation.

Reports on each of the 14 countries monitored, plus an overview report resuming the main findings across all the countries, will be published separately. First drafts of each of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations, self-advocates, parents, and international organisations. The final report reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for its final content.

## Foreword

This report is one of a series of 14 country reports prepared by the Open Society Institute's EU Monitoring and Advocacy Program and the Open Society Mental Health Initiative. The report presents an overview of the opportunities and challenges facing people with intellectual disabilities in accessing education and employment. It provides an important contribution to research on this group, one of the most vulnerable groups throughout Europe.

The initiative of producing this report fulfils important objectives. There is a clear need for comprehensive studies based on reliable research about the situation of people with intellectual disabilities in Europe. Without reliable information, the strategies and policies targeting this particular group of people are often inadequate in terms of meeting their real needs. The monitoring underlying the reports also aims to provide a comparative overview on the countries analysed. The present report goes far beyond previous reports that have brought this issue to the attention of European and national decision-makers.

Presenting a wider picture, this series of reports provides a thorough analysis of the situation of people with intellectual disabilities in their access to education and employment in eight new EU Member States (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), two accession countries (Bulgaria and Romania) and one candidate country (Croatia). To give a broader view of practice across Europe, Greece, the Netherlands and the United Kingdom have also been studied. The conclusions of the series of reports indicate that people with intellectual disabilities in Europe continue to face significant barriers as far as real access to education and employment is concerned. Discrimination also remains a major issue, despite measures taken at the national level and within a larger European context.

The reports also stand for the importance of civil society monitoring and the overall involvement of different stakeholders in dialogue regarding the human rights of people with intellectual disabilities. A local expert in each country prepared the monitoring report, while local NGOs were involved throughout the monitoring process, providing the basis for broad consultation wherever possible. A central goal of this monitoring is to promote greater awareness and discussion of the issues at stake for people with intellectual disabilities at the local, national, and international levels.

Across the countries monitored, common problems continue to block access to education and employment for people with intellectual disabilities. In many countries, data on the situation of this group is extremely limited or insufficiently disaggregated, making it difficult for Governments to develop policy tailored to their needs. What data there is, shows that while integration of children with intellectual disabilities in mainstream schools is generally increasing, a more fundamental process towards

inclusion, as presented in the 1994 Salamanca Declaration on Special Needs Education, has made little headway. Many children throughout the region are still segregated in special schools or denied an education altogether, leaving little hope that they will be able to find jobs as adults. In most countries monitored, there is only the most basic support for the transition from education to employment.

Existing incentive schemes in many countries, particularly hiring quotas, have not been successful in increasing the number of people with intellectual disabilities who have entered the work force. More specifically targeted programmes must be developed to meet the needs of this group. Throughout Europe, NGOs have piloted effective projects offering supported employment to people with intellectual disabilities, providing assistance such as job coaches, specialised job training and individually tailored supervision. However, this approach has not yet been adopted as Government policy and therefore the opportunities it offers cannot be extended to a much larger group of people.

The reports highlight numerous obstacles that people with intellectual disabilities face in accessing education and employment in various countries across Europe. Improved legislation still needs to be adopted and implemented nationally as well as at the EU level. Existing models of good practice in inclusive education and supported employment should be replicated on a more extensive scale. These reports should help domestic and European decision-makers to develop effective policies ensuring the inclusion of people with intellectual disabilities into society.

From the perspective of Inclusion Europe, the European Association of People with Intellectual Disabilities and their Families, this report makes a very important contribution to the present discussion on access to education and employment for people with intellectual disabilities. We only can encourage local, national and European decision-makers, service providers and disability and social NGOs to consider and follow the recommendations developed in this report.

*Geert Freyhoff*

Director  
Inclusion Europe

# I. Executive Summary and Recommendations

## 1. EXECUTIVE SUMMARY

Throughout Europe, people with intellectual disabilities<sup>1</sup> face major stigma and prejudice, and are confronted with significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment is critical to ensuring that they can live and work in the community as equal citizens. There is a strong link between education and employment: without access to adequate education, people with intellectual disabilities cannot secure meaningful employment. This denial of access leads to life long dependency, poverty and social exclusion, adding to the stigma of intellectual disability. This monitoring report focuses specifically on the areas of education and employment because of their importance to people with intellectual disabilities, and because of the existence of both international standards and national legislation that specifically address them.

The Netherlands' extensive legal and policy framework related to people with disabilities clearly establishes an approach intended to foster active, independent living for this population, and to ensure its inclusion in the social fabric of the country. However, the experience of this group of people often does not live up to the promise of these policies. The specific situation of people with intellectual disabilities needs to be a focus for continued Government concern; this group's needs are often not adequately addressed in policy for people with disabilities in general, and the programmes intended for their benefit fail to produce significant results. People with intellectual disabilities continue to be placed in institutional care facilities, and the number of such placements is actually increasing, albeit more slowly than previously. Two-track systems in education and employment remain established, educating people with intellectual disabilities in special schools and employing them in sheltered workshops. Initiatives to encourage a more integrated approach to education have not been in place long enough to assess their overall effectiveness, but these measures already appear inadequate to meet the specific needs of people with intellectual disabilities. Likewise in employment, Government programmes appear insufficient to increase the number of people with intellectual disabilities working on the open market. The Netherlands must ensure that its high standards of protection and pledges

---

<sup>1</sup> The term "intellectual disability" (also described as "learning disability" or "mental retardation") here refers to a lifelong condition, usually present from birth or which develops before the age of 18. It is a permanent condition that is characterised by significantly lower than average intellectual ability and results in significant functional limitations in intellectual functioning and in adaptive behaviour as expressed in conceptual, social and practical adaptive skills.

of equal treatment are realised for people with intellectual disabilities, as they are for all of Dutch society.

### *Background*

The Netherlands is a party to most major human rights conventions, which become binding upon ratification. However, it has yet to ratify the Revised European Social Charter and the Additional Protocol to the European Social Charter establishing a system of collective complaints. The Constitution guarantees equal protection, while supporting legislation comprises one of Europe's most advanced and established anti-discrimination frameworks. Recently enacted legislation on equal treatment for Chronic Illness and Disability brings the Netherlands into line with the EU Employment Directive; the act currently extends only to the employment and vocational sphere, but its scope could be enlarged to cover other areas such as primary and secondary education. An Equal Treatment Commission is responsible for deciding claims based on the Equal Treatment Acts, and although it cannot issue binding decisions its judgments are usually followed by the courts. The Commission acts as the independent body for the promotion of equal treatment required under General Equal Treatment Act as well as the Equal Treatment on the ground of Disability and Chronic Illness Act.

Although various laws and policies use different terminology to refer to people with intellectual disabilities, assessment procedures employ internationally accepted definitions (DSM-IV) for *mild*, *moderate*, and *severe* intellectual disabilities, based on IQ levels. There are a number of different procedures for assessing eligibility for various forms of education, social welfare benefits, and supported or sheltered employment. There appear to be no serious issues related to guardianship status among people with intellectual disabilities; a number of custodial arrangements exist, ranging from full (*plenary*) guardianship to more limited forms of supervision or control.

### *Access to education*

Children with intellectual disabilities are required to attend school unless they have been granted an exception, which is often the case for people with a very low developmental age. A two-track educational system exists for children with intellectual disabilities, who may either be placed in a mixed school system, which is organised in local networks that include both mainstream and special schools, or in the special school system, in which students are grouped into one of four "clusters" according to their diagnosis. There are waiting lists for children seeking to be placed in the special education system, largely due to the extensive testing that is required for admission. Generally, concerns regarding the assessment process centre on the waiting periods and the bureaucratic requirements which must be met by schools and parents.

Since August 2003, children who received a special education assessment are eligible for pupil-specific funding known as the "backpack". Parents may use this funding to cover the cost of educational support if they let their children attend a school in the



regular education system. It is lower for children with intellectual disabilities than for children with other types of disabilities, and parents' discretion over its use is limited. Other State funding distributed to school networks to support children with special needs is insufficient to provide adequate services. The inadequate level of support in mainstream schools may be one reason that parents are choosing to enrol their children with intellectual disabilities in the special school system. These special schools also benefit financially from increased enrolment. Early intervention (for children aged 0-4) is not a guaranteed right in the Netherlands, but a variety of services, both in day centres and at home, is available throughout the country. It is unclear whether these services are effective in preparing children for education in an inclusive environment, however.

The Netherlands has received EU funding, mainly from the EQUAL programme and the European Social Fund (ESF), to develop vocational training and secondary school programmes for children with intellectual disabilities. However, a substantial proportion of these funds have not been utilised, due to a lack of government co-funding and limited capacity of local schools to access the funds. The Dutch policy "Back to School Together" promotes a more inclusive approach to education; under this programme, certain schools for special education have been brought into the mixed school system, and the "backpack" funding package has been established. Fundamentally, however, the segregated two-track system remains the basis of educational options, and the Government should shift its approach towards an authentic inclusion policy. Moreover, parents and advocates have not been satisfied by the extent to which their input and needs have been incorporated into educational policy. Children with autism, for example, make up the largest group of children who do not attend school, but no specific policy has been directed towards the needs of this group.

Individual schools determine the curricula to be used in the classroom, in line with general goals elaborated by the Government. The Education Inspectorate has found that in many cases, materials and lessons are not adequately adapted for use with children with intellectual disabilities. Teachers receive only limited training for teaching such children, and in-service training is optional.

Although recent policy developments are phrased in the language of inclusion, the Dutch education system remains largely non-inclusive. Thus, the education system does not yet meet the aims of the UN Standard Rules and the Salamanca Statement. In fact, inclusion of children with intellectual disabilities in inclusive settings remains low, and even the goal for inclusion of children with disabilities through the "backpack" funding system over time is only 25 per cent of the population of all children with disabilities. The maintenance of two separate systems, even with the introduction of pupil-specific financing, is not compatible with inclusion.

In 2003, there were some 16,000 children with intellectual disabilities enrolled in special schools, but fewer than 900 students with intellectual disabilities who were considered eligible for the special school network had been enrolled in mainstream

schools. Parents and official inspectors have raised concerns regarding the support children with intellectual disabilities receive in mainstream schools, but families of children placed in mainstream settings generally report a positive result. Enrolment in the special school network has been on the increase, however, for reasons not entirely clear. Inspectors have also indicated that several aspects of special education, such as curricula and goal setting, were inadequate.

Education outside the school system is extremely limited in the Netherlands. Home schooling is not generally permitted, although as many as 2,000 children with disabilities may remain at home without educational options. Children in institutions, who are generally considered to have very low developmental ages, may be exempted from educational requirements; otherwise, children in institutions have the same rights and access to education as those living outside institutions.

### *Transition from education to employment*

Support for students with intellectual disabilities in secondary and vocational schools has been reduced, and there are plans to modify other benefits that would limit the already inadequate funding available for such students. With such insufficient support, as many as 18,000 students with disabilities may leave school annually without a diploma. While special secondary schools have a poor record of preparing students for work on the open market, pre-vocational practical programmes are successfully placing graduates in open-market employment.

### *Access to employment*

The Equal Treatment on the Grounds of Disability and Chronic Illness Act, adopted in 2003, brought the Netherlands fully into compliance with the EU's Employment Directive. The Act covers all aspects of the employment process, including hiring and placement. An extensive legislative framework establishes a range of benefits and services available to most people with intellectual disabilities. Many benefits include support for finding employment. Each employment-related benefit requires an assessment process, which also includes an assessment of capacity to work in a sheltered or supported setting. Although the regulations governing the assessment process require the team conducting the procedure to focus on individual capacity, it appears that often assessments focus on disability and take a medical approach. There have also been concerns about a lack of coordination among relevant agencies. Studies suggest that social welfare benefits may be too low for people with intellectual disabilities to support themselves without other sources of income, mainly from family.

As in the education field, EU funding to support employment of people with intellectual disabilities has been under-utilised. Both the EU's own application procedures, including age restrictions which many see as too high, as well as a lack of support for local governments wishing to apply for funding, contribute to the EU funds going unspent. Government policy has been shifting towards encouraging people with disabilities to support themselves, and to offer incentives for employment. There

is no quota system in the Netherlands; the Government has urged employers to adopt voluntary two-percent hiring targets for people with disabilities, but it is unclear if this system is monitored in any way. A number of subsidies are available to employers who hire people with disabilities, including training and job coaching support. However, the number of people with intellectual disabilities who are in fact employed on the open market remains very small.

In the Netherlands, the number of people with intellectual disabilities able to access either supported employment<sup>2</sup> or sheltered employment is relatively high; around 45 per cent of the estimated 73,000 adults with intellectual disabilities. The majority of people with intellectual disabilities who are employed work in sheltered employment, while many others have employment-like occupation in day centres. Only four per cent of people with intellectual disabilities participate in supported employment, although a much larger proportion has applied for such support under the relevant programmes. The Government has allocated substantial funds towards helping young people with disabilities to find work on the open market, but in some cases local government has been reluctant to implement supported employment policies. In contrast, sheltered employment is well established in the Netherlands; where workers are under contract, they receive pay on a scale negotiated through collective bargaining, and have the opportunity to build skills. However, few people do make the transition from sheltered work to employment on the open market, and despite reductions in waiting lists, the demand for sheltered work still exceeds the available places.

## 2. RECOMMENDATIONS

### General Recommendations

#### *International standards*

1. The Netherlands should ratify the Revised European Social Charter of 1996 (ESC) and should bind itself to Article 15 of the charter, on the right of persons with disabilities to independence, social integration and participation in the life of the community. It should also ratify the Additional Protocol to the European Social Charter establishing a system of collective complaints.

#### *Legislation*

2. The Government should ensure that the proposed Social Support Act, which is intended to streamline and further decentralise support services for people with disabilities, specifies the services that municipal governments may not fail

---

<sup>2</sup> Supported employment is an employment option that facilitates competitive work in integrated work settings for people with disabilities. It provides assistance such as job coaches, transportation, assistive technology, specialised job training and individually tailored supervision.

or refuse to provide and guarantees that people with intellectual disabilities have the right to participate in social life to the greatest extent possible.

## **Recommendations on education**

### *Legislation*

3. The Government should propose expanding the scope of the Equal Treatment on the Grounds of Disability and Chronic Illness Act to include primary and secondary education.

### *Early Intervention*

4. The Government should establish the right to early intervention, and ensure that such services are carefully monitored to ensure educational quality.

### *Reform of the special education system*

5. The Government should take steps to abolish the special education system, and the funding which now goes to special education should be given directly to mainstream schools to support children with disabilities.
6. The Ministry of Education should ensure that the Regional Expertise Centres are focused and equipped to support the education of children with special educational needs in mainstream schools.
7. The Government should take steps to give all children the right to attend a mainstream school (public or parochial).

### *Funding*

8. The Government should make student-specific funding available for post-secondary education, including vocational education.
9. The Government should ensure that children with disabilities have the right to receive both person-specific financing from the health care sector (*Persoonsgebonden budgetten*) and pupil-specific financing from the education sector (*Leerlinggebonden financiering*). If pupil-specific funding fails to provide individual therapy and support, person-specific funding should be available to facilitate the educational success of the pupil.
10. The Government should encourage and support secondary schools to access ESF and EQUAL monies for use in preparing high school students with intellectual disabilities for employment.

### *Teacher training and resources*

11. The Ministry of Education should make effective educational materials widely available for use in mainstream schools in order to support teachers and

thereby allow more children with intellectual disabilities to effectively participate in regular school settings.

12. The Ministry of Education should provide initial and in-service training and support to teachers in using adaptive teaching methods.

### *Standards and monitoring*

13. The Ministry of Education should develop national standards for adaptive education training and establish appropriate monitoring of such standards.

## **Transition from education to employment**

14. The Ministry of Education should establish a programme to facilitate the transition to employment, in which the last two years of special education should be spent in a minimum of four to six work placements with diverse employers, with support provided by school personnel trained to provide employment support.

## **Recommendations on employment**

### *Employment targets*

15. The Government should serve as a role model for other employers by hiring people with intellectual disabilities for Government posts.
16. The “social partners” involved in negotiating collective bargaining agreements should make binding agreements to hire persons with intellectual disabilities in the respective employment sector.

### *Access to EU funds*

17. The national Government should encourage and support employer organisations and municipalities to apply for ESF and EQUAL financing for employment projects for people with intellectual disabilities.

### *Access to social welfare and other benefits*

18. The Government should propose amendments to make Supported Employment benefits under the Reintegration Act and under the Sheltered Employment Act more flexible and interchangeable so that people with intellectual disabilities can qualify for the one or the other more quickly.
19. The National Social Welfare Benefits Administration Office should assign its employment integration specialists with particular experience working with clients with intellectual disabilities to work actively with municipal governments, to maximise the employment opportunities for people with

intellectual disabilities via both the Reintegration Act and the Sheltered Employment Act.

20. The Ministry of Social Affairs and Employment should make available a life-long, person-specific integration/participation budget, which can be applied in both employment settings and day activity settings at the discretion of the recipient.
21. The Government should propose amendments to ensure that people with intellectual disabilities who qualify for Youth Disability Act benefits never lose the right to reinstatement of those benefits if it later emerges that they cannot hold down a job.
22. The Ministry of Social Affairs and Employment should reassess benefits policy to ensure that people with disabilities never earn less by working than by not working, as is now sometimes the case where income from employment can lead to disqualification from certain benefits and an increased personal contribution to care costs.

#### *Day centre activities*

23. The Government should establish an oversight mechanism to monitor and encourage qualitatively good employment-like activities in day activity centres.
24. The Ministry of Public Health should ensure that personnel in adult day centres receive training and support in combining care tasks with employment-like activities.
25. Adult activity centres should be stimulated to focus more on paid employment, and adult day programmes with effective employment projects should be financially rewarded for their success.

## II. Country Overview and Background

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The Netherlands is a party to most major human rights conventions, which become binding upon ratification. However, it has yet to ratify the Revised European Social Charter and the Additional Protocol to the European Social Charter establishing a system of collective complaints. The Constitution guarantees equal protection, while supporting legislation comprises one of Europe's most advanced and established anti-discrimination frameworks. Recently enacted legislation on equal treatment for Chronic Illness and Disability brings the Netherlands into line with the EU Employment Directive; the act currently extends only to the employment and vocational sphere, but its scope could be enlarged to cover other areas such as primary and secondary education. An Equal Treatment Commission is responsible for deciding claims based on the Equal Treatment Acts, and although it cannot issue binding decisions its judgments are usually followed by the courts. The Commission acts as the independent body for the promotion of equal treatment required under General Equal Treatment Act as well as the Equal Treatment on the ground of Disability and Chronic Illness Act.*

#### 1.1 International standards and obligations

The Netherlands has ratified most major international human rights instruments, including those with provisions on people with disabilities. The Netherlands has a “tempered” monistic constitutional system,<sup>3</sup> and treaty obligations become binding as law upon ratification and publication, without the adoption of national implementing legislation.<sup>4</sup>

The Netherlands ratified the International Covenant on Civil and political Rights<sup>5</sup> (CCPR) and the International Covenant on Economic, Social and Cultural Rights<sup>6</sup> (CESCR) in 1995. The Convention on the Rights of the Child (CRC) entered into force in the Netherlands in 1995. However, while some provisions of the CRC have been invoked in litigation and found binding on State authorities, it is unlikely that all

<sup>3</sup> The Dutch constitutional system is not strictly monistic; arts. 93 and 94 of the Constitution specify that only provisions that are “binding on each and everyone” can be directly applied in the Dutch legal order. This has consequences in particular for “social rights” where the obligations imposed on government are not always clear, and therefore in a number of cases such rights are not viewed as being “binding on each and everyone.” Constitution of the Netherlands, 17 February 1983, Staatsblad (Stb.) 1983, 70 (hereafter, Constitution).

<sup>4</sup> Constitution, art. 93.

<sup>5</sup> International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 171, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (accessed 20 October 2004).

<sup>6</sup> International Covenant on Economic Social and Cultural Rights, 3 January 1976, 993 U.N.T.S. 3, available at [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm) (accessed 20 October 2004).

provisions will be seen as having direct effect.<sup>7</sup> It is not clear whether the national courts will recognise all of the articles of the CRC which concern disability and education as creating binding obligations on the actors involved in providing education.<sup>8</sup>

The Netherlands ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950<sup>9</sup> (ECHR) in 1954. It ratified Protocol 12 to the ECHR (of 2000)<sup>10</sup> in 2004. The Netherlands ratified the European Social Charter of 1961<sup>11</sup> (ESC) in 1980 and is bound by Article 15 on the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement. The Netherlands signed the Revised European Social Charter of 1996<sup>12</sup> (RESC) in 2004, but has yet to ratify it. It has similarly signed the Additional Protocol to the European Social Charter establishing a system of collective complaints, and has yet to ratify that as well.

The Netherlands has ratified all eight fundamental Conventions of the International Labour Organization (ILO)<sup>13</sup> and has also ratified ILO Convention C159 on

---

<sup>7</sup> P.P.J. Zoontjens, *Het beweeglijke recht op onderwijs*, (The Dynamic Right to Education) Den Haag, Boom Juridische Uitgevers, 2003, p. 10 and cases cited with reference to art. 93 GW.

<sup>8</sup> Articles 23, 28 and 29 concern disability and the right to education. While the issue has not been decided in courts of law, education law scholars generally believe the courts will decide against these provisions' direct application. See F.H.J.G. Brekelmans, C.W. Noorlander, R. Verstegeen., *Gelijke onderwijskansen*, (Equal Educational Opportunities) Preadvies en co-referaat symposium Nederlandse Vereniging voor Onderwijsrecht 2003, Den Haag: SDU uitgevers, 2003, p. 16, in which reference is made to the argument of Prof. Paul Zoontjens about the disparate weight given to the right of parents' views to be considered, but not to the position of the children themselves.

<sup>9</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 3 September 1953, E.T.S. 005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

<sup>10</sup> Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), not yet entered into force, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm> (accessed 25 November 2004).

<sup>11</sup> European Social Charter (ESC), 18 October 1961, C.E.T.S. 35, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/35.htm> (accessed 22 October 2004).

<sup>12</sup> Revised European Social Charter (RESC), 1 July 1999, C.E.T.S. 163, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> (accessed 22 October 2004).

<sup>13</sup> The International Labour Organisation (ILO) has identified eight fundamental ILO Conventions. These are Convention No. 29 on The abolition of forced labour Forced Labour Convention, 1930; Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948; Convention No. 98 on Right to Organize and Collective Bargaining Convention, 1949; Convention No. 100 on Equal Remuneration Convention, 1951; Convention No. 105 on Abolition of Forced Labour Convention, 1957; Convention No. 111 on Equality Discrimination (Employment and Occupation) 1958; Convention No. 138 on The Elimination of Child Labour Minimum Age Convention, 1973; Convention No. 182 on Worst Forms of Child Labour Convention, 1999.



Vocational Rehabilitation and Employment (Disabled Persons) and ILO Convention C142 on Human Resources Development 1975.<sup>14</sup>

## 1.2 Domestic legislation

Article 1 of the Dutch Constitution provides an equal protection guarantee, which does not name disability as a prohibited ground of discrimination, although it does prohibit discrimination in general terms on “any other ground.”<sup>15</sup> The Lower House of Parliament has adopted a motion to amend Article 1 to specifically include disability as a prohibited ground of discrimination.<sup>16</sup> The current Government, however, does not support such an amendment, in part based on the understanding that the language “on any ground” should, in light of changing social perceptions, be read to include disability.<sup>17</sup>

A general anti-discrimination law, the General Equal Treatment Act, was adopted in 1994.<sup>18</sup> The General Equal Treatment Act also fails to name disability as a prohibited ground of discrimination; however, a specific law prohibiting discrimination on the ground of disability in employment and vocational education was recently adopted in order to comply with the European Union’s Council Directive 2000/78/EC (hereafter, the Employment Directive).<sup>19</sup> This law, Equal Treatment on the Grounds of Disability and Chronic Illness Act entered into force on 1 December 2003. It is an “*aanbouwwet*,” which means that it establishes an anti-discrimination prohibition on

<sup>14</sup> A number of other relevant ILO Conventions are also applicable in the Netherlands, including those addressing vocational rehabilitation and training. This includes No. 122 1964, which concerns “full and productive employment” and binds States to pursue an active policy to promote “full, productive and freely chosen employment” as “a major goal” (art. 1, para. 1). Also pertinent are ILO Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled 1955; and Recommendation No. 150 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975.

<sup>15</sup> Moreover, the Dutch Supreme Court has ruled that art. 120 of the Constitution bars constitutional review of primary legislation, in respect of Parliamentary sovereignty. *Harmonisatiewet Arrest, Hoge Raad, 14-04-89, NJ 1989/469*. Discussion about amending the Constitution to lift the ban on constitutional review of primary legislation is ongoing and a majority of the Lower House has adopted a resolution for amendment. *NRC Handelsblad*, 8 September 2004, p. 1.

<sup>16</sup> Motion of MP Rouvoet of 20 December 2001, TK 28000 XVI, nr. 63.

<sup>17</sup> Letter from the Minister of Administrative Renewal to the Lower Chamber, dated 20 August, 2004, TK 29 355, Nr. 7 in which he argues on p. 7 that, “on the basis of recent developments it can be concluded that, under current social and legal circumstances, the ground of disability or chronic illness belongs to the category of suspect classifications.”

<sup>18</sup> General Equal Treatment Act, Stb. 1994, 230.

<sup>19</sup> Council Directive 2000/78/EC, Establishing a general framework for equal treatment in employment and occupation, available at [http://www.europa.eu.int/comm/employment\\_social/fundamental\\_rights/pdf/legisl/2000-78\\_en.pdf](http://www.europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisl/2000-78_en.pdf) (accessed 26 October 2004).

the basis of disability with a limited scope of application, which can be expanded to other areas over time. At present, the scope of the Disability Equal Treatment Act extends only to employment and professional education and over time it will extend to public transportation.<sup>20</sup>

The Netherlands has also enacted legislation to comply with the EU Race Equality Directive; indeed, its Equal Treatment Commission, which serves as the required body for the promotion of equal treatment of all persons without discrimination on the basis of race,<sup>21</sup> was established in 1994, well before the adoption of the Directive. The Equal Treatment Commission's mandate has since been extended to cover discrimination on other grounds, including disability.<sup>22</sup>

Social integration/rehabilitation legislation exists in the Netherlands and applies to all persons defined as "employment disabled", including people with intellectual disabilities.<sup>23</sup>

## 2. GENERAL SITUATION OF PEOPLE WITH INTELLECTUAL DISABILITIES

*Although various laws and policies use different terminology to refer to people with intellectual disabilities, assessment procedures employ internationally accepted definitions (DSM-IV) for mild, moderate, and severe intellectual disabilities, based on IQ levels. There are a number of different procedures for assessing eligibility for various forms of education, social welfare benefits, and supported or sheltered employment. There appear to be no serious issues related to guardianship status among people with intellectual disabilities; a number of custodial arrangements exist, ranging from full (plenary) guardianship to more limited forms of supervision or control.*

### 2.1 Definitions

The various bodies developing law and policy use different terms and definitions related to people with intellectual disabilities. It is unclear if these variations have adverse effects on policymaking.

---

<sup>20</sup> This extension is not to take effect until the year 2030.

<sup>21</sup> Council Directive 2000/43/EC Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, art. 13.

<sup>22</sup> European Commission, Directorate-General for Employment and Social Affairs, *Equality and non-discrimination*, Annual Report 2004, Luxembourg, European Communities, 2004, p. 25.

<sup>23</sup> The Workplace Reintegration Act applies to people defined as "employment disabled", and provides for services to facilitate the integration of persons unable to work on the basis of disability in a variety of workplaces and training programmes, including supported employment. See section IV.1.2 of this report.

Intellectual disability is generally defined in the Netherlands in terms of an IQ score. People with an IQ score between 70 and 90 are considered as *zwakbegaafd*,<sup>24</sup> which translates simply as learning disabled; those with an IQ below 35 are classified as severely intellectually disabled. The health care sector for people with intellectual disabilities employs the definition of intellectual disability as established in the American Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)<sup>25</sup> in which *mild* intellectual disability corresponds to an IQ score of 50-55 to 70, *moderate* disability 35-40 to 50-55 and *severe* disability with an IQ score between 20-25 and 35-40.<sup>26</sup> Other classification systems, such as the World Health Authority's (WHO) ICD-10,<sup>27</sup> are also used as references in assessing people with intellectual disabilities, but although these systems differ, no confusion or particular problems with the use of other classifications have been reported. It is estimated that one third of the children with intellectual disabilities have Down's syndrome in the Netherlands.<sup>28</sup> Specific legislation in each policy sphere establishes the criteria that determine eligibility for disability-related services.

## 2.2 Diagnosis and assessment of disability

In the Netherlands, a number of different bodies and procedures are used to assess intellectual disability, for educational, employment, and benefits purposes.

For educational placement, the assessment procedure varies depending on whether the child is seeking admission to the mixed school system, which includes both integrated mainstream schools and special schools, or to the special school system. Admission to a special school in the mainstream system requires a referral from the local Permanent Special Needs Commission; this referral considers mainly whether the support available in a regular mainstream school has been insufficient for the child to learn effectively. Children with *moderate* to *severe* intellectual disabilities are usually considered for

<sup>24</sup> See, for example, the Summary of Website section on Intellectual Disability of the National Institute for Public Health, Environment and Nature (RIVM "*Nationaal Kompas Volksgezondheid*"), available at [http://www.rivm.nl/vtv/data/kompas/zorg/handizorg/verstandgeh\\_kort.htm](http://www.rivm.nl/vtv/data/kompas/zorg/handizorg/verstandgeh_kort.htm) (accessed 13 October 2004).

<sup>25</sup> The DSM-IV is the main diagnostic reference of mental health professionals in the USA. See: American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM-IV), Washington D.C., 1994.

<sup>26</sup> Ministry of Public Health, Welfare and Sport, *Brancherapport Care 2000–2003*, prepared by the National Institute for Public Health and the Environment RIVM and Prismant, Den Haag, Ch. 3.3.1, Zorgvraag, May 2004, p. 107 (hereafter, *Brancherapport 2000–2003*).

<sup>27</sup> World Health Organisation, *International Statistical Classification of Diseases, tenth revision*, Geneva, World Health Organisation, 1994 (ICD-10).

<sup>28</sup> Poulisse, *Een wankel evenwicht, de integratie van kinderen met een verstandelijke handicap in het reguliere onderwijs* (A Shaky Balance, the Integration of Children with an Intellectual Disability in Regular Education), ITS-Nijmegen, 2002, p. 2 (hereafter, Poulisse, *A Shaky Balance*).

placement in the special school system. Assessment in such cases consists of “psycho-diagnostic” testing and documentation of the child’s failure to succeed in a mainstream class. Additional assessment is required at the secondary level, to determine whether a child will follow a supported learning course, or a vocational course.

Several different employment-related benefits are available to people with intellectual disabilities, each with its own assessment procedures. Qualification for disability or “reintegration” benefits is determined by the national employee benefits administration, following an examination conducted by a physician. A second assessment, conducted by an employment specialist, determines eligibility for various employment support measures. Generally, these assessments take into account production requirements, ability to work with limited support, and related issues. Eligibility for benefits available under the Sheltered Employment Act is determined by commissions which until recently were appointed by the municipal authorities.

## 2.3 Guardianship

Information about the numbers of people with intellectual disabilities under guardianship, and the kind of guardianship they are subject to is limited. The following four types of legal representation are specified and defined in the Dutch Civil Code:<sup>29</sup>

- *curatele*, guardianship, in which the a person is legally comparable to a minor under parental authority, with the ward (*curandus*) having no legal capacity to enter into contracts or undertake other legal actions. A central registry of guardianship is maintained at the District Court in the Hague;
- *onderbewindstelling*, “conservator”, with much less authority than a guardian, having authority only over financial and business issues;
- *zaakwaarneming*, or caretaker manager, with little real control over another person’s affairs;
- *mentorschap ten behoeve van meerderjarigen*, literally “mentorship for the benefit of a minor”, which gives the “mentor” authority only over personal matters and not over financial ones and is applied to adults if the “physical or mental condition temporarily or permanently impairs a person’s ability to manage his personal affairs”.

People with intellectual disabilities, NGOs, and service providers do not report particular problems connected with guardianship.<sup>30</sup> It has been noted, however, that

<sup>29</sup> Dutch Civil Code, Book One, Personal and Family Law, last amended Stb. 2001, 584, art. 378, *et seq.* *Zaakwaarneming* is codified in art. 198 *et seq.* of Book Six. *Lastgeving* is codified in art. 414 of Book Seven of the Dutch Civil Code.

<sup>30</sup> Interviews with: Director William Westveer of Onderling Sterk (Strong with Each Other), Utrecht, 21 January 2004; Cris Bergmans, employment and social security benefits policy analyst for the Federation of Parents’ Organisations, 7 April, 2004.

guardians do not regularly make the periodic financial reports to the court that are required for *curatele* arrangements.<sup>31</sup> In most cases, it appears that parents are appointed as guardians, where a guardian is appointed at all; there is no information published on this issue for privacy reasons. There is no provision in the law that prohibits people under a form of guardianship from working, nor does being under guardianship form a ground for dismissal from work, and it is entirely unclear if being under guardianship has any adverse impact on the person's ability to seek and retain employment.

Since little statistical information is maintained on the extent to which any of these forms of guardianship is used in practice, more research is needed. The Federation of Parents' Organisations (FvO), the umbrella organisation for families of people with intellectual disabilities, reports that it is actively working with a grant from the European Union and Inclusion Europe to research the nature and incidence of legal representation among persons with intellectual disabilities in the Netherlands.<sup>32</sup> It is possible that the guardianship relationships established for persons with intellectual disabilities are unfavourable to those under guardianship, but no conclusion can be drawn on this issue without further research.

## 2.4 Statistical data

Little research has been done to determine the precise number of people with intellectual disabilities in the Netherlands.<sup>33</sup> The Social and Cultural Planning Bureau (SCP)<sup>34</sup> described the living and working situation of people with intellectual disabilities for the first time in 2002 in a comprehensive report about disabled

<sup>31</sup> Inclusion Europe, *Justice, Rights, and Inclusion for People with Intellectual Disability*, p. 14, available at <http://www.inclusion-europe.org/documents/1081.pdf> (accessed 19 October 2004).

<sup>32</sup> Interview with Pauline de Graaf, policy analyst and legal counsel for the Federation of Parents' Organisations, 8 December, 2003. The first phase of this research project, which is descriptive, is finished and reported in *Justice, Rights and Inclusion for People with Intellectual Disability*, Inclusion Europe, Brussels, 2003, available at <http://www.inclusion-europe.org> (accessed 19 October 2004).

<sup>33</sup> National Institute for Public Health, Environment and Nature (RIVM), *Omvang van het probleem* (Scope of the Problem), Bilthoven, Nationaal Kompas Volksgezondheid, Versie 2.8, 16 September 2004 [www.rivm.nl/vtv/data/kompas/gezondheidstoestand/ziekte/verstandhand/verstandhand\\_omvang.htm](http://www.rivm.nl/vtv/data/kompas/gezondheidstoestand/ziekte/verstandhand/verstandhand_omvang.htm) (hereafter, RIVM, *Scope of the Problem*).

<sup>34</sup> The SCP was set up by Royal decree in 1973 to serve as an interdepartmental scientific research institute. It is formally accountable to the Minister of Public Health, Welfare and Sport, but conducts studies in the areas of social and cultural policy for a wide variety of governmental departments as well as both houses of the Parliament. Its website is <http://www.scp.nl> (accessed 26 October 2004).

persons.<sup>35</sup> The SCP commissioned a study in 2000 specifically on persons with intellectual disabilities, known as the “PSV study”, which involved 1,000 adults with intellectual disabilities selected at random from the databases of various residential and semi-residential facilities and adult day centres and centres for sheltered employment.<sup>36</sup>

The PSV study revealed that of the 1,000 persons included in the study, 40 per cent live in institutions, 30 per cent live in semi-residential facilities, and 30 per cent live at home with parents or other family members.<sup>37</sup> People with intellectual disabilities who live at home but do not attend adult day care or work in a sheltered environment were not included in this study. It is unclear what percentage of the total population of people with intellectual disabilities they represent. The study indicated that people living in institutions attended neither day centres nor centres for sheltered employment.

Demographic information disaggregated for gender and age on people with intellectual disabilities drawn from this study was recently presented in a comprehensive report on the healthcare sector prepared by the Ministry of Public Health (the “*Branch Report*”). The total number of people over age four with intellectual disabilities (an IQ under 70) nation wide, including both those in institutional care and at home, was estimated to be 103,300. This figure includes 49,700 people with mild disabilities and 53,600 with severe disabilities.<sup>38</sup> A higher prevalence based on residential placements and general practitioners’ registrations of people with intellectual disabilities in the Province of Limburg with extrapolation to the country, results in an estimate of 111,750 people with intellectual disabilities nationwide.<sup>39</sup> Of note in this latter study is the higher incidence of older persons with intellectual disabilities. An expert suggests that this finding may have to do with “the fact that younger people with an intellectual disability are less likely to be viewed as disabled these days.”<sup>40</sup> The study indicates that some 32,200 people between the ages of four and 19 have intellectual disabilities in the Netherlands.<sup>41</sup> The available statistical information is not precise as to the exact size

<sup>35</sup> M.M.Y. De Klerk, *Rapportage gehandicapten 2002, maatschappelijke positie van mensen met lichaaamljke beperkingen of verstandelijke handicaps*, (SCP Report on Disability 2002, the Societal Position of Persons with Physical Limitations or Intellectual Disabilities) Den Haag: Sociaal en Cultureel Planbureau, 2002, p. 12 and table D3, p. 288 (hereafter, de Klerk, *SCP Disability Report 2002*).

<sup>36</sup> Summarized in de Klerk, *SCP Disability Report 2002*, Appendix B, pp. 273–277.

<sup>37</sup> De Klerk, *SCP Disability Report 2002*, p. 274 in Appendix on PVH Study.

<sup>38</sup> *Brancherapport 2000–2003*, Table 18, p. 107, estimates per 1 January 2001 (using definitions of mild, moderate and severe from the DSM-IV).

<sup>39</sup> RIVM, *Scope of the Problem, Brancherapport 2000–2003*, p. 108. This estimate is derived from research conducted in the Province of Limburg, which has a university centre dedicated to promoting research on intellectual disability, the Gouverneur Kremers Centre of Universiteit Maastricht, see <http://www.lkng.nl/page0093.html> (accessed 20 October 2004).

<sup>40</sup> De Klerk, *SCP Disability Report 2002*, p. 13.

<sup>41</sup> *Brancherapport 2000–2003*, Table 18, p. 107, estimates per 1 January 2001 (using definitions of mild, moderate and severe from the DSM-IV).

and makeup of the group of people with intellectual disabilities, which may be due to the use of differing definitions in the various sectors involved with persons with intellectual disabilities.

The number of people with intellectual disabilities who live in institutions or semi-residential housing in the Netherlands is reported by the National Institute for Public Health and the Environment in terms of the numbers of beds available in these living arrangements. In 2003, approximately 35,000 beds were reported to be available in institutions for people with intellectual disabilities or multiple disabilities, and approximately 18,000 places in semi-residential support arrangements.<sup>42</sup> The Ministry of Public Health recently estimated that the total number of persons receiving care in 2002 was 49,893, of which 30,011 were living in institutions, 16,504 in semi-residential support, and 3,378 in intramural and semi-residential arrangements.<sup>43</sup>

Institutions are large and generally located outside of urban areas. Semi-residential support facilities, on the other hand, are located in urban areas and integrated as much as possible in regular neighbourhoods. People who live alone with intensive support are also counted among this group. A semi-residential arrangement consists on average of 25 members, but satellite communities can be much smaller.<sup>44</sup>

While in the past concern was expressed that deinstitutionalisation was not occurring in the Netherlands as quickly for persons with intellectual disabilities as in other countries,<sup>45</sup> it appears from recent data that this trend is reversing. Placements of people with intellectual disabilities in semi-residential care are increasing at the rate of four per cent annually (from 17,736 places in 2000 to 18,418 in 2003), while institutional placements are increasing at the rate of two percent per year (from 34,643 in 2000 to 35,346 in 2003). The fact that institutional placements continue to increase at all remains a cause for concern, however.

---

<sup>42</sup> *Brancherapport 2000–2003*, Table 24 on p. 110. De Klerk, *SCP Disability Report 2002*, pp. 210–211, and see PVH Study: *Onderzoek naar personen met een verstandelijk beperking* (Study of Persons with an Intellectual Limitation) carried out in 2000 (hereafter, SCP-PVH Study). The PVH study was conducted in 2000, and collected data from residential institutions, semi-residential care, and day care and sheltered workplaces. The research population consisted of adults with an intellectual disability who used a form of residential service and/or attended adult day care or who worked in sheltered employment. The study was designed to collect information on about 1,000 people, who were randomly selected from a combined data pool consisting of an address databank of the Ministry of Public Health, Welfare and Sport, the *Zorgnota 2000* and the official address list for the disabled care sector of 1999. The study parameters are described in the SCP Report on People with Disabilities 2002, Appendix B, pp. 173–175.

<sup>43</sup> *Brancherapport 2000–2003*, p. 104.

<sup>44</sup> De Klerk, *SCP Disability Report 2002*, p. 211.

<sup>45</sup> De Klerk, *SCP Disability Report 2002*, p. 210.

### III. Access to Education

#### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*Children with intellectual disabilities are required to attend school unless they have been granted an exception, which is often the case for people with a very low developmental age. A two-track educational system exists for children with intellectual disabilities, who may either be placed in a mixed school system, which is organised in local networks that include both mainstream and special schools, or in the special school system, in which students are grouped into one of four “clusters” according to their diagnosis. There are waiting lists for children seeking to be placed in the special education system, largely due to the extensive testing that is required for admission. Generally, concerns regarding the assessment process centre on the waiting periods and the bureaucratic requirements which must be met by schools and parents.*

*Since August 2003, children who received a special education assessment are eligible for pupil-specific funding known as the “backpack”. Parents may use this funding to cover the cost of educational support if they let their children attend a school in the regular education system. It is lower for children with intellectual disabilities than for children with other types of disabilities, and parents’ discretion over its use is limited. Other State funding distributed to school networks to support children with special needs is insufficient to provide adequate services. The inadequate level of support in mainstream schools may be one reason that parents are choosing to enrol their children with intellectual disabilities in the special school system. These special schools also benefit financially from increased enrolment. Early intervention (for children aged 0–4) is not a guaranteed right in the Netherlands, but a variety of services, both in day centres and at home, is available throughout the country. It is unclear whether these services are effective in preparing children for education in an inclusive environment, however.*

##### 1.1 The right to education

The Dutch Constitution requires the State to provide “sound” education in public schools to all persons residing in the Netherlands who wish to attend public schools.<sup>46</sup> “Private” schools with a religious or general orientation are also subject to quality standards and funded on an equal footing with public schools; 68 per cent of school-age children attend such schools.<sup>47</sup> The Compulsory School Attendance Act requires all children to attend school, unless an exemption is granted.<sup>48</sup> An exemption is available if “on the ground of physical or mental disability the child is not suited to be enrolled in a school or an institution.”<sup>49</sup> An application for an exemption on the ground of “physical or mental unsuitability” must be accompanied by a medical or psychological

<sup>46</sup> Constitution, art. 23 (5).

<sup>47</sup> Ministry of Education, *Kerngegevens in het primair onderwijs 2004* (Core statistics in primary and secondary education 2004), p. 2. (hereafter, Core Statistics in primary education 2004).

<sup>48</sup> Compulsory School Attendance Act, Stb. 1969, 303 (*Leerplichtwet*), art. 2 (hereafter, Compulsory School Attendance Act).

<sup>49</sup> Compulsory School Attendance Act, art. 5a.



statement that the child is unsuited for school.<sup>50</sup> Applications for an exemption must be made every year by the parents or legal guardians of the child in question.<sup>51</sup> Often the day care centres submit such an application. This violates the strict wording of the school attendance law.

An estimated 4,000 children attend such day centres instead of school; the Foundation for Inclusive Education estimates that at least 6,000 children fall outside of the education system, with 4,000 children attending day facilities which are not regulated under the educational laws, and the rest remaining at home due to a lack of appropriate educational facilities.<sup>52</sup> Children in day care or at home have until recently been considered “uneducable” but since 1 August 2003 schools in the special education system are no longer allowed to refuse to enrol children on the basis of a limited developmental age or tested capacity.

The Equal Treatment on the Grounds of Disability and Chronic Illness Act which entered into force on 1 December 2003 applies to higher vocational education and does not presently extend to primary or secondary education. The Government has announced to the Lower House that it is studying the cost and consequences of expanding the application of this law to primary and secondary education.<sup>53</sup> A study was completed in October 2003, estimating in considerable detail the numbers of children now experiencing either a denial of education altogether or an inadequate education such that they could file discrimination claims if the law were extended to protect them from discrimination in education.<sup>54</sup> Of the 40,000 claims projected, half are anticipated for a group identified as having learning difficulties caused by dyslexia, autism spectrum disorders and attention deficit disorders, for which an extra €70 million would be needed to provide adequate support for them in school.<sup>55</sup> The report

<sup>50</sup> Compulsory School Attendance Act, art. 7.

<sup>51</sup> Federation of Parents’ Organisations brochure on the Compulsory School Attendance Act, available at <http://www.fvo.nl> (accessed 8 September 2004).

<sup>52</sup> Available on the website of the Foundation for Inclusive Education at <http://www.inclusiefonderwijs.nl> (accessed 8 September 2004). Government estimates are much lower, but admittedly incomplete.

<sup>53</sup> The Government submitted an “Equal Treatment Plan of Action for persons with a limitation” to the Lower Chamber of the Parliament in December 2003 (*Actieplan Gelijk Behandeling in de praktijk voor mensen met een beperking*), TK 2002–2003, 29 355, nr. 1. This document is the present Cabinet’s response to the bottlenecks in access identified by several advocacy organisations in the autumn of 2002. Stressed at various points in the Action Plan is the importance of developing points of action which do not create binding legal obligations and which will cost little additional money.

<sup>54</sup> C. Hover and R. Baarda, *Effectstudie toepassing Wet gelijk behandeling op grond van handicap of chronische ziekte in primair en voortgezet onderwijs* (Study of the Effects of Applying the Act for Equal Treatment on the Ground of Disability or Chronic Illness in Primary and Secondary Education) Den Haag, October 2003 (hereafter, Hover and Baarda, *Study*) estimates some 40,000 claims, Table 14, p. 55.

<sup>55</sup> Hover and Baarda, *Study*, pp. 55–56.

identifies the separate financing rules for care and education as counterproductive for achieving integration of children from medical day care centres in school.<sup>56</sup> This research is particularly useful because it identifies how equality in education can be viewed in concrete terms. The authors further speculate that on the basis of the relatively few complaints about education received by the National Ombudsman and Equal Treatment Commission to date, extension of the equal treatment guarantee to education should cause relatively few problems.<sup>57</sup> The Government should accordingly propose expanding the scope of the Equal Treatment on the Grounds of Disability and Chronic Illness Act.

Both the Equal Treatment Act and the Equal Treatment on the Grounds of Disability and Chronic Illness Act provide for the establishment of a special Equal Treatment Commission, whose task it is to decide claims based on provisions of the Equal Treatment Acts. While there is no specific protection for alleged discrimination in education on the basis of disability, cases concerning education have been filed and decided by the Commission where the protected ground involved race or ethnic origin. Since the Equal Treatment on the Grounds of Disability and Chronic Illness Act entered into effect, the Equal Treatment Commission has handed down a number of rulings on alleged disability discrimination in education, specifically concerning dyslexia in university education<sup>58</sup> and concerning a vocational school's refusal to allow a person with a mild autism spectrum disorder to apply, on the basis that he probably would not be able to complete the programme.<sup>59</sup> Decisions of the Equal Treatment Commission are not legally binding and it is not possible to insist that a court enforce the decision of the Equal Treatment Commission. The Commission's decisions are highly regarded however, and courts do usually follow them.

Since the enactment of student-specific financing measures (see section III.3.2), it is possible for parents to seek advice and support from the national Advice Commission for Admission and Support and/or special education consultants with respect to resolving complaints against school decisions refusing to enrol children with student-specific funding.<sup>60</sup> There are no other specialised bodies or procedures for handling cases of disability-based discrimination in education in the Netherlands. Children with disabilities who have fought for placement in mainstream schools have not fared well in

---

<sup>56</sup> Hover and Baarda, *Study*, pp. 62–63.

<sup>57</sup> Hover and Baarda, *Study*, p. 53.

<sup>58</sup> Judgment 2004-59, 27 May 2004 in which the Commission found that the university did not discriminate on the basis of disability where the causal link between the delay in the student's progress and the university's refusal to grant extra examination time was not sufficiently proven, available at <http://www.cgb.nl> (accessed 8 September 2004).

<sup>59</sup> Judgment 2004-94, July 20, 2004, the defendant school was found to have discriminated on the basis of disability by refusing to allow the student to apply to the school, available at <http://www.cgb.nl> (accessed 8 September 2004).

<sup>60</sup> Activated by the enactment of Student-specific financing, Stb. 2002, nr. 631, art. XI and XII.

the civil courts because schools are allowed a wide discretion as to school placement and removal, and the courts scrutinise the exercise of this discretion only marginally.<sup>61</sup>

The Compulsory School Attendance Act 1969 requires children to attend school full time from the age of five until at least the age of 16, or upon completing 12 years of full-time school attendance.<sup>62</sup> Children may attend primary school from the day of their fourth birthday and 95 per cent of children in the Netherlands do attend school from the age of four. Primary education (in basic school, *basisonderwijs*) is compulsory and free of charge for children aged five to 12. Secondary education is from the age of 12 and lasts from four to six years depending on the degree. The Expertise Centres Act 1998, which regulates schools for special education, permits students who have met the qualification requirements for special education to remain in school until the age of 20.<sup>63</sup> An aim of special education is to prepare some students for a place in the employment market, while others will move to sheltered employment and others will move on to adult day centres.

## 1.2 Structure and administration of schools

The Constitution requires the Government to provide enough public schools for the children of parents who choose a public education for their children. While more than sixty percent of Dutch children attend denominational schools, such schools are subject to the same quality and special needs requirements as public schools.<sup>64</sup> Denominational schools are considered actors under private law, while public schools are considered to be subjects of public law. Denominational schools can deny placement to students whose parents do not agree with the religious or philosophical approach of a particular school, but they are subject to the same educational laws with respect to admission, removal and referral for placement as schools for special education.

Special education for children with disabilities is available in the Netherlands through two systems: the first is through a system of schools for children with disabilities, and the second is through the mixed school system, which includes both mainstream and special schools for primary education.<sup>65</sup>

<sup>61</sup> Cases of *Sterre* and *Thiandi*, for example, both children with moderate to severe intellectual disabilities who in separate claims against mainstream primary schools unsuccessfully challenged decisions to deny them enrolment in regular education, *Rechtbank Amsterdam*, 9 January 2002, reported in *School & Wet*, nr. 5, May 2002, p. 177; *Thiandi's* case was reported in *School & Wet*, nr. 5, April 2000, p. 71.

<sup>62</sup> Compulsory School Attendance Act, Stb. 1969, 303, art. 3 (1)(a-b).

<sup>63</sup> Expertise Centres Act, Stb. 1998, 496, 1998, art. 39(c) (hereafter, Expertise Centres Act).

<sup>64</sup> Denominational schools have a constitutional right to be established if there is interest by parents to do so. The three educational laws concerning childhood education are applicable to public and denominational schools alike in most essential respects.

<sup>65</sup> See Annex 1 for a table of education options.

The current dual system has developed from a long tradition of separate schooling for children with intellectual disabilities, extending back to the early twentieth century. By the end of the First World War, it was generally assumed that separate schools were much preferable to integrated schools, and accordingly, significant resources were expended to finance a complex system of special education that was the model well into the 1970's.<sup>66</sup> Only since 1990 has Government policy developed to include children with learning disabilities in the mainstream educational system. Children with more severe intellectual disabilities continue to be placed in schools for special education, although since August 1, 2003 they can use special student-specific financing, known as a "backpack", to enrol in a mainstream school if the school agrees to place them. However, the underlying two-track system remains in place, which is essentially non-inclusive.

### 1.2.1 The mixed system

The mixed school system at both the primary and secondary levels is organised in school networks or consortia containing at least 2,000 children and within which each consortium is required to contain at least one special school for primary education.<sup>67</sup> There are approximately 250 primary school consortia comprising 7,000 mainstream primary schools and 348 special schools for primary education (plus 63 branch schools).<sup>68</sup> Primary and secondary schools are organised in separate consortia. There are 87 secondary school consortia comprising 675 secondary schools plus 115 practical education schools and 337 supported learning departments.<sup>69</sup> Each consortium is administered by a small staff, as mandated by the Primary Education Act 1998 and the Secondary Education Act 1998 respectively.

As a result of the adoption of new education laws in 1998, children with milder intellectual disabilities (with an IQ greater than 70) are included in the mixed educational system, and only those with more severe intellectual disabilities are enrolled in the special education system. (See section III.A.4) These new policies have resulted in the re-naming of one kind of special education formerly for children with learning and/or behavioural problems (formerly called *lom/mlk*, which often included children with learning disabilities), as mainstream primary education. This means that the former *lom/mlk* schools no longer exist as a category of special education, but are now considered part of mainstream education. However, this re-categorisation has not changed the fact that these schools are exclusively for children with special needs, requiring a special referral for admission, and are not inclusive. In theory, these children should be able to succeed in mainstream schools, if the extra resources are

---

<sup>66</sup> R. de Groot, "Van exclusief naar inclusief onderwijs" (From exclusive to inclusive education) in R. de Groot, et al. (eds.), *Inclusief Onderwijs*, Wolters-Noordhoff, Groningen, 1996, pp. 17–18.

<sup>67</sup> Primary Education Act Stb. 1998, 495, 1998, art. 18, para. 2 (hereafter, Primary Education Act).

<sup>68</sup> Ministry of Education, Core Statistics Primary Education 2004, p. 2

<sup>69</sup> Correspondence from the Ministry of Education, dated 21 July 2004.

provided to the consortia for distribution to the schools within each consortium. If this support is insufficient to enable the child to succeed in the mainstream school, the child's parents can apply for referral to a special school in the consortium, which is called a special school for primary education (but is not considered to be special education because it is in the mainstream consortium). Admission to the special primary school is regulated by the Permanent Commission for Special Needs Support, which is made up of at least three experts in special needs support.<sup>70</sup>

Financing for special needs support in the mixed system is organised on the basis of a policy goal to have no more than two per cent of the children in any given primary education consortium attending special schools for primary education.<sup>71</sup> Experts have noted that the effect of financing on the policy aim of mainstreaming is an important point for study in general.<sup>72</sup> Unabated upward enrolment in special education facilities raises questions as to whether the current system truly promotes inclusion. European research implicates financing as a very significant factor in either promoting or inhibiting inclusion in education.<sup>73</sup> Currently, available funding may not be sufficient, nor the system of allocating funds appropriate, to effectively implement full mainstreaming.

### 1.2.2 The special education system

Children with more severe learning disabilities are generally referred to a school within the special education system. Since 2003 all special education schools are required to belong to and form a Regional Expertise Centre (*Regionaal expertise centrum*, hereafter, REC). The 14 kinds of special education have been grouped into four "Clusters", based on the nature of the medical diagnosis underlying the disability. There are 324 schools for special education and 90 branch schools in 33 RECs.<sup>74</sup> The majority of children with intellectual disabilities are educated in Cluster Three schools, along with

<sup>70</sup> Primary Education Act, art. 23.

<sup>71</sup> Government Policy Statement, TK 1996/97, 25 409, nr. 3, p. 5.

<sup>72</sup> OSI roundtable, The Hague, June 2004. *Explanatory note: OSI held a roundtable meeting in the Netherlands in June 2004 to invite critique of the present report in draft form. Experts present included representatives of the government, parents, and NGOs.*

<sup>73</sup> Cor J.W Meijer, *Effects of Financing of Special Needs Education, A Seventeen-country Study of the Relationship between Financing of Special Needs Education and Inclusion*, Brussels: European Agency for Development in Special Needs Education, 1999.

<sup>74</sup> Ministry of Education, Core Statistics Primary Education 2004, p. 2. Of the special education schools, 160 are for both primary and secondary special education, and the 33 RECs comprise both primary and secondary schools.

children who have physical disabilities, multiple disabilities, chronic illnesses and epilepsy.<sup>75</sup>

The special schools are required to belong to a REC, which are organised in a variety of ways. The REC concept corresponds in theory to the Salamanca vision of transforming special education schools into expertise centres, which can advise and support teachers to teach all kinds of children with varying abilities in inclusive classrooms. The Dutch RECs may move in this direction over time if in fact children make use of pupil-specific funding and are able to secure placement in mainstream schools. The RECs could then fulfil the important function of supporting teachers in mainstream classrooms and coordinating other support for children with disabilities in inclusive schools. Development in this direction remains limited, largely due to the fact that children with disabilities do not move on to mainstream schools, but stay in the special schools.

While schools are funded directly by the national Government, administration of the special educational system is decentralised. Every school for special education is independently run by its own school board. The Expertise Centres Act delegates responsibility to the schools to determine if they want to transfer school administration from the school board to the REC board. The schools themselves are free to provide education as they see fit as long as they address the “essential goals” set out in the Expertise Centres Act:

Education must be adapted to the developmental potential of the pupil. It should be structured such that a pupil can experience an uninterrupted process of development. Where possible it should enable children to attend regular education in primary or secondary schools. Education should be directed in any case toward emotional and intellectual development, the development of creativity, the acquisition of knowledge and of social, cultural and physical skills.<sup>76</sup>

Since August 2003, children referred to a REC school for special education also qualify for a “backpack” of student-specific funding,<sup>77</sup> which they can take to the school of their choice in the mainstream system and apply for enrolment. The “backpack” is intended to facilitate the participation of children with disabilities in mainstream school settings, although children with more severe disabilities can lawfully be refused

---

<sup>75</sup> The other clusters are Cluster One for children with visual impairments, Cluster Two for children with auditory and communication impairments, and Cluster Four for children with psychiatric and severe behavioural impairments.

<sup>76</sup> Expertise Centres Act, art. 11.

<sup>77</sup> Regulation for Pupil-specific Financing 28 November 2002, Stb. 2002 631.

placement in a mainstream school if the school finds that it cannot provide the child with an appropriate education.<sup>78</sup>

The “backpack” contains financial resources which can be used to obtain additional teaching hours, remedial teaching, limited on-site support for the teacher in the mainstream school from the REC, and a limited budget for physical accommodations to the classroom or for adapted materials. The total amount of the funding in the “backpack” is approximately equal to what it costs to educate a child in a special school.<sup>79</sup> A child who qualifies for special education in a REC school for special education qualifies automatically for a “backpack.” In theory the “backpack” is available at every level of education, for support in both primary and secondary schools. Eligibility need not be proven every year. The Government is working now on simplifying the qualifying criteria so that permanent disabilities need not be demonstrated every two years as originally required in the legislation.<sup>80</sup>

Not all children receive the same amount of “backpack” funding, the amount varying in some cases considerably among and between Clusters, and thus among the underlying diagnoses of disability.<sup>81</sup> Intellectual disability qualifies for the lowest amount of funding at the primary school level, and secondary school students with an intellectual disability receive 20 per cent less funding than pupils with other disabilities,<sup>82</sup> although, in fact the resources needed to provide an appropriate education for children with intellectual disabilities may be greater. The funding decision is made based on broad categories, not on the individual needs of the students, and the Ministry of Education should adjust this system to ensure that the money for support is adequate to meet the specific needs of children with intellectual disabilities.

While “backpack” funding is modelled on similar programmes in the health care sector, where qualifying people are awarded a lump sum over which they have spending discretion, the money in the “backpack” is restricted to paying for on-site teacher support from a REC teacher and the purchase of additional personnel hours from the school staff at the mainstream school (in the form of one-on-one remedial teaching, for example). Free spending discretion was one of the early features planned

<sup>78</sup> The courts review denials of enrolment or removal decisions with marginal scrutiny, as in a recent case brought to the Court in Zutphen of 17 November 2003, 57111/KG ZA 03-263, which involved a regular high school’s refusal to admit two brothers with behavioural issues on the grounds that the money provided in their financial “backpack” would not be enough to facilitate the kind of small group attention both boys needed according to the expert advisors consulted by the school. The school is granted a wide discretion in making such decisions.

<sup>79</sup> Poulisse, *A Shaky Balance*, p. 7.

<sup>80</sup> Website for parents of children with a backpack, citing to recent developments, dated 24 March, 2004, see <http://www.oudersenrugzak.nl/nieuws.html> (accessed 26 October 2004).

<sup>81</sup> See, for example, Core Statistics Primary Education 2004, p. 6, which provides a table listing how the number of paid teaching hours per disability diagnosis among the four special education Clusters.

<sup>82</sup> Ministry of Education, Core Statistics Primary Education 2004, p. 6.

for the backpack, but this was later restricted. Many parents and some educators have indicated that greater flexibility would increase the utility of the funding, for example to permit the hiring of an extra teacher's aide.<sup>83</sup> This highly restricted spending discretion does not effectively promote greater inclusion.

Furthermore, there have been efforts in the recent past to disqualify children from health care sector funding if they enrol in school, which will likely be counter-productive as parents will opt for the more flexible health care personal allowances over school enrolment.<sup>84</sup> The possibility of losing the right to a personal care budget, which is more flexible and in many ways more attractive than the educational budget, will likely have the effect of discouraging parents from applying for school enrolment. Forcing parents to choose between support for education and support for health care would create a "benefits trap", which not only disadvantages children in the exercise of their right to education, but would be more costly to society in the long run as children remain more dependent on care than they would be if they could attend school with the additional support. The possibility of losing the flexible personal care budget is an alarming prospect for parents, made very real by current policy and regulation.

A central task of the special school is to prepare children to return to mainstream schools.<sup>85</sup> This is an important aim, in keeping with the inclusive education philosophy of the Salamanca Statement. As shown in Table 1, Ministry of Education figures reveal that this does not happen to any significant degree, and that a decreasing percentage of students flow from the special school for primary education to mainstream schools.<sup>86</sup> Most students go on to special forms of education.

---

<sup>83</sup> Telephone interview with J.C. Smits, parent of child with severe intellectual disabilities enrolled in regular school and representative of Foundation for Inclusive Education, 2 February, 2004.

<sup>84</sup> Interview with Annely Moraki, the parent of a child with a severe intellectual disability who is fearful of enrolling her son in school because she may then lose the funding necessary for effective intensive home therapy, 21 August 2004.

<sup>85</sup> Primary Education Act, art. 8, para. 5: "Education in a special school for primary education is at the same time aimed at preparing pupils to follow education in regular primary and secondary schools where possible."

<sup>86</sup> Table supplied by the Ministry of Education in correspondence dated 21 July, 2004. In 2003 13.4 per cent of the students who left special schools for primary education went on to regular schools, in 2002 this total was 18.5 per cent, in 2001 it was 36.7 per cent and in the year 2000 it was 20.4 per cent.



**Table 1. Transfers from special schools for primary education to other school types**

Destination schools by type	2003	2002	2001	2000
Mainstream primary school	241	286	271	372
Special primary school in mixed education system	1,999	1,885	1,657	2,273
Special education in Cluster school	1,071	1,138	998	860
Special secondary school in mixed education system	8,325	7,575	5,220	7,495
Mainstream secondary school	1,587	2,267	4,666	2,546
Special secondary Cluster education	314	332	283	264
Unknown (no school)	289	320	358	493
<b>Total</b>	<b>13,826</b>	<b>13,803</b>	<b>13,453</b>	<b>14,303</b>

Source: Ministry of Education, July 2004

REC schools are financially rewarded for keeping children in the special school system, although RECs are also expected to help parents of children with disabilities make good, informed choices about the educational options for their children.<sup>87</sup> This policy sets up a potential conflict of interest, and it may not be appropriate for RECs to perform such an advisory function.

The Ministry of Education reports that for the year 2003 some 16,000 children with intellectual disabilities were enrolled in schools for special education.<sup>88</sup> At the same time less than 900 students with intellectual disabilities were enrolled in regular schools.<sup>89</sup> One explanation for this low participation may be the lack of “a structural regulation for educating children with a disability.”<sup>90</sup>

The law protects no individual or student-specific entitlement to resources to help children with learning disabilities remain in mainstream schools. Support is supposed to come from the mainstream school itself, via the funds earmarked for children with special needs. This is particularly frustrating for children who need some level of individual support that is not available in mainstream schools, and provides at least in part an explanation for why the enrolments in Cluster 3 special education schools are

<sup>87</sup> Expertise Centres Act, art. 28b, para. (e).

<sup>88</sup> Ministry of Education, *Core Statistics Primary Education 2003*, p. 4.

<sup>89</sup> The Minister of Education informed the Lower House on 28 July 2004 that 871 of the children qualified for Cluster 3 special education on the basis of intellectual disability were enrolled in mainstream schools, of the total 5,619 children with disabilities enrolled in mainstream schools. TK 27 728, nr. 76, p. 14.

<sup>90</sup> TK 27 728, nr. 76, p. 14.

increasing. Parents are afraid that their children will not get enough support in the mainstream schools and they have no way to demand individualised services.<sup>91</sup>

### 1.3 Diagnosis and assessment of disability for educational purposes

#### 1.3.1 The mixed school system

To attend a special primary school in a mainstream school consortium, a child must have a referral from the Permanent Special Needs Commission set up for that consortium.<sup>92</sup> Every consortium of primary schools is required to establish a Permanent Special Needs Commission made up of at least three persons including a chair, an educational expert and a behavioural expert. A child need not meet any medical definition of disability in order to attend a special primary school in a mainstream consortium. Rather, the mainstream school that seeks to move the child to the special school has to document the efforts they made to keep the child in the mainstream primary school. The records must show that it was not possible to provide sufficient support for the child to be able to learn effectively in the mainstream school. It is the Permanent Special Needs Commission which grants or denies the referral to the special school in the consortium.

The official aim of national educational policy is to refer no more than two percent of the children enrolled in the schools of any given consortium to a special school for primary education.<sup>93</sup> For every child over two per cent of the total number of children enrolled in the consortium's schools who is referred to the special school, the mainstream schools must transfer their special needs money to the special school. Therefore, a direct consequence of the number of referrals to the special school is the amount of money that either remains among the mainstream schools for special needs support, or for the amount of money that flows to the special school. This should create an incentive to keep children with learning disabilities in mainstream schools, provided the funding is truly sufficient to provide adequate support. However, at present funding does not appear adequate, with mainstream schools receiving only a very small amount of money for this purpose. This seems to be at least one of the

---

<sup>91</sup> Parents have expressed concern about the limited and diffuse special needs support available in mainstream schools for children with intellectual disabilities. Telephone interview with Hillie Beumer, education policy advisor for the Federation of Parents' Organisations, 20 February 2004.

<sup>92</sup> Primary Education Act, art. 40, para. 3.

<sup>93</sup> Government Policy Statement, TK 1996/97, 25 409, nr. 3, p. 5: "The special school for primary education receives educational care resources directly from the government for 2 per cent of the number of the pupils of a consortium. If more than 2 per cent of the pupils are admitted to the special school for primary education, then the primary schools in the particular consortium must transfer special education money for the children above 2 per cent. If the number of pupils attending the special school drops, then the primary schools can use personnel from the special school."

reasons parents are choosing to have their children qualified for REC Cluster 3 education instead of taking the risk that their children will fail in mainstream schools.

### 1.3.2 The special education system – RECs

A different procedure is used for referral to a REC school for special education. Children with an intellectual disability must have a diagnosis of intellectual disability in order to be referred to a Cluster 3 school for special education. The categories of diagnoses of intellectual disability are taken from the “referral criteria” that are set out in Government regulations for use by the Referral Commissions (*Commissies van Indicatiestelling, CVI*) based at each REC, and subject to review by a national commission for referral.<sup>94</sup> The criteria for referral to a Cluster 3 school are set out under the caption for “children with severe learning difficulties”; such a referral requires “psycho diagnostic” testing with an IQ score of below 60, and “very limited” social self-help skills.<sup>95</sup> A child with an IQ of between 59 and 70 can also qualify for a Cluster 3 referral if there is also an accompanying “serious disorder” diagnosed according to the classification systems of DSM-IV, ICD-10 or ICF, such as an autism spectrum disorder.<sup>96</sup> Although these three reference works use different classification systems for intellectual disability, their use does not appear to present problems or create confusion. Lastly, it must be shown that a child received insufficient benefit from the educational support given in a mainstream classroom.<sup>97</sup> This must be documented in school records. These requirements are the same for both primary and secondary level special education. A child with intellectual disabilities who meets the criteria will be referred to a school for special education in a Cluster 3 REC school.

The requirements for qualifying for special education are complicated and require considerable documentation. Complaints from parents and by the Commissions have led to adjustments to streamline paperwork and hopefully to ease the bureaucratic nature of the referral process.<sup>98</sup> An interesting point of research would be to see just

<sup>94</sup> Regulation providing Referral Criteria for Pupil-specific Financing, Gele Katern, nr. 1, 19 March 2003, pp. 5–15 (hereafter, Referral Criteria).

<sup>95</sup> Referral Criteria, art. 7(1)(a-b).

<sup>96</sup> Referral Criteria, art. 1 definitions, art. 7(1)(b) for “serious disorder.” Notably, autism spectrum disorder is not in itself a ground for referral to a REC school, nor for special needs funding of any kind in the regular schools. This “serious disorder” must have a demonstrated negative influence on the child’s “structural participation in education.” This can be demonstrated by showing a learning delay and very limited social sufficiency skills. This means that children with autism spectrum disorders are often doubly disabled: first by their impairment and then again by the lack of funding to facilitate adequate educational support.

<sup>97</sup> Referral Criteria, art. 7(2)(a-d).

<sup>98</sup> See measures to “de-bureaucratise” the referral process described in Minister of Education’s first status report on pupil-specific financing, presented to Lower House on August 30, 2004, TK 27 728, nr. 76, pp. 1–4.

how much this referral process costs and what percentage of the special education budget it represents.

The process is different for qualifying for special needs support at the secondary school level. In order for a student with learning disabilities to qualify for additional support in a secondary mainstream school, a Regional Referral Commission for Secondary Education must give a positive evaluation. Regional Referral Commissions can refer a student to one of two possible educational routes: a supported learning route, and a vocational route. To qualify for the supported learning route, a student must have an IQ of between 75 and 90 and must be behind in at least two of four primary scholastic areas, which are maths, reading comprehension, technical reading and spelling, and where the gap in either maths or reading comprehension falls within 0.25 to 0.50 of the standard deviation.<sup>99</sup> A pupil with an IQ score between 91 and 120 can also qualify for the supported learning route if, in addition to having demonstrable gaps in certain scholastic areas, the child has a social-emotional problem. Referral to the vocational route at the secondary level requires an IQ score between 60 and 80 and a learning delay in at least two of the four primary scholastic areas.<sup>100</sup>

Diagnosis or referrals can be challenged and are subject to a form of judicial review. Legally, a referral is considered an administrative decision by a public official and is therefore subject to administrative review procedures, which may be appealed to a court after a final administrative decision is taken.<sup>101</sup> The Government has established a national Advice Commission for Admission and Support, which accepts appeals for cases where admission has been denied or placement refused in special education.<sup>102</sup> The Advice Commission can also give advice in cases of disagreement over how pupil-specific funding is to be used. The Commission has been asked to investigate and advise in only seven cases since January 2004.<sup>103</sup> The Government has also provided support for parents whose children have placement difficulties in the form of “education consultants” who have been active since October 2002.<sup>104</sup> Since the pupil-specific funding started in August 2003, Education Consultants have received 261 requests for intervention on behalf of children with placement issues.<sup>105</sup>

---

<sup>99</sup> The referral criteria for support at the high school level are based on government regulations including the Regulation for the list of instruments which can be used in referral decisions for learning route and practical route education for the school year 2004–2005, Number 18 Gele Katern 77, 30 July 2003 (hereafter, Secondary Education Criteria).

<sup>100</sup> Secondary Education Criteria.

<sup>101</sup> The General Administrative Law Act 1992, effective 1 January 1994, last revised: Stb. 2002, 148.

<sup>102</sup> Articles XII and XII of the Expertise Centres Act, 2002, Stb. 631.

<sup>103</sup> Report by the Minister of Education to the Lower House on the status of special education and pupil-specific funding, July 24, 2004, TK 2003/04, 27 728, nr. 76, p. 19.

<sup>104</sup> TK 2003/04, 27 728, nr. 76, p. 20.

<sup>105</sup> TK 2003/04, 27 728, nr. 76, p. 20.

There have been lengthy delays before a child can be assessed and, if appropriate, diagnosed. The process is time consuming, and the resources available to conduct the relevant tests and evaluation are limited. The referral process has also been described as lengthy and bureaucratic. This is due to the often elaborate medical and diagnostic tests that are required to establish whether the child is eligible to be admitted to a special school.<sup>106</sup> According to the Education Inspectorate, the number of children waiting to be assessed for their eligibility to enter a special school in mainstream education networks has been greater than 1,000 every year since 1999.<sup>107</sup> For Cluster 3 schools in the special education network, 126 students were awaiting placement in primary and secondary schools in 2003, while 776 students were waiting just to be assessed and referred.<sup>108</sup> Approximately 57 per cent of the children on the waiting lists for referral and assessment at the primary school level in Cluster 3 special education schools are children with intellectual disabilities.<sup>109</sup> The Minister of Education has devoted particular attention to the issue of lengthy waiting and reported in August 2004 that both the waiting times and the number of children on waiting lists have decreased.<sup>110</sup>

#### 1.4 Early intervention

A right to early intervention in the child's own environment is strongly supported by the Salamanca Statement, which targets pre-school age children as a particularly vulnerable group,<sup>111</sup> but such a right is not guaranteed in the Dutch legal system. The educational system does not provide early intervention services to pre-school age children, as children are not eligible for school enrolment until their fourth birthday. Children under the age of five can qualify to attend special day centres and are also eligible for social development support at home in a variety of programmes aimed at providing "integral" support, including early intervention and practical support in the home. The current services developed out of earlier attempts to coordinate some system of early detection and later, early intervention. In 1976 a National Commission

<sup>106</sup> The Fifth Progress Report on *Back to School Together*, dated 19 December 2003, by the Minister of Education to the Parliament identifies several areas of complaint as well as ten recommendations made by the National Referral Commission to simplify the referral process and/or requirements. TK 2003/04, 27 728, nr. 60, pp. 4–6.

<sup>107</sup> Education Inspectorate, *Wachlijsten Speciaal Basisonderwijs*, 2003-03, p. 14, available at <http://www.owinsp.nl/documents> (accessed 22 February 2004) (hereafter, Education Inspectorate, *Waiting Lists for Special Schools*).

<sup>108</sup> Education Inspectorate, *Waiting Lists for Special Schools*, p. 13.

<sup>109</sup> Education Inspectorate, *Waiting Lists for Special Schools*, Table 1 of Appendix 1, p. 31.

<sup>110</sup> Minister of Education, 6th Progress Report on *Back to School Together* (Integration policy) April 5, 2004, TK 2004/05, 21 860, nr. 72, pp. 5–7.

<sup>111</sup> UNESCO, Salamanca Conference on Special Needs Education, 1994, Framework for Action, Section E, points 53, 54.

for Early Detection of Developmental Disorders was established.<sup>112</sup> Based on the findings of this commission, there was an attempt to start an early detection system on a national basis, but it was never successfully launched.<sup>113</sup> In 1994 a project called “Integral Early Help” was started for children from birth to age four that aimed at providing early intervention in addition to diagnostic services.<sup>114</sup> Some 41 Integral Early Help contact points now function throughout the Netherlands, offering at least telephone consultation services, and coordinated by a national coordinator.<sup>115</sup>

Early intervention services are available in a number of settings, including social-pedagogic service centres, toddler and children’s day care centres, and at rehabilitation centres for children who are diagnosed with a disability and accordingly satisfy referral criteria set out in the general social insurance law. These centres are financed by the General Act for Extraordinary Care (AWBZ) and are free of charge for children who qualify for them on the basis of a medically documented developmental delay.

A national organisation financed by general insurance funds, MEE, provides counsellors who can advise parents of children with “developmental delays”, which are not necessarily rigorously medically defined, how to qualify for assistance at home, in regular neighbourhood toddler centres and in other places where early intervention can help children with problems associated with a delay in development.<sup>116</sup> MEE does not provide services directly, but provides support to parents so that they can themselves apply for resources to cover early intervention support.

It is not at all clear that the various day care centres and home services are effective in preparing these children for inclusion in mainstream settings, including schools, and it is important to monitor the educational aspects of early intervention services. The Health Services Inspectorate monitors the quality of the services provided in these settings. They concluded in a recent report that the parents interviewed are generally very satisfied with the services for their children.<sup>117</sup> However, the Inspectorate also found that the way referrals are made for early intervention is often arbitrary and therefore often haphazard, and that the day care and rehabilitation centres largely fail to work together or exchange information or expertise with each other.<sup>118</sup> The

<sup>112</sup> Inspectie voor de Gezondheidszorg, *Op de voet gevolgd, de ketenkwaliteit van zorg voor kinderen met een ontwikkelingsstoornis (0-6 jaar)* (Closely Followed, Quality in the Chain of Care for Children with Developmental Disorders (0-6 years), Den Haag, June 2002, p.13 (hereafter, Quality of Early Intervention Study).

<sup>113</sup> Quality of Early Intervention Study, p. 13.

<sup>114</sup> Quality of Early Intervention Study, p. 9.

<sup>115</sup> National Platform for Early Intervention (Landelijke Platform integrale vroeghulp), see website [www.vroeghulp.nl](http://www.vroeghulp.nl) for description of services and links to 41 local addresses for contact.

<sup>116</sup> It is unclear how many children are receiving early intervention, as well as the nature and quality of the early intervention services they are receiving. It is not clear if such statistics are kept nor by whom.

<sup>117</sup> Quality of Early Intervention Study, p. 40.

<sup>118</sup> Quality of Early Intervention Study, p. 41.

Foundation for Down's Syndrome has long advocated for effective early intervention services for children with Down's Syndrome and has made a number of specific recommendations for improving both the professional quality and availability of services and training of service providers.<sup>119</sup>

## 2. GOVERNMENT EDUCATION POLICY

*The Netherlands has received EU funding, mainly from the EQUAL programme and the European Social Fund (ESF), to develop vocational training and secondary school programmes for children with intellectual disabilities. However, a substantial proportion of these funds have not been utilised, due to a lack of government co-funding and limited capacity of local schools to access the funds. The Dutch policy "Back to School Together" promotes a more inclusive approach to education; under this programme, certain schools for special education have been brought into the mixed school system, and the "backpack" funding package has been established. Fundamentally, however, the segregated two-track system remains the basis of educational options, and the Government should shift its approach towards an authentic inclusion policy. Moreover, parents and advocates have not been satisfied by the extent to which their input and needs have been incorporated into educational policy. Children with autism, for example, make up the largest group of children who do not attend school, but no specific policy has been directed towards the needs of this group.*

### 2.1 The EU and Government education policy

The EU provides subsidies for developing training programmes/policies in job-placement via the EQUAL programme<sup>120</sup> and the European Social Fund (ESF). In 1992, secondary schools for vocational education (formerly special schools for children with mild learning and/or behavioural difficulties) were given the opportunity to request a subsidy from the ESF. This period expired in 1999, and a second programme followed which started in 2002 and will run to 2008.<sup>121</sup> At present, 14 per cent of the students following a practical course of study in pre-vocational secondary education are

<sup>119</sup> E.de Graaf and M.W. Hodes, *Early Intervention: laagdrempelig, vroeg en lang, Standpuntbepaling SDS met betrekking tot hulpverlening bij early intervention* (Early Intervention: accessible, early and long-term, the position of SDS regarding support for early intervention), Nota Stichting Downs Syndrome, 2002, pp. 25–28.

<sup>120</sup> See the EU web site, [http://europa.eu.int/comm/employment\\_social/equal/index\\_en.html](http://europa.eu.int/comm/employment_social/equal/index_en.html) (accessed 26 October 2004).

<sup>121</sup> B.Vreugdenhil-Tolsma, Q. Kools, A.de Wolf, *Uitstroom praktijkonderwijs in beeld, de ontwikkeling van een instrument en een meting van de uitstroom in 2001–2002 van leerlingen praktijkonderwijs*, (A View of Pre-Vocational Education Output, the Development of an Instrument to Measure Output in 2001–2002 of Pre-Vocational Ed Students) Tilburg, IVA, 2003, p.22, available at <http://www.iva.nl>, (accessed 26 October 2004) (hereafter, Vreugdenhil-Tolsma et al., *Output Pre-vocational Education*).

ESF participants.<sup>122</sup> The Minister of Education recently reported to the Parliament that

These projects are directed toward development activities in the framework of strengthening the job placement function of the respective (special) secondary education programs, to which temporary work placements also belong. In addition, a request is pending before the EU to use ESF subsidies to realize job placement projects in the special high schools.<sup>123</sup>

Information about the use of EQUAL and ESF monies shows that they have, to date, been considerably under-utilised: unused EQUAL funds from 2001 amounting to €2.9 million were returned to the EU, and €167 million of the €251 million available for 2001 in ESF funds had to be returned to the European Commission.<sup>124</sup> According to a rehabilitation expert in the field who works with secondary vocational preparatory schools, schools simply do not have the staff and information to access these funds effectively, which have very bureaucratic application procedures and require exhaustive documentation of many kinds.<sup>125</sup> It is unclear whether the EU also funds other aspects of educational development for people with intellectual disabilities.

## 2.2 National programmes

While in some respects educational policy in the Netherlands is being restructured along the lines of the Salamanca Framework, for example by establishing “expertise centres” equipped to support the integration of disabled children in mainstream classrooms, reference is not made to it, or other international instruments, in policy development. Setting national policy in the context of international developments in this area could help generate a stronger impetus for realising inclusive education and for deepening commitments in this direction.

Special education programmes remain very clearly differentiated from the national education programme for children who do not have disabilities, in marked contrast to the national policy of promoting mainstreaming. This policy programme was launched

---

<sup>122</sup> Vreugdenhil-Tolsma, et al., *Output Pre-vocational Education*, p. 23.

<sup>123</sup> Fifth Progress Report on Policy *Back to School Together*, 19 December 2003, TK 2003/04, 27 728, nr. 60, p. 7.

<sup>124</sup> Progress report on ESF-3 and EQUAL prepared by the Agency of the Ministry of Social Affairs and Employment Opportunity, available at [http://www.agentschap.szw.nl/index.cfm?fuseaction=dsp\\_document&link\\_id=35134](http://www.agentschap.szw.nl/index.cfm?fuseaction=dsp_document&link_id=35134) (accessed 15 October 2004).

<sup>125</sup> Interview with Sjaak Verwer, Director of ProWerk, and former rehabilitation specialist for Administration Office for Unemployment and Disability Insurance (UWV), 20 January 2004.



in the late 1980's under the name "Back to School Together" (*Weer Samen Naar School*).<sup>126</sup> The aim of this policy is to

promote the integration in primary school of those pupils who need special educational attention. The point is to bring the care to the pupil instead of the pupil to the care, or to realise customised care for those children who need it.<sup>127</sup>

The policy intended to achieve greater participation of children with disabilities in mainstream education in two ways: by expanding the notion of mainstream education to include children with mild learning disabilities (resulting in consortia of mainstream schools and special schools within the mainstream education system), and by introducing pupil-specific financing so that children with more severe learning disabilities could attend mainstream schools with extra money to be used specially for them. The policy does not change the fundamental two-track system of mainstream and special education, but tries to make room for the mainstream system to include children with disabilities in integrated classrooms. Some progress towards inclusion is taking place in this system, but not much, as the system is based on separate facilities and segregation.

The movement to include children with intellectual disabilities into mainstream schools was largely instigated by parents' organisations. In 1990 the Association for the Integrated Education of Children with Down's Syndrome, together with the Seminary for Ortho-pedagogy (Child Development) in Utrecht started a project with four schools that had some experience integrating children with Down's Syndrome.<sup>128</sup> They joined together to support other schools willing to try integration. In 1992 the Federation of Parents' Organisations, an umbrella NGO for parents' organisations and people with intellectual disabilities, initiated a similar school support project in primary schools. An important element of the project was to bring on-site support from the special schools to children with intellectual disabilities in mainstream schools wherever possible.<sup>129</sup> The Ministry of Education decided to support these projects and provided financing for them as "integration support schools" for the period 1994–1998. The Ministry of Education stopped funding these projects in 2000, with the expectation that the projects would be carried on by the newly formed RECs, which were to take over and extend this work.<sup>130</sup> It is unclear how the RECs have taken over the work of these projects and if the result has been positive. Additional investigation is necessary to

---

<sup>126</sup> The outline of the policy was presented to the Parliament in a Government Paper entitled "*Weer Samen Naar School*" (Back to School Together), October 1990, TK 1990/91, 21 860, nr. 1.

<sup>127</sup> Parliamentary Materials, Justifying Remarks of the Government Presented to the Lower House of Parliament, TK 1996/97, 25 409, nr. 3, p. 3.

<sup>128</sup> Poulisse, *A Shaky Balance*, p. 9.

<sup>129</sup> Poulisse, *A Shaky Balance*, p. 9.

<sup>130</sup> Poulisse, *A Shaky Balance*, p. 10.

see if families and schools are satisfied with the model and change to the current REC system.

Consultations with a wide variety of stakeholders as well as public discussions in Parliament must be held prior to a programme's adoption, in keeping with what is popularly referred to as the "Dutch Polder Model".<sup>131</sup> In addition to this standard consultation and debate, the Minister of Education is required to report to the Lower House on the Back to School Together policy on a periodic basis.<sup>132</sup> A comprehensive Fifth Progress Report was submitted to the Parliament on December 19, 2003.<sup>133</sup> The Federation of Parents' Organisations raised several important issues in response to the Minister's Report.<sup>134</sup> Among the points of critique are:

- many mainstream schools' refusal to place children with intellectual disabilities who apply for enrolment with "backpack" funding;
- expansion of the authority of the Advice Commission for Placement and Support which appeared to be exclusively concerned with placement of children with severe behavioural problems and long-term absenteeism and not with placement of children with intellectual disabilities who are refused placement in mainstream schools;
- the importance of allowing children with medical care needs to continue receiving care financing alongside educational support financing;
- the many insufficiently documented decisions denying referral for special education;
- the necessity of adopting "backpack" financing for support in vocational education;
- the necessity of extending non-discrimination guarantees to all levels of childhood education.

While consultation with advocacy groups occurs on a regular basis as a standard part of Dutch policymaking, this practice does not necessarily result in effective change or new policy. For example, although many of the children (approximately 64 per cent) who

---

<sup>131</sup> This model of governance is based on consensus building among discussion partners who may have very different interests but share a common interest in working together, such as trade unions and business leaders.

<sup>132</sup> The Minister of Education, Culture and Science submitted a Fifth Progress Report to the Parliament in December 2003. TK, 2003/04, 27 728, nr. 60.

<sup>133</sup> Sixth Progress Report was submitted to the Lower House on 5 April 2004, TK 2003/04, 21 860, nr. 72.

<sup>134</sup> Letter from Federation of Parents' Organisations Director Wim van Minnen to the Lower Chamber of Parliament, Permanent Commission on Education, Culture and Sciences, dated 16 January 2004.

do not attend any form of school at all have an autism spectrum disorder,<sup>135</sup> the urgent need for reform in this area has not been adequately recognised in Government policy. The diagnosis of autism has not been established as a separate category to automatically qualify for educational assistance, despite extensive long-term advocacy by the National Autism Association.<sup>136</sup> The Government appears reluctant to create a category of special education for children whose disability is expressed in such a variety of ways and degrees. Similarly, while public discussion was held for several years on the proposal to introduce “backpack” funding to support inclusion, it was in a much more restricted form than had been proposed by the Parliamentary Commission appointed to develop a plan for introducing pupil-specific funding.<sup>137</sup>

A recent study on the effectiveness of advocacy efforts by Dutch patient and client NGOs reveals that in comparison to the lobbying efforts of universities, industrial lobbies and health care sector organisations, patient and client NGOs are less successful in achieving their aims. One of the explanations offered for this is the phenomenon of cooption, “the input and negotiation structure itself.”<sup>138</sup>

The government has ensured that the patient and client movement is invited to join the discussion table, as a third party, alongside the health caregivers and health care insurers. Patient and client groups receive subsidies and can count on official recognition. As a result they appear less inclined to apply activist strategies. Research into “best practices” reveals that “pulling a chair up to the discussion table” is usually not in itself an effective strategy for advocating on behalf of patients and clients.<sup>139</sup>

<sup>135</sup> Fifth Progress Report on the policy of Back to School Together to the Parliament, TK 2003/04, 27 728, nr. 60, p. 8.

<sup>136</sup> The National Autism Association (NVA) has advocated recognition of autism and its related spectrum disorders for several years and includes this position in many of its publications, including a monthly magazine, Engagement. See website of the NVA at <http://www.nva-autisme.nl>. Children with autism and no other handicap form one of the groups of children which has the greatest difficulty in staying in school, and would likely have a claim for discrimination if the Equal Treatment Act is extended to pre-18 education.

<sup>137</sup> The Rispen Commission (*Commissie Rispen*), chaired by Professor Rispen of the Orthopaedics Department of the University of Utrecht, initially proposed a budget with wide parental discretion for implementation. This was later trimmed back to requiring the budgets to be invested primarily in the RECs and parental involvement going no farther than to sign off on the plan made by the REC and regular school for using a pupil’s budget.

<sup>138</sup> T. Nederland and J.W. Duyvendak, *De kunst van effectieve belangen-behartiging door de patienten- en clientenbeweging*, (The Art of Effective Advocacy by the Patient and Client Movement), Verwey Jonker Instituut, May 2004, p. 143 (hereafter, Nederland et al., *The Art of Effective Advocacy*).

<sup>139</sup> Nederland et al., *The Art of Effective Advocacy*, p. 143–144.

### 3. EDUCATION IN PRACTICE

*Individual schools determine the curricula to be used in the classroom, in line with general goals elaborated by the Government. The Education Inspectorate has found that in many cases, materials and lessons are not adequately adapted for use with children with intellectual disabilities. Teachers receive only limited training for teaching such children, and in-service training is optional.*

*Although recent policy developments are phrased in the language of inclusion, the Dutch education system remains largely non-inclusive. Thus, the education system does not yet meet the aims of the UN Standard Rules and the Salamanca Statement. In fact, inclusion of children with intellectual disabilities in inclusive settings remains low, and even the goal for inclusion of children with disabilities through the “backpack” funding system over time is only 25 per cent of the population of all children with disabilities. The maintenance of two separate systems, even with the introduction of pupil-specific financing, is not compatible with inclusion.*

*In 2003, there were some 16,000 children with intellectual disabilities enrolled in special schools, but fewer than 900 students with intellectual disabilities who were considered eligible for the special school network had been enrolled in mainstream schools. Parents and official inspectors have raised concerns regarding the support children with intellectual disabilities receive in mainstream schools, but families of children placed in mainstream settings generally report a positive result. Enrolment in the special school network has been on the increase, however, for reasons not entirely clear. Inspectors have also indicated that several aspects of special education, such as curricula and goal setting, were inadequate.*

*Education outside the school system is extremely limited in the Netherlands. Home schooling is not generally permitted, although as many as 2,000 children with disabilities may remain at home without educational options. Children in institutions, who are generally considered to have very low developmental ages, may be exempted from educational requirements; otherwise, children in institutions have the same rights and access to education as those living outside institutions.*

#### 3.1 Resources and support

##### 3.1.1 Curriculum and support

Recent research has concluded that “adaptive education”, meaning educational techniques that are adapted to the learning levels and skills of a variety of learning abilities, is necessary but not yet widely available in the education curricula in the Netherlands.<sup>140</sup> Standardised curricula are not in use in either mainstream or special schools as they are viewed as incompatible with the constitutionally protected right of each school to determine the content of education provided.<sup>141</sup> The Government sets out criteria for evaluating the quality of education, such as in the form of “core objectives”, and it is the responsibility of the Education Inspectorate to monitor

<sup>140</sup> Hover and Baarda, *Study*, pp. 44–45; I. Jepma, *Schoolloopbaan van risicoleerlingen in het primair onderwijs* (Educational Path for At Risk Pupils in Primary Education) Amsterdam: ICO, 2003.

<sup>141</sup> Jan de Haan, Working Group Education Policy of the Administrative Board of the Organisation for Protestant Education, in correspondence 6 July 2004.

schools to ensure that their curricula can achieve these core education objectives. Schools are free to use the curricula they want, or to develop curricula as they see fit, as long as they are tailored to meet the core aims set out in the education laws.

The precarious position of children with milder learning disabilities was highlighted by the recent analysis of the Dutch educational system for potential discrimination liability should the Equal Treatment on the Grounds of Disability and Chronic Illness Act be extended to pre-adult education. The authors indicate that very little adaptive education is provided in mainstream schools, and that schools do not specifically target their work to the specific learning needs of individual children.<sup>142</sup> A significant percentage of the children who are at home because no suitable place for them can be found at school are “designated by schools as having serious behavioural problems and a (*mild*) intellectual disability.”<sup>143</sup>

In terms of the support available to students with disabilities in general, a recent study commissioned by the Ministry of Education upon motion of the lower house of Parliament into the effectiveness of various regulations for special needs support in enabling participation of children with disabilities in mainstream and special educational settings, revealed several serious shortcomings.<sup>144</sup> The authors summarise their findings:

The most obvious problems in regular education have to do with [...] the lack of clarity about funding, reluctance to organise physical care at school and bureaucratic procedures for getting assistive support and adapted teaching materials. The most obvious problems in special education are: the quality of student transportation, the lack of vision with respect to vocational training, and financing that is unrelated to the needs of the student.<sup>145</sup>

The basic premise underlying the study’s recommendations for solving these problems is that the student and parents should be at the heart of the solutions, with a recommendation to improve the provision of information to parents and to strengthen their position in the educational system.<sup>146</sup>

---

<sup>142</sup> Hover and Baarda, *Study*, pp. 44–46.

<sup>143</sup> The number of children in this category is reported by the Education Inspectorate to be 186 as of 16 January 2004, up from 177 at the same date last year. TK 2003/2004, 27 728, nr. 76, p. 18.

<sup>144</sup> N. Heringa, M. Spierenburg, E. Hermans, “*Kom op, in de taken!*”, (“*Come up Here, in the Branches!*” *An Analysis of Problems and Possible Solutions for Using Regulations for Participation in Education by Pupils with a Disability*) Wegbereiders Expertisecentra LGF, The Hague, April 2003 (hereafter N. Heringa et al, *In the Branches*). This study was commissioned by the Ministry of Education and conducted by the National Institute for Care and Welfare, an independent research institute. It is a follow-up to an earlier study in which all of the relevant regulations were identified.

<sup>145</sup> N. Heringa et al, *In the Branches*, p. 7.

<sup>146</sup> N. Heringa et al, *In the Branches*, pp. 8, 48.

### 3.1.2 Teacher training

The four-year training programmes in Dutch teaching academies are not specifically geared towards providing teachers with sufficient skills to teach children with disabilities in mainstream schools. This practice may be changing, and it would be useful to examine the curricula of the teaching academies to ascertain what subjects are covered, how the curricula could be improved, and ensure that it includes education in adaptive teaching.

Special qualifications are not required for teaching children with intellectual disabilities in the mainstream schools beyond that which is given in general teacher training programmes. However, it is clear that teachers are insufficiently equipped to teach adaptively.<sup>147</sup> In order to tackle the job of providing inclusive education, teachers must be trained in methods of adaptive teaching and it is yet to be seen if teachers in mainstream schools will develop these skills using the tools now available to them via the various pilot projects and information exchanges organised by the Ministry of Education in recent years.

The task of preparing teachers for mainstreaming children with disabilities takes place in extra in-service training modules for working teachers, such as that provided by the Seminarium voor Orthopedagogiek, a department of the Utrecht School of Professional Education.<sup>148</sup> Teachers may follow this additional in-service training while working, but are not required to attend. A review of the various two-year programmes provided to in-service teachers by the Seminarium in Utrecht identifies only one specific course in adaptive education, focusing on techniques for working with children with intellectual disabilities.<sup>149</sup> In addition to full certificate courses, as given by a teaching seminary, teachers can also attend in-service training days, provided, for example, by a specialist in education and Down's Syndrome.<sup>150</sup>

Because the ability to work with adaptive teaching techniques plays such an important role in including "at-risk" students in the mainstream schools,<sup>151</sup> this aspect of teacher

---

<sup>147</sup> Hover and Baarda, *Study*, pp. 44–46; telephone interview with Gert de Graaf, education researcher and advisor to the Down's Syndrome Association, 3 February 2004 who reports that the biggest problem in his experience is the discouraging attitude of more experienced school teams toward new ideas such as adaptive teaching methods.

<sup>148</sup> Their website is <http://svo.feo.huu.nl>, which also has an English language portal. There are three educational training institutions which provide such programs in the Netherlands.

<sup>149</sup> One course called "Introduction to Adaptive Teaching" is required in the learning route Coaching Specialist (*Begeleidingsspecialist*), but does not appear in the other modules, such as Remedial Teaching, Young At-Risk Pupils, Behavioral Problems, nor the general module "Orthopedagogiek."

<sup>150</sup> Telephone interview with Gert de Graaf, 3 February 2004.

<sup>151</sup> "At risk" students are those pupils who have difficulties with the core subjects of regular education such that without some additional support they run the risk of transfer to special education.

training is essential to providing quality education to children with intellectual disabilities. With respect to the inclusion of children with intellectual disabilities (reflected in an IQ score of 70 or lower), adaptive techniques are essential. According to one regular classroom teacher, there is great difficulty finding appropriate teaching materials for teaching children with even *mild* learning disabilities (reflected in an IQ between 70 and 90); for example, easier-to-understand books and written materials on subjects that other students can learn about easily either through Internet research or from age-appropriate books.<sup>152</sup> In this respect, the lower student “backpack” budget for children with intellectual disabilities does not seem justifiable.

A minimum qualification to teach in the special education system is a certificate of competence which can be satisfied with a variety of diplomas, ranging from the teaching academy to kindergarten teacher.<sup>153</sup> Additional training for teachers and staff is available in which goal setting, planning and evaluation are taught. However, this training is not mandatory, and the Education Inspectorate reports that the quality of these elements in the special schools leaves much to be desired.

### 3.2 Inclusive education

Inclusive education operates from the premise that all children and young people can learn, preferably in the school closest to home, and that all children and young people need support. All students are different in some way, and have different learning needs; inclusive education enables the structures, systems, and learning methodologies to meet the needs of all learners. To be fully inclusive, attitudes, behaviour, teaching methodologies, curricula and the environment must be tailored to meet the needs of all learners. Techniques of adaptive education are essential to providing inclusive education.

A recent study commissioned by the Federation of Parents’ Organisations and the Association for the Integration of Children with Down’s Syndrome revealed that 60 per cent of the 175 parents interviewed found mainstream schools no more accessible than they were before the introduction of pupil-specific funding, and that it was even more difficult to enrol in secondary schools.<sup>154</sup> Based on the study, the Director of the Federation called for the creation of greater possibilities for teaching children with

<sup>152</sup> Interview with Hennie Clermonts, Public Primary School Director, 16 February 2004.

<sup>153</sup> The Expertise Centres Act, arts. 3 and 17(1).

<sup>154</sup> *Ouders over de rugzak (Parents about the Backpack), Onderzoek naar ervaringen van ouders met leerling gebonden financiering en de toegankelijkheid van het reguliere onderwijs.* Research into the experiences of parents with pupil-specific funding and access to regular schools), Utrecht, September 2004. Some 73 per cent of the parents who participated in the study have a child with a disability in regular education, most of them in primary schools and only 5 per cent in secondary school. Further, 67 per cent of the parents have a child with Downs Syndrome, and the other parents reported one or more other disabilities, see pp. 9–10 for description of the group studied.

intellectual disabilities in regular classrooms, declaring that mainstream schools should be equipped to teach all children. “The special schools are then no longer special, and we won’t need them anymore,” he declared on national television.<sup>155</sup>

### 3.2.1 The mixed education system

The official education policy of the Netherlands, *Back to School Together*, aims to include as many children as possible in mainstream education. Integration and participation are the official aims of disability policy generally.<sup>156</sup> While all schools in the Netherlands are therefore potential candidates for enrolling and teaching children with intellectual disabilities, they are not required by law to accept children with such disabilities if they do not believe they can provide them with an adequate education. This is a subjective judgement, which, as long as the school in question appears to have carefully considered the decision, is subject only to limited review in courts of law. There is no standard for defining what an adequate education would mean in this context, and a comparison between what is available in the mainstream school with what would be available in the special school is not invited.

The percentage of children with disabilities (of any type) integrated in mainstream schools was 15 per cent in July 1998, and the aim is to raise this to 25 per cent via the student-specific funding introduced in August 2003 (the “backpack” funding system), although the date for reaching this goal is unclear.<sup>157</sup> An overview of the integration of students with any type of disability in primary and secondary schools, by type of education from year to year since 1997, is provided in Table 2.

---

<sup>155</sup> Wim van Minnen, Director of the Federation of Parents’ Organisations, in a television interview aired on “Netwerk”, 6 October 2004.

<sup>156</sup> Policy is to prevent “that a person’s disability is the (primary) cause of their social marginalization”, TK 1994/1995: 20, cited in SCP Report on Disability 2002 at p. 21.

<sup>157</sup> Poulisse, *A Shaky Balance*, p. 7.



**Table 2. Integration of children with disabilities in primary and secondary schools, by year**

Year	1997	1998	1999	2000	2001
<i>Mainstream primary and secondary schools</i>	1,519,700	1,533,600	1,543,000	1,546,300	1,552,200
<i>Special schools for primary education</i>	54,700	53,600	52,000	51,600	51,900
<i>Special education (REC)</i>	25,800	27,100	28,900	30,300	31,600
<b>Total</b>	<b>1,600,200</b>	<b>1,614,300</b>	<b>1,623,900</b>	<b>1,628,200</b>	<b>1,635,600</b>
<i>Vocational special education</i>	13,000	13,900	14,600	15,500	16,600
<b>Total</b>	<b>1,613,200</b>	<b>1,628,300</b>	<b>1,638,500</b>	<b>1,643,700</b>	<b>1,652,300</b>

**Source:** Minister of Education, Culture and Science, Fourth Progress Report on Back to School Together Policy to the Lower House of Parliament, TK 2002–2003, 21 860, nr. 68, p. 4, Table 1.

**Table 3. Children in special education and mainstream primary education, 2002–2003**

Educational System	Absolute figures	Percentage of total
Special primary education (in mixed educational network)	52,077	3.19
Special education (REC)	33,068	2.02
Mainstream primary education	1,549,776	94.79
<b>Total</b>	<b>1,634,921</b>	<b>100.00</b>

**Source:** Minister of Education, Culture and Science, Fifth Progress Report on Back to School Together Policy to the Lower House of Parliament, 19 December 2003, TK 2003–2004, 27 728, nr. 60.

From the information in the tables, and contrary to the aim of mainstreaming policy, between 1997 and 2001, the total number of children receiving education in either a special school or in the special education networks (REC) actually increased; in 2001, over five per cent of all children received education in this way. Moreover, 5,800 more students attended REC schools for special education in 2001 than in 1997. Special

education at the secondary level also increased by 3,600 students. This is expected to change with the availability of “backpack” financing since August 2003, but figures are not yet available.<sup>158</sup>

A percentage of the children who attend schools in the mainstream education system have some degree of intellectual disability, but it is not clear how large this group is. Since special needs funding in mixed education is not student-specific, but distributed at the consortium level to be divided among the schools on the basis of how many children with learning difficulties are enrolled at each school, the assumption is that mainstream schools will naturally have an incentive to keep as many “difficult” children as possible. However, the amount of money available to each school is too small to be a real incentive, and it is doubtful whether this measure will be effective; increasing referral figures to the special schools in the regular consortia appear to confirm these doubts. More special needs money should be made available at the consortium level to be used in the schools (and not for consortium expenses).

Many regulations exist to help children with disabilities in mainstream education. However, according to a comprehensive analysis of the education laws by the National Institute for Care and Welfare,

A core problem is that these regulations form a patchwork quilt. It is not possible to speak of a complete and coherent whole in which the pupil takes the central place, but rather it is a complex and opaque situation which has arisen over the course of years. In addition, the regulations are not adjusted to the individual pupil.<sup>159</sup>

To support mainstreaming, the Ministry of Education provides extra money for special ambulatory support by teachers from REC schools in the regular schools. On October 1, 2003 some 12,500 pupils received this kind of support.<sup>160</sup> Pupil-specific funding (the “backpack”) is<sup>161</sup> available for children eligible for special education in a REC Cluster school to give them the means to attend a regular school with extra support, including this kind of ambulatory support from a REC school.

However, it is unlikely that the “backpack” funding will result in inclusive education as long as regular schools are allowed to refuse enrolment if they feel they cannot provide

---

<sup>158</sup> The Ministry of Education reports that it does not know the number of intellectually disabled students in the supported streams for theoretical education and practical vocational education at the secondary level; it reports that in May 2004 some 3,200 referrals were given for Cluster 3 education (and backpack) to applying students with intellectual disabilities by the Commissions for Referral, but whether the parents chose “backpack” financing was unknown. Correspondence from the Ministry of Education dated 21 July 2004.

<sup>159</sup> N. Heringa et al, *In the Branches*, p. 47.

<sup>160</sup> First Progress Report on Student-specific funding measure (LGF), TK 2003/04, 27 728, nr. 76, p. 7.

<sup>161</sup> Hover & Baarda Study, p. 77 Of the 11,743 children cited as receiving ambulatory support, 423 received such support from the ZMLK category of Cluster 3.

enough support to enable the child to learn effectively in the regular school. At least some schools have interpreted their responsibility for accepting children with “backpack” financing with a negative presumption: “no to enrolment, unless...”, instead of “yes provided that...”<sup>162</sup> The number of students supported in mainstream schools by ambulatory teachers from special schools has grown significantly over the past years. In 1999, 9,700 children received ambulatory support, and in 2003 this figure was up to 13,900.<sup>163</sup> It appears that less than 500 of them were children with intellectual disabilities and receiving support from specific Cluster 3 ambulatory teachers.

One true mainstreaming project exists in the Netherlands and is called Simply Different (*Gewoon Anders*), which operates and cuts across three of the four special education clusters in the northern city of Almere.<sup>164</sup> Approximately 400 children are enrolled with the Foundation, spread over 50-60 schools in the area, with 90 percent of the attempted placements in the various school or classroom arrangements seen as successful by both the placement schools and Simply Different.<sup>165</sup> Simply Different places children who have a referral for special education in a REC Cluster school from any of the four clusters of special education. Each child is placed in one of three types of “integrated” classroom models:

- **Child in Group.** In this model the child attends a mainstream neighbourhood school and participates as much as possible in the regular curriculum. The teacher and the parents receive direction and support from a “case manager” from Simply Different (called an ambulatory teacher in other contexts), and in addition support tailored to the child’s learning needs is provided via a special teacher, for example, or a special classroom assistant;
- **Group in School.** In this model the child is assigned to a special classroom in a mainstream school. This class is limited to 15 children with similar disabilities. The class is staffed by a teacher and a classroom assistant and the classroom is specially adapted to the needs of the children. The children are integrated wherever possible in the general activities of the school. A Simply Different case manager provides support to the parents, the special teacher and the classroom assistant
- **Group Connected to School.** This model is a special facility for children with multiple or complex disabilities, or children who are also in psychiatric treatment. The classroom is located in a separate location, but affiliated with a mainstream school. Most children participate in this model only temporarily. Staffing is much like in the Group in School model.

<sup>162</sup> Newsletter of *Stichting Jong Leren* (School Association Learning Young), March 2004, p. 4.

<sup>163</sup> Ministry of Education, Core Statistics Primary Education 2003, p. 4.

<sup>164</sup> <http://www.gewoonanders.nl> (accessed 9 February 2005).

<sup>165</sup> Telephone interview with Susan Walstra, education specialist for the Foundation Just Different, 21 January 2004.

The Project stresses that it is an integration project and not an inclusion project, meaning that the project has to date worked at placing children with disabilities in the most regular situation possible for a child in the context of a school willing to place the child, but that most of the schools in the area are not equipped or willing to place any child regardless of type of disability.<sup>166</sup> According to the Project's Education Expert,

the project (and thus the school) has developed enormously in seven years and there is now at least one school that can rightfully call itself an "inclusive school" and many other schools that are heading in that direction. The board of the public schools in Almere has announced that all of the public schools plan to grow in the direction of inclusive education.<sup>167</sup>

The national Government has indicated that it does not intend to expand this programme beyond Almere, although in Almere it will be extended to secondary education.<sup>168</sup> It is unclear why this project will not be duplicated, or if there is a demand for this possibility in other areas of the country. There are no waiting lists to attend the Simply Different programme, although the resources available to children with moderate to severe disabilities are limited.<sup>169</sup>

Parents of children with special needs who attend mainstream schools have the same rights as any other parent: the right to access to a school plan in which the efforts a school will make to accommodate special learning needs are detailed; a right to an informal complaint process for decisions made concerning teaching and related issues; a right to a formal complaint process for admissions and removal decisions; and a right to annually receive a school guide in which parents' rights are set out.<sup>170</sup> Parents of children who attend special schools have a right to submit information to the referral commissions and a formal right of complaint if they disagree with a referral decision. Parents of children who choose to use the option of "backpack" financing must approve the individual education plan set out by the school before funding will be released, and thus will be involved at least to some extent in educational planning. This limited degree of parental participation falls far short of the original proposal to introduce student-specific financing.

The degree of parental involvement is also much less than the role a parent has with respect to the person-specific care budget provided through the health care system,

---

<sup>166</sup> Telephone interview with Susan Walstra, 21 January 2004.

<sup>167</sup> Written correspondence from Susan Walstra, 15 July 2004.

<sup>168</sup> Fifth Progress Report of Minister of Education to Parliament, TK 2003/04, 27 728, nr. 60, p.3. The Minister does not want to promote separate classes as two of the forms available in the project, interview with Susan Walstra, 21 January 2004.

<sup>169</sup> Telephone interview with Jose Smits, parent of child with multiple disabilities enrolled via experimental programme of two children in a mainstream elementary school, 2 February 2004. Jose Smits reports that Just Different works with a set amount of resources, which is the same for each child. If that is not sufficient for adequate support, the placement cannot be made.

<sup>170</sup> Primary School Act, arts. 12, 14, 39 and 49, and 13, respectively.

where parents have far more discretion over how to use the funding allocated to their children. Parents' organisations advocate greater parental involvement in programme development for their children.<sup>171</sup> Research also suggests that the role of parents should be strengthened, and have suggested that parents be given support by an independent advisor (not employed by a REC) who can help parents "see the forest through the trees" of regulations in both education and other areas often very important in the lives of people with disabilities.<sup>172</sup>

A number of problems with the quality of mainstream education for children with intellectual disabilities has been noted. According to a representative of the Foundation for Inclusive Education two children with severe intellectual disabilities who were enrolled in the same mainstream primary school brought with them a classroom assistant funded from a care budget. The school was unable to prepare an education plan for either child until several months into the school year, and finally the parents themselves established learning objectives for their children and elaborated steps on how to achieve these objectives. In both cases it is reported that the classroom assistant is often required to leave the child's classroom to fill in for other teachers who are absent.<sup>173</sup> The parents of both children are very grateful that their children were allowed to be among other pupils in a mainstream setting, and believe that this has had a positive impact on their children's development, despite their feeling that many opportunities to improve the quality of the children's education were lost. Both children have now reached high school age and the parents are now fighting for their placement in mainstream secondary schools, to date without success.<sup>174</sup>

The independent Education Inspectorate, which evaluates the quality of educational programmes annually has also found faults with special needs support in mainstream schools.<sup>175</sup> These reports have been critical of the quality of special educational support with respect to child-specific goal-setting and methodical tracking of progress, as well as noting that remedial teachers are quickly used as substitutes for other teachers in cases of teacher illness.<sup>176</sup>

<sup>171</sup> Telephone interview with Hillie Beumer, educational policy advocate for the Primary School Act, arts. 12, 14, 39 and 49, and 13, respectively.

for the Federation of Parents' Organisations, 8 September 2004.

<sup>172</sup> N. Heringa et al, *In the Branches*, p. 44.

<sup>173</sup> Telephone interview with F. Ploeger of the Foundation for Inclusive Education, 16 January 2004.

<sup>174</sup> All high schools approached by the parents have refused admission, for a variety of reasons, and both sets of parents are turning to litigation to press the issue.

<sup>175</sup> Education Reports of the Education Inspectorate for the years 2001, 2002 and 2003 are available via the website <http://www.postbus51.nl> (accessed 26 October 2004).

<sup>176</sup> For summary of findings of comprehensive Inspection reports of the quality of special education from 1999 and 2000 see J.A. Schoonheim, "The Right to Education in the Light of Disability", in J.C.M. Willems, ed., *Developmental and Autonomy Rights of Children*, Antwerp, Intersentia, 2002, p. 172.

Recent doctoral research confirms the positive effect of mainstreaming on children with mild learning difficulties, as well as the importance of the attitude of teachers and school staff toward these pupils in determining the pupils' success in inclusive classrooms. A sample of 4,000 pupils described as "at risk" in terms of maths, reading and behavioural test scores attending mainstream primary schools were matched for similar "at risk pupils" who attended special schools for primary education.<sup>177</sup> The students' test scores in maths and reading were compared after two and then four years. According to the researcher, "the development of language and arithmetic performance is more positive for at-risk pupils" in mainstream schools, and that the students who remained in mainstream schools scored "considerably better" than their counterparts in special schools.<sup>178</sup> The author suggests a kind of "pull-up effect" on the at-risk pupils in mainstream schools, identifying the teachers' ability to use adaptive education techniques as the most important factor in determining educational placement, and not the characteristics of the pupil.<sup>179</sup> This finding confirms similar conclusions taken from earlier studies of the integration of children with Down's Syndrome in mainstream education, where four factors are found to be critical to success: whether a child feels good about being in the classroom; whether the teacher supports integration; whether the teacher is able to teach using an adaptive approach with adaptive techniques; and whether the school leadership thinks positively about integration and is able to communicate that effectively to team members.<sup>180</sup>

### 3.2.2 The special education system

Although recent policy has adopted the approach of including as many children as possible in the mainstream schools, the main system of education in the Netherlands for children with disabilities, including intellectual disabilities, is based around the special school. An extensive system of special education has been in place for many decades and remains the educational context for most children with intellectual disabilities (and all other disabilities in the Netherlands). The Expertise Centres Act of 1998 provides the legislative framework for the special education system which applies to students up to twenty years of age.

The increase in attendance at special education facilities reflected in tables 2 and 3 (see Section III.3.2.1) was also reported by the Social and Cultural Planning Bureau in 2002 as an unexplained increase of 70 per cent among children with an intellectual disability in Cluster 3 schools.<sup>181</sup> No single explanation seems to account completely

<sup>177</sup> I. Jepma, *De schoolloopbaan van risicoleerlingen in het primair onderwijs* (Educational Path for At Risk Pupils in Primary Education), Amsterdam: ICO, 2003, English language summary at pp. 207–219 (hereafter, I. Jepma, *Study of At-Risk Pupils*).

<sup>178</sup> I. Jepma, *Study of At-Risk Pupils*, p. 193.

<sup>179</sup> I. Jepma, *Study of At-Risk Pupils*, p. 194.

<sup>180</sup> Poulisse, *A Shaky Balance*, pp. 96–97.

<sup>181</sup> Poulisse, *A Shaky Balance*, p. 67.

for this development. Various explanations include a drain of pupils from special primary schools brought into the mainstream school networks as an unintended effect of national mainstreaming policy, which gives networks the discretion to distribute the special needs money they receive. This means that parents of children who could or should attend mainstream schools believe that their children will not get enough support there, and seek to have their children referred to a REC school for special education where they will receive more support.<sup>182</sup> Also given as explanation for the dramatic increase in enrolments in Cluster 3 schools is the increase in immigrant children placed in this form of education, as well as better diagnostics, an increase of children born prematurely, and a more generous admission policy to the special schools.

No reason seems to clearly explain the phenomenon that the provision of special education continues to grow.<sup>183</sup> More research should be undertaken to pinpoint the cause of this increase, with particular attention to the financial incentives built into the system, which only serve to perpetuate two tracks, relegating children with disabilities to separate schools. Despite the policy of mainstreaming the reality of a two-track educational system remains very much the same as it has traditionally been.

Since August 2003 and the entry into force of the “backpack” provisions of the Expertise Centres Act, a comprehensive education policy extends to all children with intellectual disabilities, in that special schools organised in Cluster 3 RECs may no longer deny placement to a child on the basis of a low developmental age or IQ score. Previously, most children classified with profound intellectual disabilities were placed in medical day care centres, outside of the educational system. However, the Government has yet to equip the Cluster 3 schools to support education for these children beyond the funding of a number of pilot projects, which were completed some time ago.

It has until now focused first on evaluating the possibilities and developing best practices in a number of pilot projects, involving 400 children from day care centres.<sup>184</sup> When the pilot projects came to a close in July of 2003, reports prepared by the four national working groups on Child Characteristics, Curriculum Development, Necessary Conditions and Professional Profiles were presented to the Ministers of Education and of Public Health.<sup>185</sup> The Working Groups called for further development of the theoretical and practical knowledge related to their respective

<sup>182</sup> Telephone interview with Hillie Beumer, education policy analyst for the Federation of Parents’ Organisations, 20 February 2004.

<sup>183</sup> De Klerk, *SCP Disability Report 2002*, p. 39.

<sup>184</sup> Report on Projects between Medical Day Care Centres and Cluster 3 Schools, in *Wegbereiders expertisecentra leerlinggebonden financiering*, ZieZo Special, April 2003.

<sup>185</sup> Letter from ‘Stuurgroep Samenwerkingsprojecten KDC’s –Cluster3’, signed Frans Meijer and Sylvia Hasper, of 10 July 2003 to the Ministries of Education and Public Health.

subject, as well as specific planning and wide dissemination of their findings and recommendations. The Minister of Education reported that

parents were generally satisfied with the education of their children. Especially cognitive development (learning to do new things), children's self-help skills and their social-emotional development improved. Most parents would not consider either a return to placement in day care or to full placement in regular education.<sup>186</sup>

The Minister of Education also informed the Lower House about unspecified plans to continue placement of children from day care in Cluster 3 schools as part of a revised Social Support Act, which is now in a proposal stage and will not be enacted before 2006 at the earliest.<sup>187</sup> The Minister's report does not present a clear picture of what continuing efforts will be made to facilitate the education of children with severe intellectual disabilities before the proposed law is enacted. Nothing has been reported about the recommendations of the Working Groups and whether the information they developed has reached Cluster 3 schools and facilitated effective education for children who were until recently relegated to full time day care. It remains to be seen how many children have transferred from day care arrangements to Cluster 3 schools and possibly other schools with "backpack" financing.

Parents have a right to participate in school advisory councils, the establishment of which is required by law, and which must be elected and composed of an equal number of staff and parents.<sup>188</sup> The parent members of these advisory councils play an advisory role with respect to a broad range of decision-making affecting the school, from the school's teaching plan, to personnel matters. Whether the schools actually establish such councils and how effective they are has not been evaluated, and no information is available regarding their operation.

While the atmosphere can be very supportive and positive in Cluster 3 schools, the Education Inspectorate has found that concrete goal setting, planning and assessment or evaluation are often poorly developed or missing.<sup>189</sup> By law each child with a referral for special education is entitled to a child-specific education plan.<sup>190</sup> The REC schools have long been required to report to the parents on their child's progress, for whom

---

<sup>186</sup> Letter of 30 August 2004 from the Minister of Education to the Lower House reporting on the first year of experience with pupil-specific funding, TK 2003/04, 27 728, nr. 76, p. 23.

<sup>187</sup> "Discussions with the Ministry of Public Health are taking place within the context of plans for the proposed Social Support Act about how the financing of children in day care who are also enrolled in school will be arranged. Once there is a structural solution, agreements will be made with the relevant schools for special education about how educational efforts can be continued." Letter of 30 August 2004, TK 2003/04, 27 728, nr. 76, p. 23.

<sup>188</sup> The Law on Advisory Councils 3 December 1992, Stb. 1992, 663. Art. 3 requires every school to establish an advisory council.

<sup>189</sup> Report of the Education Inspectorate for the Year 2002, para. 4.2.6, pp. 112–114.

<sup>190</sup> Expertise Centres Act, art. 41a, (effective August 1, 2003 after introduction of the Leerling-specific financing, Stb. 631)



special education was to have been tailored to their individual learning needs.<sup>191</sup> In the past, systematic goals setting and measurement of progress was often poor according to Education Inspectorate reports.<sup>192</sup>

Due to shortcomings in special educational care, particularly in the area of concrete (minimum) goal setting, the schools are hardly able to determine if students achieve sufficient progress. Schools are unable to make the aims they strive to attain in a school year sufficiently clear in relation to long-term planning, and the means and materials they use to attain their aims.

It is unclear whether REC schools have improved in setting educational aims and evaluating student progress. The most recent report of the Education Inspectorate does not focus on this issue.

With respect to the quality of education in special schools for primary education (included in the mainstream education networks), the Inspectorate concluded in a report of October 2002:

Due to the limited extent to which the indicators of good education are present, the quality of special primary education can be described as risky. These are primarily the indicators related to the educational content offered and the attention to special needs. In particular the shortcomings in attention to special needs cause many schools to form an incomplete view of the learning achievements of their pupils as well as generate too little information about the tempo of pupil progress.<sup>193</sup>

More specifically, with respect to the quality of educational content on offer, the Inspectorate found that the curriculum was limited and outdated in too many schools, and too often borrowed from mainstream schools without adaptation.<sup>194</sup> In addition, “the expertise of the school personnel in working with education plans, in particular as related to establishing minimum learning goals, is inadequate at this point in time”.<sup>195</sup> While “the general conclusion is that the learning environment is supportive and that teachers structure the lessons well. (...) In three areas the schools demonstrate serious shortcomings: the teaching content on offer, special needs support and learning achievements.”<sup>196</sup> Addressing the shortcoming in special needs support more specifically, the Inspectorate reported,

<sup>191</sup> Expertise Centres Act, art. 20 (Progress report to parents) and art. 11 (Purpose of Education) requires in para. 1 that “education be tailored to the developmental possibilities of the pupil.”

<sup>192</sup> Report of the Education Inspectorate, *De kwaliteit van het speciaal basisonderwijs: nulmeting bij een nieuwe school type*, (The Quality of Special Primary Education: The Baseline for a New School Type) Utrecht, October 2002, p. 113–114 available at the website <http://www.postbus51.nl>, (hereafter, Education Inspectorate Report).

<sup>193</sup> Education Inspectorate Report p. 22.

<sup>194</sup> Education Inspectorate Report, p. 24.

<sup>195</sup> Education Inspectorate Report, p. 25.

<sup>196</sup> Education Inspectorate Report, pp. 112–113.

particularly with respect to maintaining concrete (minimum) learning goals, the schools are barely successful in determining if students make sufficient progress. The schools make insufficiently clear which goals they work toward in a school year, their relationship to longer term planning, the resources and materials employed to achieve their intended aims.<sup>197</sup>

Experts have also noted that the quality of special education has not kept pace with the quality of mainstream education. Very young children with disabilities and children with severe developmental disabilities (meaning intellectual disabilities and in some cases with accompanying conditions such as autism spectrum disorders) generally have access to care services, but not to quality education.<sup>198</sup>

### 3.3 Education outside the school system

#### 3.3.1 Home schooling

Dutch law does not permit home schooling except where the parents prove a strong religious reason to justify an exemption from the Compulsory School Attendance Act. The subject of home schooling is under some discussion, and a recent survey of the effects of home schooling on learning achievement and social skills development in the US and Canada lead to the conclusion that it is often very positive for the children who receive it.<sup>199</sup> However, in a recent response to individual parents' requests for the legalisation of home schooling, the Ministry of Education indicated that no such move would be forthcoming, on the grounds that if "home schooling were universally permitted, the burden of supervision would become excessive."<sup>200</sup> For a limited number of children with severe disabilities, home schooling could be an important educational option; the ministry should make home schooling available to such children, which would not overburden the supervision mechanisms.

#### 3.3.2 Education of children in institutions

Children with disabilities who live in institutions are required to attend school, unless they qualify for an exemption. The Compulsory School Attendance Act does not exempt children on the basis that they live in an institution. Children who live in institutions attend either a mainstream school, in the unlikely event that the child is accepted for enrolment there, or a special Cluster 3 school, or is exempted from attending school altogether due to a low developmental age. Children living in institutions are generally

<sup>197</sup> Education Inspectorate Report, pp. 112–113.

<sup>198</sup> OSI Roundtable, The Hague, June 2004.

<sup>199</sup> H. Blok, *De effectiviteit van thuisonderwijs: een overzicht van onderzoeksresultaten* (The Effectiveness of Homeschooling: an Overview of Research Conclusions), NTOOR (Dutch Journal of Education Law) 4 December 2002, p. 151.

<sup>200</sup> Ministry of Education, response to queries regarding home schooling, available at <http://www.minocw.nl/english/mail.html> (accessed 19 February 2004).

those with either the lowest developmental age or the most serious behavioural difficulties, or a combination of the two, and likely attend day centres. These centres come under the purview of the health laws and not the education laws.

## 4. TRANSITION FROM EDUCATION TO EMPLOYMENT

*Support for students with intellectual disabilities in secondary and vocational schools has been reduced, and there are plans to modify other benefits that would limit the already inadequate funding available for such students. With such insufficient support, as many as 18,000 students with disabilities may leave school annually without a diploma. While special secondary schools have a poor record of preparing students for work on the open market, pre-vocational practical programmes are successfully placing graduates in open-market employment.*

### 4.1 Vocational training

Mainstream secondary education is provided pursuant to the Secondary Education Act.<sup>201</sup> In addition to special secondary schools, there are two options for children with intellectual disabilities within the mainstream school system, the “supported learning route” (*Leerweg ondersteunend onderwijs*), and the “practical education” route (*Praktijkonderwijs*).<sup>202</sup> The supported learning route is intended for children who have the capacity to graduate with a diploma, provided that they receive special needs support. This form of support is offered either in a mainstream secondary school setting, at vocational preparatory schools, or in separate learning centres, depending on what is available in a given area. The support can take the form of remedial teaching, homework coaching, extra tutorials, or small group instruction. The pre-vocational practical education route is for those students who even with extra support will not be able to qualify for a diploma. This kind of education is supposed to prepare students directly for a job on the open employment market. To qualify for either form of supported secondary education, a positive referral has to be made by a Regional Referral Commission for Secondary Education consisting of at least a chair, a behavioural expert and a secondary education specialist. Parents are not allowed to request placement for their children in either the supported learning route or the practical education route, the secondary school must initiate the process.<sup>203</sup>

According to an expert, “the direct consequence of [...] education in special schools is that participation by people with intellectual disabilities in vocational and higher education is almost nil.”<sup>204</sup>

<sup>201</sup> Secondary Education Act) Stb. 1998, 512, 17 August 1998 (hereafter, Secondary Education Act).

<sup>202</sup> Secondary Education Act, arts. 10 e and 10 f.

<sup>203</sup> Secondary Education Act, art. 10 e and g.

<sup>204</sup> *SCP Report on Disability 2002*, p. 39.

A total of 645,000 students attend vocational highschoools in the Netherlands, representing 60 per cent of the working population of the country.<sup>205</sup> No individualised programme of support exists for vocational school education beyond the high school level. It is estimated that between 15 and 18 per cent of the students enrolled in vocational and adult education has some form of disability, and that five per cent are handicapped by their disability.<sup>206</sup> Just 35-40 per cent of students with disabilities successfully complete adult vocational educational programmes, compared to a general success rate of 85 per cent.<sup>207</sup>

With the introduction of “backpack” financing in pre-adult education in August 2003, the former regulation financing ambulatory support for students leaving high school for adult vocational education was terminated. Some 30,000 students with disabilities at the high school level, 60 per cent of whom will leave secondary school without a diploma, are faced annually with the choice of attending further vocational school without ambulatory support.<sup>208</sup> At the same time, the Ministry of Employment Opportunity announced its plan to terminate a certain form of benefits to people having no work history.<sup>209</sup> These benefits have been used in the past to assist students in preparing for the labour market and thus for tuition for vocational training.<sup>210</sup> This will very likely lead to difficulties for students with milder intellectual disabilities who wish to attend post-secondary vocational education, but as a rule have no work history. There is no overlap with any other existing regulation, and the Government has not created an alternative source of financing for special support in vocational training.<sup>211</sup> The Government claims that it intends to modify existing education law to provide material assistance formerly available through this form of benefits.<sup>212</sup> If and when this will happen is unclear.

Regional Training Centres (RTC) receive “lump sum” funding which they can use at their discretion to provide additional support to students with disabilities, but from

<sup>205</sup> Adult and Vocational Education – institutions and disabled persons, facts and figures, p. 4, attached to letter to Permanent Commission for Education of the Lower House from the Council for Adult Vocational Education, April 29, 2004, available at <http://www.bveraad.nl> (accessed 8 November 2004).

<sup>206</sup> CINOP, *Funding Participants with a Disability in Vocational and Adult Education*, 2002, p. 25–26.

<sup>207</sup> Adult and Vocational Education, institutions and disabled persons, facts and figures, 29 April 2004.

<sup>208</sup> General Discussion between the Secretary of Education with the Permanent Education Commission of the Lower House of Parliament, TK 2003/04 (30 June 2004), 24 578 and 27 728, nr. 64, from comments by MP Vergeer at p. 2.

<sup>209</sup> Fifth Progress Report on Policy Back to School Together, Presented to the Lower House of Parliament on 19 December 2003, TK 2003/04, 27 728, nr. 60, p. 14.

<sup>210</sup> Employment Reintegration Act (*Wet REA*), Art. 22, 11.

<sup>211</sup> Letter from Secretary of Education to the Parliament, “Belemmering voor de ROC’s” (Hindrances for Regional Training Centers), 22 May 2003, TK 2002/03, 24 578, nr. 50, p. 4.

<sup>212</sup> Fifth Progress Report on Policy Back to School Together, TK 2003/04, 27 728, nr. 60, p. 14.

which they are also expected to support other at-risk students, parents re-entering the workforce, and a number of other activities as well.<sup>213</sup> The vocational education sector reports that this sum is insufficient to provide effective support to students with disabilities.<sup>214</sup> Representatives of the field of vocational and adult education, the national Disability Council, and the Federation of Parents Associations advocate for the introduction of student-specific financing in higher vocational education.<sup>215</sup> While the Parliament supports their call for this kind of funding,<sup>216</sup> the Government is opposed, claiming that the money distributed in a lump sum is sufficient and that the Centres need to make better use of these general funds.<sup>217</sup> The Government has noted that individual students can improve their position if necessary by bringing lawsuits under the recent Equal Treatment on the Grounds of Disability and Chronic Illness Act, essentially acknowledging that these students will have to litigate in order to get what they need. It is now up to advocacy organisations to inform students about their rights, and to begin to plan a comprehensive litigation strategy and provide legal support to students to litigate under the Equal Treatment Act. The basis for such litigation would be the failure of the school to provide reasonable accommodation, which would otherwise enable a student to successfully participate in vocational education. Unfortunately the defendant will be the RTCs, which are already short of funds.

In a report from 2001 on secondary schools for special education, the Education Inspectorate noted that,

placement on the job market is seldom successful, primarily due to the inaccessibility of the job market to these mentally disabled students. Almost all of these students leave the educational system between the ages of 18 and 20. Mostly they go on to protected work and living environments.<sup>218</sup>

Other research has concluded that there are not enough internships for students in special education and that too little time is devoted to exploring what students are

<sup>213</sup> The Secretary of Education reported that such “VAO-funds” amount to €79 million annually, to be increased by €12.5 million in 2007. Letter to the Lower House of Parliament of 25 May 2004, TK 2003/04, 27 728, nr. 70, p. 1.

<sup>214</sup> See Fifth Progress Report on Policy Back to School Together, TK 2003/04, 27 728, nr. 60, pp. 13–14.

<sup>215</sup> Questions from Members of Parliament and Answers by the Secretary of Education, 21 July 2003, TK 2002/03, 1650 Aanswangen, pp. 3451–3452; Letter of the Secretary for Education to the Parliament of 22 May 2003, TK 2002/03, 24 578, nr. 50, p. 5; M. de Graaf, et al, *Financing Education for Participants with a disability in the Field of Vocational and Adult Education (Financiering onderwijs aan deelnemers met een handicap in het Be veld)*, Cinop 2002.

<sup>216</sup> Motion by MP Aasted Madsen-van Stiphout to investigate possibility of extending student-specific financing to adult and vocational education, of 19 February 2004, TK 2003/04, 27 728, nr. 64.

<sup>217</sup> Letter from the Secretary of Education to the Lower House of Parliament, 25 May 2004, TK 2003/04, 27 728, nr. 70.

<sup>218</sup> Office of the Education Inspectorate, *Inspection Report 2000*, pp. 57–58.

interested in doing.<sup>219</sup> In addition, schools claim that they have too little money for assessment, training, supervision of students and classroom space in order to effectively work on vocational training.<sup>220</sup>

The placement results of the pre-vocational practical schools are more encouraging, reflecting a 60 per cent placement rate in work on the open market, in sheltered employment or in continuing education.<sup>221</sup> A number of private and non-governmental institutions offer advice and placement services to schools on preparing and placing graduates in work either in sheltered employment or on the open employment market. A comprehensive study was made recently on the placement of students finishing the vocational route of secondary education.<sup>222</sup> This route is meant for students who were assessed as needing special education by the Regional Referral Commission on the basis that they have an IQ score of between 55 and 80 and an educational delay of at least three years in two or more primary scholastic areas. The information gathered in this study is taken from questionnaires completed by 60 of the 179 schools or departments for vocational education and 1,936 students from 90 different schools, and reveals the following:<sup>223</sup>

**Table 4. Placement of students completing vocational training, six months after graduation**

Type of occupation	Percent of respondents (out of 1,936)
Open job market	30
Work in combination with study	13
Sheltered employment	18
Post-secondary vocational education	11
Job training programme	6
Secondary school – supported diploma route	2
Jobless and at home	6
Moved, lost contact, lost, other	12

Source: Vreugdenhil-Tolsma et al., *Output Pre-vocational Education*

Of the students who found work, 60 per cent had an employment contract for a permanent position. This is an unusually high rate of employment among people with intellectual disabilities, and it would be very useful to identify the specific good practices which account for this success.

<sup>219</sup> N. Heringa et al, *In the Branches*, p. 33.

<sup>220</sup> N. Heringa et al, *In the Branches*, p. 34.

<sup>221</sup> Vreugdenhil-Tolsma et al., *Output Pre-vocational Education*.

<sup>222</sup> Vreugdenhil-Tolsma et al., *Output Pre-vocational Education*.

<sup>223</sup> Vreugdenhil-Tolsma et al., *Output Pre-vocational Education*.

## IV. Access to Employment

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The Equal Treatment on the Grounds of Disability and Chronic Illness Act, adopted in 2003, brought the Netherlands fully into compliance with the EU's Employment Directive. The Act covers all aspects of the employment process, including hiring and placement. An extensive legislative framework establishes a range of benefits and services available to most people with intellectual disabilities. Many benefits include support for finding employment. Each employment-related benefit requires an assessment process, which also includes an assessment of capacity to work in a sheltered or supported setting. Although the regulations governing the assessment process require the team conducting the procedure to focus on individual capacity, it appears that often assessments focus on disability and take a medical approach. There have also been concerns about a lack of coordination among relevant agencies. Studies suggest that social welfare benefits may be too low for people with intellectual disabilities to support themselves without other sources of income, mainly from family.*

#### 1.1 Equal opportunities and the prevention of discrimination

The right to employment was included in the Dutch Constitution in its most recent revision in 1983. Article 19 of the Constitution provides:

1. The promotion of sufficient employment opportunities is an area of responsibility for government.
2. Binding rules shall be adopted concerning the legal position and protection of those employed by others as well as regards participation in co-management.
3. The right of every Dutch citizen to a free choice of employment shall be recognised, to the extent provided by the law and any limitations therein contained.

What the Government must guarantee in terms of sufficient work opportunity has been interpreted to mean that in any case, everyone should be enabled to earn his or her own maintenance, and that Government is responsible for taking measures to enable everyone to participate in the employment market.<sup>224</sup>

National legislation and policy were brought into conformity with the EU's Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (hereafter, the Employment Directive) upon the entry into force of Equal Treatment on the Grounds of Disability and Chronic Illness Act on 3 December 2003 (hereafter, the Equal Treatment Act). The act provides protection against discrimination on the open market on the grounds of disability and chronic illness. Three forms of discrimination are prohibited: direct

<sup>224</sup> A.C. Hendriks, *Gelijke toegang tot de arbeid voor gehandicapten*, (Equal Access to Employment for People with Disabilities) Deventer, Kluwer, 1999, p. 82.

discrimination, indirect discrimination and discrimination in the form of a failure to make available reasonable accommodation. The scope of the Equal Treatment Act is not limited to employers, but is also applicable to all others involved in facilitating employment, which could include Government agencies as well as private rehabilitation firms. The Equal Treatment Commission has jurisdiction to hear and decide allegations of discrimination in employment based on disability or perceived disability, pursuant to the Equal Treatment Act.

Both the employment and pre-contractual aspects of the employment process, including advertising, solicitation, hiring and assessment for employment, are covered in the scope of the act, in accordance with the Employment Directive. Also protected is the process of work placement, which should be broadly interpreted to include offers for practical workplace experience, and the provision of professional employment advice and information about career and schooling opportunities.<sup>225</sup>

A number of laws are relevant to the employment situation of people with intellectual disabilities in the Netherlands. These include:

- The Youth Employment Disability Benefits Act 1998
- The Employment Disabled Reintegration Act 1998
- The Structure of the Benefits Administration Act 2001
- The Sheltered Employment Act 1998
- The General Law on Extraordinary Costs of Illness 1968
- The Disability Services Act 1994
- The Equal Treatment on the Grounds of Disability and Chronic Illness Act 2003

The Youth Employment Disability Benefits Act 1998 provides a monthly disability payment to people who have been long-term disabled for employment purposes from a young age (the disability must be present at age 17).<sup>226</sup> The maximum benefit in 2004 was approximately €930 per month for an adult, as compared to the gross monthly minimum wage of €1,264.80 for a working adult.<sup>227</sup>

<sup>225</sup> A.C. Hendriks, *Wet gelijk behandeling op grond van handicap of chronische ziekte*, (Equal Treatment on the Ground of Disability and Chronic Illness Act) Deventer: Kluwer, 2003, p. 73.

<sup>226</sup> Youth Employment Disability benefits are calculated on the basis of the monthly minimum wage divided by a factor of 21.75, with 100 per cent disabled qualifying for the maximum benefit. As of 1 January 2004 this benefit was €58.15 per day paid for a five-day work week. *De Kleine Gids voor de Nederlandse Sociale Zekerheid* (The Little Guide to Dutch Social Security), Kluwer, 2004.1, p. 42 (hereafter, *The Little Guide to Dutch Social Security*).

<sup>227</sup> *The Little Guide to Dutch Social Security*, p. 132.



The Employment Disabled Reintegration Act (hereafter, the Reintegration Act) which entered into force on July 1, 1999, is designed for those who are defined as “employment disabled”, including those who qualify for unemployment benefits on the basis of disability at a young age and those who qualify for placement in a sheltered workplace.<sup>228</sup> The act applies both to employees with disabilities who wish to re-enter the workforce, and to those who have never worked previously. The Reintegration Act requires municipal governments to promote employment (re)integration of unemployed people who are qualified by the municipal governments for the receipt of minimum social welfare benefits.<sup>229</sup> Some people with intellectual disabilities receive this form of support instead of Youth Employment Disability Benefits.

The Structure of the Benefits Administration Act entered into force on 29 November 2001 and regulates the responsibilities and oversight of the Employment Benefits Administration and the national Council for Work and Income, among other bodies. This act provides that the Employment Benefits Administration has the responsibility for processing applications for Youth Employment Disability Benefits as well as for employment integration support and services under the Reintegration Act. Once qualified for Youth Employment Disability Benefits, benefits recipients are eligible for an employment assessment, conducted by an Employment Benefits Administration employment expert who will set out an “integration vision.”<sup>230</sup>

The Sheltered Employment Act (SEA) provides the structure within which some 30,000 adults with an intellectual disability work in sheltered work facilities and to a lesser extent, in supported employment on the open market.<sup>231</sup> The SEA provides a job coaching measure with a salary subsidy financed from the municipality’s budget for sheltered employment. The job coaching measure is intended to finance the search for a job on the open employment market, support on the job if paying employment is found, and adjustments or accommodations to the workplace if necessary. If the employee has a lower productivity than expected, a subsidy will be paid to the employer to compensate. An employee qualified for work within the framework of the Sheltered Employment Act is entitled to the full wage paid under the terms of the collective bargaining agreement in place for that job. In addition, and other than under the Reintegration Act, employees under the Sheltered Employment Act are entitled to a government-subsidized salary for their function, regardless of productivity.

---

<sup>228</sup> Rehabilitation Act, art 2.

<sup>229</sup> Reintegration Act, art. 12(1)-(3).

<sup>230</sup> SUWI, article 30(1)(b) requires the Benefits Administration “to promote participation in the employment process of persons who receive benefits payments under laws specified in paragraph (1)(a).”

<sup>231</sup> De Klerk, *SCP Disability Report 2002*, Table 3.17, p. 82.

The General Law on Extraordinary Costs of Illness<sup>232</sup> finances the adult day centres attended by some 15,000 adults with intellectual disabilities, which increasingly offer employment-like activities and support.<sup>233</sup> This law also finances home support for people with disabilities, including personal assistance in care and housekeeping.

The Disability Provisions Act of 1994 was enacted to enable people with disabilities to live as independently as possible and to participate as fully as possible in the daily activities of social life. It is administered by the municipal governments. One of the provisions of the act is in the area of transportation<sup>234</sup> and allows for reimbursement of taxis, adaptations to a car or bicycle or scooter, or assistance in the use of public transportation. Access to transportation opens up opportunities for employment and also helps reduce an important expense in the lives of people with disabilities.

The Equal Treatment on the Grounds of Disability and Chronic Illness Act, effective 1 December 2003, prohibits discrimination on the basis of disability and chronic illness in employment and adult vocational and professional education. Prohibited discrimination includes direct discrimination on the grounds of disability, indirect discrimination on other grounds, but which disproportionately affect disabled persons, as well as refusal to make available reasonable accommodation which would otherwise enable a disabled person to perform the employment function.

While a great deal of legislation affects persons with intellectual disabilities, no single law is directed specifically at people with intellectual disabilities. The distinctions made among disabling conditions in the employment and social security laws are concerned with the degree of income or employment support which will be provided under a given law. In addition, administrative regulations concerning eligibility for employment disability payments are relevant, as well as a motion adopted by the Parliament in December 2002 to commit €11.5 million per year towards removing barriers for young people with employment disabilities, a third of whom have intellectual disabilities (see Section IV.3.2).<sup>235</sup> This extra money is to be channelled to the Employment Benefits Administration.

In addition to protection of their legal position under anti-discrimination legislation, people with disabilities can qualify for job coaching and other “reintegration” assistance to help them function in jobs on the open market. This support is available via the Sheltered Employment Act and until December 29, 2005 via the Reintegration Act.

---

<sup>232</sup> Entered into effect on 1 January 1968, most recently amended on 17 December 2003, Stb. 2004, 32.

<sup>233</sup> De Klerk, *SCP Disability Report 2002*, Table 3.17, p. 82.

<sup>234</sup> Disability Provisions Act, art. 2.

<sup>235</sup> Verburg-Noorman-den Uyl, Amendment to the Budget of the Ministry of Social Affairs and Employment Opportunity, TK 2002/03, 28 600 XV, nr. 39, which provides: “Young disabled persons and students who follow Practical Education deserve a chance on the employment market. Toward achieving that aim, and linked to the Reintegration Act, a schooling and support budget will be attached to the Youth Employment Disability Benefits Act.”

After December 29, 2005 when the Reintegration Act is no longer in force, this reintegration instrument will be taken up in the Youth Employment Disability Benefits Act.

## 1.2 Diagnosis and assessment for employment and benefits purposes

The Medical Assessment Act prohibits prospective employers from requiring medical assessments in hiring procedures, unless the employer has received approval to conduct such assessments on the basis of the nature of the employment demands. Only where a person wishes to qualify for benefits or participate in a supported employment programme will an assessment be required. These assessments are discussed in detail below.

There are three types of employment-related benefits specifically available to people with disabilities under Dutch law:

- (Youth) Employment disability benefits – under the Youth Employment Disability Benefits Act;
- Sheltered employment benefits – under the Sheltered Employment Act;
- Reintegration support benefits – under the Reintegration Act.

Both the Reintegration Act and the supported employment provision of the Sheltered Employment Act govern the integration of people with disabilities into jobs in the open market. As noted above, the Acts can provide essentially the same support but people placed via the Sheltered Employment Act are paid commensurate to what the collective bargaining agreement for the sector establishes (with salary supplementation available to the employer). People placed via the Reintegration Act but who do not meet the performance norm set for the job will not be able to earn more than 120 per cent of the minimum wage.

### *Eligibility for youth employment disability and reintegration support benefits*

The national employee benefits administration (*Uitvoeringsinstantie werknemersverzekeringen*, hereafter UWV) administers youth employment disability benefits and reintegration support benefits under the Reintegration Act, including supported employment and the employer reintegration stimuli noted above. To qualify for disability or reintegration benefits, a UWV physician determines whether the applicant is “employment disabled”, a term defined by law in 1993:

Employment disabled, partially or total, is a person who as a direct and objective consequence of illness or deficiency is partially or completely

unable to gain from employment in situations in which healthy persons with similar training or experience are generally gainfully employed.<sup>236</sup>

The “medical employment disability guideline” standard for assessment was introduced in 1996, which shifts the focus of inquiry to what the applicant can and cannot do, instead of the medical causes of the limitations.<sup>237</sup> However, survey research in 2000 revealed that insurance physicians generally continued to focus on causes and not on functional capacity,<sup>238</sup> and this practice appears to persist up to the present.<sup>239</sup> The shift to a capacity-focused inquiry is significant, because the question whether the applicant can “be helped to find a job” is only addressed under this approach.<sup>240</sup> The result of this approach for persons with intellectual disabilities is positive in the sense that almost all persons are determined 100 per cent employment disabled and therefore qualify for the maximum benefits payments. This provides a minimum safety net for these persons, but may not encourage far-reaching consideration of employment capacity.

A second assessment takes place between the applicant and an employment specialist of the UWV, and may also include a representative from school, a parent or an advisor.<sup>241</sup> It is at this stage that the applicant’s employment potential with the various support measures of the Reintegration Act (additional schooling, individual integration budget, specific on-the-job support or job coaching) will be assessed. While various UWV offices around the country encourage cooperation with schools, advisors and prospective employers and/or reintegration services, this networking is not consistent, and not required by law. This problem could be resolved through the appointment of a single representative who would be responsible for coordination among the various agencies and regulations involved in the employment process, to take into account the

<sup>236</sup> Act to Reduce Vocational and Employment Disability Benefits Claims 1993, noted in *Claimbeoordeling WAO: Het handelen van verzekeringsartsen in de praktijk* (Report Claim Determinations Under the Employment Disabled Act: Insurance physicians in practice), Lisv, February 2000, p.22, Reintegration Benefits Act (Wet REA), art. 12; Employment Disability Act (WAO), art. 18(1), Youth Employment Disability Benefits Act (WAJONG), art. 2..

<sup>237</sup> “The employment disability determination should depart from the remaining possibilities for performing work, given the health problems and limitations.” Act to Reduce Vocational and Employment Disability Benefits Claims. It appears that this standard is a binding interpretation of the Act to Reduce Vocational and Employment Disability Claims, 1993.

<sup>238</sup> Claim Determinations under the Employment Disabled Act, Table 8, which reveals that in 2000, 55 per cent of the doctors questioned strongly prefer the causal model and an additional 22 per cent have some preference for examining the cause of disability, p. 23.

<sup>239</sup> Telephone interview with an employment benefits physician, anonymity requested, 24 March 2004.

<sup>240</sup> Telephone interview with Frans Lanen, UVW benefits specialist, 9 March 2004.

<sup>241</sup> Until recently the Social Pedagogical Service often provided this kind of assistance via an employment consultant. This service has been reorganised and is now called MEE (see section III.1.4).

needs and wishes of the individual and ensure that the appropriate services meet the individual user.<sup>242</sup>

Qualification for reintegration benefits under the Reintegration Act requires that one be found “employment disabled.” A person who qualifies for youth unemployment benefits is also legally qualified as “employment disabled” for Reintegration Act purposes.<sup>243</sup>

### *Eligibility under the Sheltered Employment Act*

To be eligible for benefits under the Sheltered Employment Act, (see section III.3.2) an applicant must be a resident of the Netherlands under 65 years of age, registered at the local Centre for Work and Income as a job-seeker, and due to physical, intellectual, or psychiatric limitations be able to perform regular employment only under “adapted” circumstances. Applicants are considered to be capable of regular employment in sheltered circumstances if:

- they can meet a minimum production requirement of ten per cent of what a non-disabled person would be expected to produce;
- can work continuously for at least one hour;
- with a limited amount of support to exceed no more than ten per cent of the hours worked per week (this is called the 1:10 ratio, and is often not enough support for persons with intellectual disabilities); and
- able to perform more than one function.<sup>244</sup>

Until 2005, commissions appointed by the municipal governments make the assessments of applicants for sheltered employment and supported employment on the open employment market. An assessment commission made up of an employment specialist, a labour market specialist, a physician and a psychologist determines if the applicant can meet these requirements and makes a recommendation to the municipality, indicating the applicant’s degree of disability as light, moderate or severe. The commission then determines if an applicant who meets the criteria for coverage of the act is willing and able to work on the open market with support. Those applicants who do not qualify for supported employment are placed on a waiting list and then offered a job in a sheltered environment, which means that they could also be placed “externally” (individually or as part of group assigned to a regular employer/workplace) or work under supervision in a team outside of the sheltered workplace. Also those who

<sup>242</sup> This is an observation of Reintegration Specialist of the Ministry of Social Affairs and Employment Opportunity, based on extensive contact with disabled persons, expressed in e-mail correspondence of 6 June 2004. The recently published report of the Commission for a Working Perspective recommends introducing a “personal participation plan” and “participation advisors” assigned to the national MEE organisation for this purpose, *A Working Perspective*, pp. 24–25.

<sup>243</sup> Reintegration Act, art. 2(a).

<sup>244</sup> The Little Guide to Dutch Social Security, p. 49.

qualify for and desire supported employment on the open market are first put on a waiting list.<sup>245</sup> Qualification for benefits under the Sheltered Employment Act remains valid for two years, after which reassessment is necessary. Those who continue to meet the criteria are re-qualified.

A number of studies have concluded that the assessment process as conducted by the municipalities is not conducted independently enough of the Sheltered Employment provider and that the target group criteria was inconsistently applied by the various assessment commissions.<sup>246</sup> In some cases it appeared that the needs of the Sheltered Employment provider took priority in the assessment process. The Government decided therefore to place an independent institution, the Centre for Work and Income (formerly the Employment Office) in charge of assessments, and has promulgated a law to move the assessment process to the 28 offices of the Centre for Work and Income spread throughout the country.<sup>247</sup> This step is supported by the Federation of Parents' Organisations in the hope that it will provide greater uniformity in the assessment procedures and will also clearly separate the assessment function from the municipalities and ensure greater objectivity in determining an individual's suitability for either the sheltered workplace or supported employment.<sup>248</sup>

### 1.3 The role of the social welfare system

Most adults with intellectual disabilities qualify for disability benefits under the Youth Employment Disability Benefits Act. Some people, who do not, are eligible for general social welfare benefits, which are administered by municipal governments.<sup>249</sup> Applications for both youth employment disability benefits and Reintegration Act benefits are administered under the umbrella of the UWV, while municipal

<sup>245</sup> Correspondence by e-mail with Heleen Heinsbroek, staff representative of CEDRIS, the branch organisation for Sheltered Employment providers, 9 July 2004.

<sup>246</sup> *Interdepartementale Beleidsonderzoek (IBO), Eindrapport van de werkgroep Toekomst van de arbeidsmarktbeleid. Aan de Slag* (Interdepartmental Study, End-report of the Work Group Future of the Labour Market. Let's Get to Work), 2001, The Hague; *Sociale Werkvoorziening* (Evaluation of the Sheltered Employment Act), General Accounting Office, The Hague, 2001, TK 28 130.

<sup>247</sup> Change to the Sheltered Employment Act and the Act for the Structure of the Administration for Work and Income to reflect the transition of the assessment for sheltered employment from the municipalities to the central organisation for work and income, etc., TK 2003–2004, 29 225, nr. 6.

<sup>248</sup> Interview with Cris Bergmans, Policy Advisor on employment and social security for the Federation of Parents' Organisations, Utrecht, 7 April 2004.

<sup>249</sup> The Little Guide to Dutch Social Security, 2004.1, p. 131. The recently amended welfare benefits act has an enhanced job search requirement, and is called the Act for Work and Welfare, effective 1 January 2004. Welfare benefits for a single adult pursuant to the Act for Work and Welfare are €555.67 per month plus €26.60 per month in vacation money. This is considerably less than the payment for 100 per cent disability under the Youth Employment Disability Benefits Act.

governments implement benefits under the Sheltered Employment Act, including supported employment on the open market.

Youth employment disability benefits are intended for the “young disabled”. Young people with disabilities are defined as residents of the Netherlands who are disabled for employment purposes as of the day they are 17 years old, or who become disabled after their seventeenth birthday and in the preceding year was registered as a student for at least six months.

To qualify for youth employment disability benefits the applicant must be assessed as at least 25 per cent employment disabled. A waiting period of 52 weeks from the time of application is maintained before benefits are paid, but not before the age of 18 and not after the age of 65. Young people with intellectual disabilities are very likely to qualify for these benefits, and are generally assessed with 100 per cent employment disabilities.<sup>250</sup> The payment level for youth disability employment benefits depends on the level of disability assessed by the UWV, but is fixed by law not to exceed 70 per cent of the minimum wage.

The Social and Cultural Planning Bureau (SCP) produces reports commissioned by the Government on the situation of a wide variety of population sectors.<sup>251</sup> The SCP published a report on the living and working situation of the population of intellectually disabled people in 2002,<sup>252</sup> drawing statistical information from a study of 1,000 people with intellectual disabilities, randomly selected from the databases of care and support facilities.<sup>253</sup> The SCP reports that almost 60 percent of people with intellectual disabilities between the ages of 18 and 64 in their study receive youth

<sup>250</sup> Telephone interview with UWV benefits specialist Frans Lanen, 8 March 2004. Mr. Lanen reported that young persons who apply for employment benefits and are assessed by the medical physician as being intellectually disabled qualify almost without exception for youth employment disability benefits as 100 per cent employment disabled which entitles them to a maximum of 70 per cent of the minimum wage.

<sup>251</sup> The SCP was set up by royal decree in 1973 to serve as an interdepartmental scientific research institute. It is formally accountable to the Minister of Public Health, Welfare and Sport but conducts studies in the areas of social and cultural policy for a wide variety of governmental departments as well as both houses of the Parliament. Its website is <http://www.scp.nl> (accessed 9 February 2005).

<sup>252</sup> De Klerk, *SCP Disability Report 2002*.

<sup>253</sup> De Klerk, *SCP Disability Report 2002*, pp. 210–211; and see PVH Study: Study of Persons with an Intellectual Limitation (*Onderzoek naar personen met een verstandelijk beperking*). The study was conducted in 2000, and collected data from residential institutions, semi-residential care, and day care and sheltered workplaces. The research population consisted of adults with an intellectual disability who used a form of residential service and/or attended adult day care or who worked in sheltered employment. The study was designed to collect information about 1,000 people, who were randomly selected from a combined data pool consisting of an address databank of the Ministry of Public Health, Welfare and Sport, the Zorgnota 2000 and the official address list for the disabled care sector of 1999. The study parameters are described in De Klerk, *SCP Disability Report 2002*, Appendix B, pp. 173–175.

employment disability benefits.<sup>254</sup> This suggests that 40,000 people with intellectual disabilities receive youth employment disability benefits in a population of approximately 70,000 adults with an intellectual impairment in the Netherlands. Figures published by the employment benefits administration for the third quarter of 2003 confirm these estimates, reporting that some 137,000 people currently receive youth employment disability benefits, of which at least one third are people with intellectual disabilities.<sup>255</sup>

For people who work and earn an income beyond the benefits level on either the open labour market or in a sheltered workshop, their benefits are offset by their earnings. Full youth employment disability benefits become available again if the other source of income is lost. It is possible to receive both youth employment benefits and income from supported employment on the open market via the Reintegration Act, as long as this income does not exceed 120 per cent of the minimum wage. People who “work” in employment projects via adult day centres do not receive remuneration, and therefore continue to receive youth employment disability benefits.

The Social and Cultural Planning Bureau has estimated that 65 per cent of adults with intellectual disabilities live at or around the minimum welfare income level.<sup>256</sup> Only approximately 20 per cent receive more than the minimum wage of €817 (as of 2000), 96 per cent of whom generate this income from sheltered employment.<sup>257</sup>

**Table 5. Income levels per month, specified for degree of disability and living situation**

Income level	Degree of disability (per cent)			Living situation (per cent)				Total (per cent)
	Mild	Moderate	Severe	Family	Indep.	Deinst.	Instit.	
< €634/month	38	49	61	32	22	50	65	48
€635 – €816	18	16	16	23	23	15	12	17
> €817	30	18	2	42	43	10	1	19
unknown	14	17	21	3	12	25	22	17
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: SCP Report *Rapportage Gehandicapten 2002*, Table 4.13 at p. 118.

People who live in institutions or in community-based housing, which are both financed by monthly allowances provided under the General Act for Extraordinary Costs of Illness, are required to pay a monthly contribution for their living support. What remained for personal spending was on average approximately €200 per month

<sup>254</sup> De Klerk, *SCP Disability Report 2002*, p. 116, citing to PHV study of 2000.

<sup>255</sup> Statistics provided on the website of the UWV at <http://www.uwv.nl> (accessed 9 February 2005).

<sup>256</sup> De Klerk, *SCP Disability Report 2002*, p. 117.

<sup>257</sup> De Klerk, *SCP Disability Report 2002*, p. 120.



in the year 2000.<sup>258</sup> According to more recent analysis, the situation is much worse today, with most people with intellectual disabilities having a negative income-expenses balance per month.<sup>259</sup> Parents and other family members are expected to pick up the burden of support for people with disabilities, in keeping with the Government's express policy of decentralising responsibility for social welfare and shifting it increasingly to "civil society."

In a study of income and expenses, the Federation of Parents' Organisations analysed the household budgets of three people with intellectual disabilities, aged 27, 38 and 23 respectively.<sup>260</sup> One young woman lives in a community living arrangement with five other persons, attends adult day care and has an income of €840 per month from her Youth Employment Disability Benefits payments. After deducting expenses (including €270 for transportation to her day centre), her budget reveals a loss of €145 per month for 2003. A man living in semi-residential care, with the same net income as the young woman, had for 2003 a surplus of €134 per month. The cuts to programmes proposed by the Government in September 2003 would have resulted in a monthly loss of €171 in 2004 for him. The third example, a young man, lives independently and works 24 hours per week supported by job coaching in a restaurant. His income is €850 per month, and he reports a loss of €116 per month. In 2004 the Government adopted a number of measures to compensate the loss in income and/or purchasing power resulting from budget cuts. An analysis of the Government's various budget-cutting measures and compensatory offsets reveals that people with disabilities in general continue to suffer a decline in income nonetheless.<sup>261</sup> With respect specifically to people with intellectual disabilities, the Federation of Parent Organisations expects a decline in expendable income in 2005 ranging between 3.7 per cent for people living under supervision to ten percent for people living in institutions.<sup>262</sup>

The increasing impoverishment of people with disabilities is a result of drastic budget cuts proposed and implemented by the current Government in response to economic

<sup>258</sup> De Klerk, *SCP Disability Report 2002* at p. 118 and footnote 27 referenced on p. 123. The Act on Extraordinary Costs for Sickness set the amount designated for spending money in 2000 at €188 per month.

<sup>259</sup> Federation of Parents' Organisations, *De huishoudboekjes van Marlies, Ivar en Joost, Financiële gevolgen van de kabinetsplannen voor mensen met een verstandelijke handicap* (The Home Budgets of Marlies, Ivar and Joost, Financial Consequences of the Cabinet's Plans for Persons with an Intellectual Disability), September 2003, available at <http://www.fvo.nl> (accessed 26 October 2004), (hereafter, FvO, *Home Budgets*).

<sup>260</sup> FvO, *Home Budgets*.

<sup>261</sup> Dutch Council of the Chronically Ill and Disabled (C-G Raad), *Onderzoek naar de gevolgen van de bezuinigingen op de Rijksbegroting 2004 voor chronische zieken en gehandicapten* (Study of the Effects of the Budget Cuts of National Budget 2004 on Chronically Ill and Disabled Persons), October 2004, available at <http://www.cg-raad.nl> (accessed 19 October 2004).

<sup>262</sup> Federation of Parent Organisations, in letter from Director Wim van Minnen to the parliamentary factions in reaction to the "Miljoenennota", 20 September 2004, p. 1 with reference to appendix 2.

recession and an increasing national budget deficit, which is currently above the limit agreed upon in the EU Stability Pact.<sup>263</sup>

## 2. GOVERNMENT EMPLOYMENT POLICY

*As in the education field, EU funding to support employment of people with intellectual disabilities has been under-utilised. Both the EU's own application procedures, including age restrictions which many see as too high, as well as a lack of support for local governments wishing to apply for funding, contribute to the EU funds going unspent. Government policy has been shifting towards encouraging people with disabilities to support themselves, and to offer incentives for employment. There is no quota system in the Netherlands; the Government has urged employers to adopt voluntary two-percent hiring targets for people with disabilities, but it is unclear if this system is monitored in any way. A number of subsidies are available to employers who hire people with disabilities, including training and job coaching support. However, the number of people with intellectual disabilities who are in fact employed on the open market remains very small.*

### 2.1 The EU and Government employment policy

The European Commission supports the development of employment programmes and policies for people with intellectual disabilities through the framework of the mainstreaming activities of the European Social Fund (ESF), and one of the Communities Initiatives, the EQUAL programme (2002–2006) which contain specific stipulations concerning measures for combating discrimination against disabled persons. As noted with regard to education (see section III.2), much of this money has been under-utilised in employment projects as well. Of ESF monies earmarked for the integration of both short and long-term unemployed people, €476.6 million went unused over the period to 2002.<sup>264</sup> The lack of co-financing is the basis of this problem, and it itself has a variety of causes, including access to information, the complexity of the application process, and the lack of expertise in the employment and education sectors in setting up these kinds of projects.

Under the new ESF funding Round 3, effective 2002–2006, €250 million is available annually for three employment priorities: long-term unemployment among adults, continuing employability, and life-long learning as a component of vocational

<sup>263</sup> The current budget-cutting operation is described as the most far-reaching since the Second World War.

<sup>264</sup> Letter of Council for Work and Income (*Raad voor Werk en Inkomen*) to the Minister of Social Affairs and Employment Opportunity, dated 14 May 2003, p. 2 citing information on ESF funds available at <http://www.agentschapszw.nl>. It is unclear when the period referred to, began. Letter available at the website of the Council for Work and Income, <http://www.rwi.nl> (accessed 9 February 2005).

education, including transition from secondary school to vocational training.<sup>265</sup> These EU funds are only available where 50 per cent project co-financing from a national source is provided. A number of problems impeding access to these programmes have been brought to the attention of policy makers, and include:

- the Government's failure to earmark reintegration money for co-financing of ESF projects;
- EC designation of Government education and research grant funds as "state subsidy" money, instead of private financing, which is not permitted under European competition law;
- The minimum age for participants (23 years old) is viewed as arbitrary and seriously limits the effectiveness of unemployment prevention projects;
- Municipal governments cannot deal with the complexity of the subsidy rules and need an effective support point to get help with proposal development, and the rules should be streamlined as well.<sup>266</sup>

ESF money is waiting to be utilised, but it is unclear if steps are being taken that will result in better use of it. One report from the field is that the requirements made for taking advantage of these monies are so complicated that a full-time employee is needed just to do the paperwork.<sup>267</sup>

The EU monitors the participation of persons with employment disabilities in national labour markets to a degree, although it has not adopted specific directives requiring national policy changes. The European Commission requires the submission of an annual plan of action for integrating disabled persons in mainstream employment. More information about how this process is working in the Netherlands and the extent to which it is coordinated with national monitoring projects should be made available.

## 2.2 National employment policy

### 2.2.1 Development of employment programme(s)

Four Government ministries, several national administrative agencies, local municipalities throughout the country, private or quasi-private integration firms and service providers, insurers and social workers are all involved in administering programmes aimed at employment and support for persons with disabilities. This area

<sup>265</sup> Letter of Council for Work and Income (*Raad voor Werk en Inkomen*) to the Minister of Social Affairs and Employment Opportunity, dated 14 May 2003, pp. 2–3. Letter available at the web site of the Council for Work and Income, <http://www.rwi.nl> (accessed 19 October 2004) (hereafter, Letter of Council for Work and Income).

<sup>266</sup> Letter from Council for Work and Income pp. 4–7.

<sup>267</sup> Interview with Richard Lustermans, Director of Adult Services for Stichting Radar, 5 March 2004.

is highly complex and fragmented and the subject of numerous studies, which has led to many recommendations for simplification and improvement.

There are a number of national and locally administered employment programmes, which can be roughly divided into three groups:

- sheltered employment projects at the municipal level; including ‘external’ and supported employment
- supported employment on the open market with funding either via the Sheltered Employment Act or the Reintegration Act;
- unpaid employment-like activities in adult day care centres.

A recent publication on supported employment opportunity presents an overview of how people with a disability generally have been viewed over time in the Netherlands.<sup>268</sup> This study tracks the evolution from a medical approach, where “patients” received occupational therapy or therapeutic employment in the mid nineteenth century, to a client-oriented approach in the 1970s, which focused on employment-like activities in day centres or in sheltered workshops, to the present view of people with intellectual disabilities as citizens and employees, who are able to participate on the open market.<sup>269</sup> This approach is reflected in current Government policy, which aims to offer more and more people with intellectual disabilities the opportunity to participate in the employment sector.

Under the title of “Taking Responsibility for Oneself,” the Government described its position on the integration of people with disabilities to the Parliament:

The Cabinet finds that, besides creating preconditions and where necessary protection by government, disabled persons clearly also have their own responsibility. People must be willing and able to shape their own lives. This requires a variety of facilities from which people can make a choice for compensating their limitations. Existing instruments must acquire an “inclusive” character. This does not mean, in the view of the Cabinet, that the government or society are responsible for solving everyone’s problems. People’s own power and the direct network that people with limitations have play an important role. (...) In short, taking responsibility themselves for designing their own lives implies at the same time that facilities must exist to make this possible.<sup>270</sup>

---

<sup>268</sup> H. Krober and H. van Dongen, *Mensen met een handicap en Betaalde Arbeid, Strategieën voor support* (People with a Disability and Paid Employment, Strategies for Support), Soest: Uitgeverij Nelissen, 2003 (hereafter, H. Krober and H. van Dongen, *People with a Disability and Paid Employment*).

<sup>269</sup> H. Krober and H. van Dongen, *People with a Disability and Paid Employment*, p. 28.

<sup>270</sup> Plan of Action for Equal Treatment of Persons with a Disability or Chronic Illness presented to the lower house of Parliament on November 28, 2003, TK 2003/04, 29 355, nr. 1, p. 8.

As much as participation may be the aim of Government policy, the reality falls short. Interviews with experts in the field reveal a tendency to view people with intellectual disabilities as more suited to care arrangements than work arrangements. For example, the director of a local advocacy organisation for parents of disabled persons reported that he did not know of anyone among the 120 members of his organisation who is employed.<sup>271</sup> Another organisation, financed by a provincial government to advocate on behalf of people with intellectual disabilities, was involved in what was described as a provincial study on access to employment.<sup>272</sup> However, this study is in fact an inventory of “*knelpunten*” or bottlenecks in the *care* services available to persons living in institutions via care providers in Limburg. The study does not address sheltered employment or supported employment on the open market, and fails to describe with any specificity the “employment-like” activities offered by service providers.<sup>273</sup> According to an organisation representative, the group aims to represent the interests of disabled persons working in sheltered or supported employment, but that care services dominate advocacy efforts.<sup>274</sup> The representative also expressed concern about the quality of employment-like activities and indicated that until adults with disabilities have been reassessed for person-specific support under the new Act for Extraordinary Costs of Illness, they will not have the support they need to articulate their interests and develop skills.<sup>275</sup>

It does not appear that the possibility of working on the open market is realistic for many people with intellectual disabilities. A young adult man with intellectual disabilities who has five years’ experience in sheltered work which he had to leave because he had reached the maximum term for such employment, and will soon be starting work with the support of a job coach for an advocacy organisation for intellectually disabled persons, reports that it is very difficult to get a job on the open

<sup>271</sup> Telephone interview with W. de Heer, 8 April, 2004, father of a 20 year old son with intellectual disabilities who will soon finish school and go to work at the bakery in the residential institution where he works. This young man will not be paid for his work, which is considered a “day activity” offered by the care provider. Mr. de Heer is the chairman of the local chapter of VOGG, the Association for Parents of Intellectually Disabled Persons, a member organisation of the Federation of Parents’ Organisations.

<sup>272</sup> SOL, Parent Organisations Working Together in Limburg for Persons with Intellectual Disabilities, which is financed by the Province of Limburg and which advocates in a variety of ways and contexts, but particularly with respect to assessment procedures for care.

<sup>273</sup> E. van Lankvelt, *Inventarisatieonderzoek aanbod dagbesteding/arbeid Limburg* (Inventarization Study of day care/employment services in Limburg), Provinciale Bestuurscommissie Onderzoek en Ontwikkeling, Maastricht, December 2002. Review of the Source Book indicates a division of categories of activity offered in day centres into “getting used to working”, “social activation”, “employment exploration”, “employment training”, “employment placement”, “employment support”, “employment training”. Nowhere is it explained what these “products” are and if they succeed in their aims or by which standards of quality they are measured.

<sup>274</sup> Telephone interview with John Hutton of SOL, 14 April 2004.

<sup>275</sup> Telephone interview with John Hutton of SOL, 14 April 2004.

market, “because employers don’t know about all of the subsidies.”<sup>276</sup> This has also been identified as a problem in a Government study conducted in October 2003, “Monitoring the Impressions People Have of Persons with an Employment Disability”.<sup>277</sup> In addition to employer ignorance of the possibilities for financial support, protective attitudes of schools, parents and of people with intellectual disabilities themselves also limit the possibilities for employment.<sup>278</sup>

### 2.2.2 Government requirements and incentives

The Dutch Government has been unwilling to date to impose legal requirements in the form of quotas, for example, on employers to stimulate or promote greater participation of persons with disabilities (including intellectual disabilities) in employment.<sup>279</sup> All attempts to impose a hiring quota pursuant to Article 5 of the Reintegration Act have failed. The Government has consistently urged employers to take voluntary measures to strive toward a two per cent hiring target of employees with disabilities (not specifically intellectual disabilities).<sup>280</sup> It is unclear if this is monitored in any way. An alternative to voluntary hiring goals would be to make such the subject of collective bargaining between employers and labour organisations in the context of new contract negotiations, for example.

International events such as the European Year of Disabilities (2003) have focused greater attention on the rights of people with disabilities and the Dutch Government

<sup>276</sup> Telephone interview with Guus v.d. Dungen, 15 April 2004.

<sup>277</sup> A. Van Petersen, M. Vonk & J. Bouwmeester, *Onbekend maakt onbemind, Monitoring Beeldvorming van mensen met een arbeids handicap* (Unknown is Unloved), a study commissioned by the Commission for a Working Perspective, Leiden, 9 January 2004, <http://www.werkendperspectief.nl> (accessed 26 October 2004), is a study in which 1,300 people, including managers, employees who often call in sick, are sick, or with a disability, unemployed persons and healthy employees, were asked to fill in a questionnaire about their attitudes toward persons with an employment disability. One of the recommendations of the study is to provide employers with much more information about subsidies as well as specific support in finding instruments geared toward employee integration. *Aanbevelingen, Rol overheid* (Recommendations, the Role of Government).

<sup>278</sup> This conclusion is confirmed by Cris Bergmans of the Federation of Parents’ Organisations, as well as the findings of the broad-based Commission for a Working Perspective, May 2004, pp. 14–15.

<sup>279</sup> A.C.Hendriks, *Wet gelijk behandeling op grond van handicap of chronische ziekte* in de serie *Actualiteiten Sociaal Recht*, (Equal Treatment on the Grounds of Disability and Chronic Illness in the Series Current Developments in Social Welfare Law) Deventer: Kluwer, 2004, p. 17.

<sup>280</sup> A.C.Hendriks describes the history of Dutch social security provision, which has been generous, but which has had the unintended result of largely and persistently segregating persons defined as employment disabled from the employment sector. “From Social (In)Security to Equal Employment Opportunities – A Report from the Netherlands”, in M. Jones and L.A. Basser Marks (eds.), *Disability, Diversity and Legal Change*, Kluwer Law International, 1999, pp. 153–169.

has developed a two-track strategy to improve the position of people with disabilities on the employment market, consisting of a general policy to stimulate participation, as well as a policy to enhance individual legal protection.<sup>281</sup> Individual legal protection has been enhanced in theory through the adoption of the Equal Treatment on the Grounds of Disability and Chronic Illness Act, although it is unclear how much protection this will afford people with intellectual disabilities in the pre-employment phase.

The Dutch NGO, Federation of Parents Organisations, has criticised current Government policy as being insufficient to stimulate participation, urging the adoption of a third track in which the international and constitutional obligations imposed on government are made explicit in domestic legislation and for which Government can be held legally accountable.<sup>282</sup> At present, according to the Federation, the Government evades its international obligations to provide laws anchoring a right to social inclusion and participation by characterising these obligations as the diffuse “responsibility of society”. The Federation has actively participated in the discussions convened by the Commission for a Working Perspective<sup>283</sup> and supports their recommendations, in particular the recommendations concerning the use of an individual participation plan for young people with intellectual disabilities.<sup>284</sup>

Employers who hire people with disabilities are eligible for a number of subsidies, including wage dispensation for underproduction, compensation for workplace accommodations, and release from insurance obligations. The primary benefits provided to employers under the Reintegration Act are:

- A reduction in the cost of old-age and unemployment insurance premiums to the employer. An employer who places a new employee with an employment disability is eligible for a reduction of €2,042 per year for up to three years. If the employee earns less than 50 per cent of the youth minimum wage the

<sup>281</sup> M. Jones and L.A. Bassar Marks (eds.), *Disability, Divers-ability and Legal Change*, Kluwer Law International, 1999, pp. 18, 41. Several laws are noted as examples of participation-stimulating provisions of the law, including the Reintegration Act (in particular art. 4 on equal opportunities, art. 5 concerning quota requirements and art. 15 concerning integration instruments including job coaching for supporting employment on the open market). Mention is also made of other laws in other areas, such as the Disability Provision Act and the pupil-specific funding in primary and secondary education.

<sup>282</sup> Letter submitted to the Permanent Commission for Health, Welfare and Sport of the Lower House of Parliament on 15 January 2004 in reaction to the Government’s Action Plan for Equal Treatment in the Field.

<sup>283</sup> The Commission for a Working Perspective was appointed by the Minister of Social Affairs and Employment Opportunity to identify problems in the employment of young people with disabilities. In May 2004 it presented its findings and recommendations to the Minister of Social Affairs and Employment Opportunity.

<sup>284</sup> Interview with Cris Bergmans, Policy Advisor on employment and social security for the Federation of Parents’ organizations, Utrecht, 7 April 2004.

employer is eligible for a reduction of €484, and €1,361 more if the employee was employment disabled as a youth.

- Reimbursements of costs involved in making a workplace accommodation that are higher than the insurance premium subsidies.
- A “no-risk” guarantee for employers who hire a person with an employment disability. This means that if the employee should become ill within five years of hiring, the benefits administration office will pay the legally required sick pay (for the first year if the employee went on sick leave before 2004, for the first two years for sick leave during or after 2004) and the employment disability benefits will not be billed to the employer.
- Trial placements for a period of six months are available with full employment disability benefits if the employee does not receive other compensation (this will be reduced to three months).
- Salary supplementation for up to four years for employees who produce less than projected on the basis of the employee’s employment disability. Wage dispensation is available where employees produce less than what a non-disabled employee would be expected to produce in the same position, up to 120 per cent of the minimum wage.<sup>285</sup>
- Schooling is available if approved by the benefits administration office.
- Job coaching is available for up to three years, which is flexible and provides personal support on the work floor by a job coach from a reintegration firm. The support is limited to 15 per cent of the number of hours worked per week, and is reduced to 7.5 per cent the second year, and six per cent the third year.<sup>286</sup>

Several of the above measures are also directly beneficial to the employee, including job coaching. Recently, a measure known as the “individual reintegration contract” (IRO) has also become available. Under this measure the beneficiary can hire a reintegration specialist from a reintegration firm with funds provided under the Reintegration Act.

### 3. EMPLOYMENT IN PRACTICE

*In the Netherlands, the number of people with intellectual disabilities able to access either supported employment or sheltered employment is relatively high; around 45 per cent of the estimated 73,000 adults with intellectual disabilities. The majority of people with intellectual disabilities who are*

<sup>285</sup> Regulation Conjunction Income from Work and Employment Disability Benefits), Reintegration Act, art. 11,12.

<sup>286</sup> The UWV does have discretion to continue job coaching beyond three years so that it can continue to be helpful to people with intellectual disabilities, who almost always require permanent job coaching support.



*employed work in sheltered employment, while many others have employment-like occupation in day centres. Only four per cent of people with intellectual disabilities participate in supported employment, although a much larger proportion has applied for such support under the relevant programmes. The Government has allocated substantial funds towards helping young people with disabilities to find work on the open market, but in some cases local government has been reluctant to implement supported employment policies. In contrast, sheltered employment is well established in the Netherlands; where workers are under contract, they receive pay on a scale negotiated through collective bargaining, and have the opportunity to build skills. However, few people do make the transition from sheltered work to employment on the open market, and despite reductions in waiting lists, the demand for sheltered work still exceeds the available places.*

### 3.1 Statistical information

The general unemployment level in the Netherlands, as indicated by total number of persons registered as unemployed and looking for work is reported by the Centre for Work and Income as 695,200, or 9.2 per cent of the labour force.<sup>287</sup> Of the approximately 73,000 adults with intellectual disabilities,<sup>288</sup> roughly 30,000 (41 per cent) participate in sheltered employment, approximately 3,000 (four per cent) receive Reintegration Act support for supported employment on the open employment market,<sup>289</sup> and approximately 15,000 (21 per cent) attend adult day care centres. Many people with intellectual disabilities engage in some form of employment-like activity without remuneration.

Approximately 3,000 people, or four per cent of the adult population with intellectual disabilities, qualify for both youth employment disability benefits and supported employment on the open market under the Reintegration Act.<sup>290</sup> Although more than 30 per cent of those qualified for sheltered employment have also applied and are qualified for supported employment on the open market, until recently only eight per cent have actually been placed in jobs on the open market. The Commission for a Working Perspective, which was asked specifically to make recommendations regarding supported employment, reported the following:

The Commission stresses the importance of supported employment for improving participation in employment. The Commission is of the opinion that the poor utilisation of supported employment via the Sheltered Employment Act is caused in part by the negative image young people with

<sup>287</sup> *Nieuwsflits Arbeidsmarkt juli 2004* (CWI News Flash Labour Market July 2004) available at <http://www.cwi.nl> (accessed 9 February 2005).

<sup>288</sup> SCP Disability Report, p. 288.

<sup>289</sup> Some 3,708 persons are reported to have received Reintegration Act support in the 4th quarter of 2003, 99 per cent of which were Youth Employment Disability Benefit recipients, and 95 per cent of whom have intellectual disabilities. E-mail correspondence with J. van Dongen of the Ministry of Social Affairs and Employment, 17 March 2004.

<sup>290</sup> Telephone interview with John van Dongen, REA Act specialist for Ministry of Social Affairs and Employment Opportunity, 17 March 2004.

an employment disability have of the sheltered workplace. In addition, supported employment does not contribute to the income of the firm providing sheltered employment. This does not encourage sheltered employment organisations to make greater use of the supported employment option, so that placing the “better employees” on the open market is more likely to be experienced as a threat to the continuity of the organisation.<sup>291</sup>

A number of people with intellectual disabilities are employed in supported employment under the Sheltered Employment Act, although the official report of the branch organisations for sheltered employment, CEDRIS, states that in mid-2002 only 910 persons received supported employment services under the act.<sup>292</sup> There are plans to try to increase this number.<sup>293</sup>

The following table indicates the numbers of people with intellectual disabilities in sheltered work and adult day care centres; additional information on the age, gender, and origin of this population is included in table A3 in the annex.

**Table 6. People with intellectual disabilities in sheltered work and care**

Type of activity	Absolute numbers	Percentage
Total in Sheltered workplaces	92,095	100
Mild intellectual disabilities	26,526	29
Moderate intellectual disabilities	3,659	4
Total in Day Care Centres	17,300	100
People with intellectual disabilities	15,100	88

Source: SCP *Rapportage Gehandicaptten 2002*, Table 3.17, p. 82.

### 3.2 Employment on the open market

In December 2002, the lower house of Parliament committed €11.5 million annually towards removing barriers for young people with employment disabilities, a third of whom have intellectual disabilities. The special Commission for a Working Perspective<sup>294</sup> consulted a wide range of experts to identify the main categories of

<sup>291</sup> CWP Report, p. 30.

<sup>292</sup> *Brancherapport 2002*, p. 13.

<sup>293</sup> The aim is to channel at least 25 per cent of the people qualifying for sheltered employment to the open labour market via supported employment. To stimulate placement in this direction beyond the current 8 per cent placement rate is a driving motivation for moving the assessment procedures away from the Sheltered Workplaces themselves to the Centres for Work and Income. TK 2003–2004, 29 225, nr. 6 (Report to Lower House of Parliament of 3 February 2004).

<sup>294</sup> A body appointed by the Minister of Social Affairs and Employment Opportunity to identify problems with respect to employing young people with disabilities.

barriers that will be the target of this funding initiative. These obstacles include a lack of clarity about who is in charge of employment integration (the young person is in any case not sufficiently in charge) and insufficient knowledge, quality and professional expertise of the many parties involved, particularly of the many applicable rules and of the specific limitations and possibilities of the group and its subgroups. There is also confusion over which ministry and how each party is responsible for financing the various possible forms of support. Negative images held by employers, the youth themselves, their parents and others was also identified as a barrier, as was the ineffective dissemination of information about the transition from school to work. External developments which make employment more difficult, such as economic recession, low-cost labour from other countries and the preference of integration specialists for more easily integrated employees, present difficulties. Laws and regulations, such as financial budgeting, can also work at cross-purposes with the needs of this group, as they make custom-made or individually-tailored solutions too expensive to try.<sup>295</sup>

### 3.2.1 Supported employment on the open market

Both the Reintegration Act and the supported employment provision of the Sheltered Employment Act govern the integration of people with disabilities into jobs in the open market. At the end of 2003, 3,708 persons had made use of the job coaching measure contained in the Reintegration Act,<sup>296</sup> and 1,110 people had an employment contract for supported employment pursuant to the Sheltered Employment Act.<sup>297</sup> SEA supported employed is arranged locally; supported employment pursuant to the Reintegration Act (since end-December 2005 incorporated into other social welfare acts, including the Wajong) is provided by reintegration service providers via public procurement contracts with the Benefits Administration.

In 2004 the Government proposed limiting the scope of Reintegration Act provisions to people with an employment history only, forcing people who have never been employed to use the supported work provisions of the Sheltered Employment Act. This appears to have been motivated by the current Government's efforts to "deregulate" and eliminate duplicate measures. The Minister of Social Affairs and Employment Opportunity asked the Commission for a Working Perspective to evaluate the desirability of "streamlining" the two regulations.<sup>298</sup> The Federation of

<sup>295</sup> Report of the Commission for a Working Perspective, May 2004, *Overzicht knelpunten* (Overview of Bottlenecks) pp. 12–16.

<sup>296</sup> Report of the Commission for a Working Perspective, p. 30, citing to Fourth Quarter reporting 2003 by the UWV.

<sup>297</sup> Report of the Commission for a Working Perspective, p. 30 citing to Plooi, et al., *Wsw-Statistiek*, a report over the first half of 2003, conclusion, 2004.

<sup>298</sup> Request for Advice on *Adviesvraag 'integrale aapak (re)integratie jonggehandicapten* (An Integrated Approach to (Re)integration of young disabled, letter of 8 December 2003, attached in Appendix 8 of CWP Report, May 2004, pp. 52–53.

Parent Organisations warned that this could have a negative impact on the situation of people with intellectual abilities.<sup>299</sup> The Commission for a Working Perspective found several reasons for keeping both measures and no reason not to continue making both measures available, and advised that additional research first be done to see what the problems are with keeping both options for supported employment.<sup>300</sup>

Arguments for continuing to provide supported employment under the Reintegration Act for persons without an employment history are several. In the first place, the supported employment measure of the Sheltered Employment Act is grossly under-utilised. Some municipalities have categorically refused to work with the measure at all, simply not assessing persons for supported employment on the open employment market.<sup>301</sup>

Supported employment via the Reintegration Act is more flexible than via the Sheltered Workplace Act because the production requirement is more flexible, sometimes being arranged faster and more easily. Some people who are in adult day centres because they cannot qualify for sheltered employment are able to make use of the Reintegration Act and find work on the open employment market.<sup>302</sup> Furthermore, the same office that administers youth employment disability benefits also oversees the Reintegration Act measure, and the qualification process for both forms of benefit involves an analysis by an employment specialist of the applicant's work capacity as its second step. No wait is involved, while qualification for supported employment under the Sheltered Employment Act would require waiting for an assessment procedure by another Government office. The Commission for a Working Perspective has identified the waiting between steps in the chain of provision of services as particularly damaging to the employment prospects of applicants with intellectual disabilities, who lose skills and motivation as they wait.<sup>303</sup> But perhaps most important of all, the Employment Benefits Administration has developed a measure of expertise in working with young people with disabilities, which does not appear to be the case at the municipal level.

Several recommendations contained in the report of the Commission for a Working Perspective stress the importance of a central coordinating role for the national benefits administration, UWV, in providing an integrated approach to reintegration from time of application for support to placement. Municipal administrations have not had great success in administering other benefits in the disability sector, such as provided by the Disability Services Act. Divergent practices throughout the country reflect no uniform

---

<sup>299</sup> Interview with Cris Bergmans, 7 April 2004.

<sup>300</sup> CWP Report, May 2004, pp. 29–31,

<sup>301</sup> Reported on the basis of information received from the field.

<sup>302</sup> This is not exceptional according to Cris Bergmans, 7 April 2004.

<sup>303</sup> CWP Report, p. 12: "The waiting periods between the links in the chain (for example, school-sheltered work; Reintegration Act-sheltered work, school-Integration Act and school-work) are too long. This is extra problematic for intellectually disabled youth because they lose knowledge and skills during such periods."

policy or provision and a great deal of inequality for persons entitled to benefits related to transportation and adaptations to housing.<sup>304</sup> Of particular concern is the “race to the bottom” of service provision among municipal governments, which have a financial incentive to fund as cheaply as possible within strict financial constraints and not on the basis of individual need.<sup>305</sup>

Reintegration firms are generally private companies contracted via an open-bidding system for Government financing by the national Employment Benefits Administration (UWV). In order to receive State subsidies (contracts) for providing services related to employment placement or vocational activities, reintegration firms and care providers must be officially recognised. Such contractors are subject to government scrutiny by the Inspection Service for Work and Income. Providers of employment activities to adults in day centres are subject to Government inspection by the Health Inspectorate. In general, non-profit foundations or associations provide employment-like day activities and are financed via clients’ social security benefits. It would be very useful to determine if the quality of services provided in both sectors is monitored, and against which standards. Both inspectorates could play an important role in establishing and maintaining better quality of work placement preparation.

People with intellectual disabilities who do secure placement in the open market do not appear to report harassment in the workplace as a widespread problem, although there is limited research on this issue. A greater problem is the negative image that many prospective employers have about employees with disabilities, such as the expectation of low productivity or a high rate of illness. Employers’ ignorance of the availability of employment subsidies, and the perception of much paperwork to qualify for such subsidies also contribute to a reluctance to take on employees with disabilities. The Government<sup>306</sup> intends to counter these negative perceptions through a media campaign.

<sup>304</sup> Study on the implementation of the Disability Provisions Act which is intended to provide disabled persons with adjustments to their homes where necessary, special equipment and transportation, J. van Dongen, *Onrecht door Rechtspraak? Een evaluatie van de WVG* (Injustice through Judicial Decision-making? An Evaluation of the Disability Services Act), Wetenschapswinkel Universiteit van Tilburg, November 2003.

<sup>305</sup> Injustice through Judicial Decisions, an Evaluation of the Disability Services Act, pp. 29–30.

<sup>306</sup> *Onbekend maakt Onbemind, Monitoring beeldvorming van mensen met een arbeids handicap* (Unknown is Unloved, Stereotyping of persons with an employment disability) is the study that was conducted in the autumn of 2003. The end report was brought out on 9 January 2004 and is available at the website of the Commission for a Working Perspective, <http://www.werkendperspectief.nl/Documents/Eindrapport.pdf>, (accessed 26 October 2004).

### 3.3 Sheltered employment

Sheltered employment has a long history in the Netherlands. Even before 1900, private initiatives by churches and parents of children with disabilities were taken to provide sheltered employment opportunities.<sup>307</sup>

In 1969, the Sheltered Employment Act (SEA) was adopted, which for the first time provided for State-subsidised sheltered employment, and effectively ended private initiatives in this area. Since 1969 the SEA has been amended several times, each reflecting a major change in approach and control over the operation of the law. From 1969 to 1989 the national Government covered 100 per cent of the wage costs of SEA employees, and 80 per cent of the costs incurred by the workplace. Those eligible to participate included “anyone who did not fall under some other existing social legislation,”<sup>308</sup> and from the first year of its operation, some 40,000 people with a wide range of disabilities were employed under the Sheltered Employment Act. The Government strictly monitored the workplaces via “state consultants” who made binding recommendations to employers when deemed necessary. In the 1970s the introduction of modernised employment conditions, including wage protection, was also extended to SEA employees. The salary of employees in sheltered employment was no longer tied to their productivity and was replaced by the “full function salary,” a salary tied to the description and concomitant salary as negotiated in the collective bargaining agreement. Moves were made to democratise sheltered employment workplaces, including the introduction of consultative bodies comprised of employees and trade unions as well as employers.

In 1989 the Sheltered Employment Act was overhauled for the first time. The primary changes reflect a move towards decentralisation from national implementation to municipal government supervision, deregulation, and closed budget financing instead of open-end financing based on the numbers of people qualifying for the service. The fixed budget for sheltered employment nationally is approximately €2 billion.<sup>309</sup> Local authority units, meaning municipal councils, central councils which operate on behalf of smaller councils and sheltered employment groups with or without formal public body status, assumed responsibility for implementing the activities specified in the act, and also assumed the operational risks. The central Government’s oversight role was limited to assessing if the law was being implemented correctly and effectively. The number of employees in sheltered employment rose to 90,000, which was a significantly smaller increase than among employees claiming benefits under disability and unemployment benefits laws in the same period of time.

<sup>307</sup> *Nationale Overlegorgaan Sociale Werkvoorziening Brancherapport* (National Discussion Organisation for Sheltered Employment) 2002, Past, Present, Future, available at <http://www.nosw.nl> (accessed 26 October 2004) (hereafter, National Discussion Organisation, *Brancherapport*.)

<sup>308</sup> National Discussion Organisation, *Brancherapport*, p. 6.

<sup>309</sup> RWI Report, *Werkgelegenheidsvoorzieningen WSW: Buitenlandse Ervaringen* (Employment Opportunities SEA: Experiences of Other Countries), p. 12.

The criteria for qualifying for sheltered employment provisions were tightened in 1998, as well as the relationship with two other acts related to job seeking and reintegration of people with an employment disability. An independent commission was introduced to assess the desire and suitability for employment as well as the possibility of supported employment, and a sector-wide collective bargaining agreement was reached. Since revision of the Sheltered Employment Act in 1998, the number of applications for employment under the Act has declined, due in part to the stricter qualifying criteria, but also due to the favourable market conditions of the time. With the decline of the economy in recent years and increased competition, the number of employees in sheltered employment increased to 92,900 in the first half of 2002.<sup>310</sup> In the autumn of 2003 approximately 95,000 persons were employed within the provisions of the Sheltered Employment Act.<sup>311</sup> Waiting lists are growing and the increase in applicants for sheltered employment may be explained by the increasing number of part-timers.<sup>312</sup> The financial budget for sheltered employment is fixed and does not change if the need for sheltered employment increases.

Municipal governments are responsible for providing sheltered employment, which they may provide independently or together with other municipalities under a job creation board. There are approximately 100 sheltered employment companies active in the Netherlands,<sup>313</sup> 90 of which are administered by the job creation boards.<sup>314</sup> Ten municipalities independently provide sheltered employment, receiving the Social Affairs and Employment Opportunity budget directly.<sup>315</sup> Approximately 22 per cent of the total number of employed persons with an employment disability work in or via sheltered employment.<sup>316</sup> Nearly a third of those qualified for sheltered employment under the SEA are people with intellectual disabilities, some 30,000 people. Sheltered

<sup>310</sup> National Discussion Organisation, *Brancherapport*, p. 8.

<sup>311</sup> Letter from State Secretary Rutten of the Ministry of Social Affairs and Employment Opportunity, 30 September 2003 to the Lower House, concerning the SEA and the Council for Work and Income Report *Wet sociale werkvoorziening en het RWI-advies "de gewoonste zaak van de wereld."* ("The most normal thing in the world")

<sup>312</sup> E-mail correspondence with Evelyne Simons, Dutch Association of Municipal Governments, dated 9 July 2004.

<sup>313</sup> A description of the location and size of these workplaces is available at <http://www.cedris.nl> (accessed 9 February 2005).

<sup>314</sup> Letter from the Secretary of Social Affairs and Employment Opportunity to the Lower House, dated 30 September 2003, p. 2.

<sup>315</sup> E-mail correspondence with Heleen Hoensbroek, CEDRIS, Branch Organisation for Sheltered Employment Providers, 9 July 2004.

<sup>316</sup> J. van Genabeek, et al., Raad voor Werk en Inkomen (RWI), *Werkgelegenhedenvoorzieningen WSW: Buitenlandse Ervaringen* (Sheltered Employment Provision under SEA: Experiences in Other Countries), TNO Arbeid, 2002, p. 12, available at <http://www.rwi.nl/publionderzoek.html> (accessed 9 February 2005) (hereafter, RWI study) This same report notes that in 2000 more than 1.2 million people had an employment disability in the Netherlands. Of these 1.2 million people, approximately 34 per cent was employed, in comparison to a 61 per cent employment rate for those employees working without a disability, p. 12.

employment is not open to people with *severe* and *profound* intellectual disabilities as there is a minimum production requirement, as well as a limit to the support provided. The total cost of providing sheltered employment was €2.1 billion in 2003; the annual subsidy per sheltered employment position in 2002 was approximately €23,000 for employees in the *mildly* and *moderately* disabled category, and more than €28,000 for employees assessed as *severely* disabled.<sup>317</sup> It is possible to work part-time in sheltered employment and receive part-time eligibility for placement in adult day centres.

The type of work performed in and via sheltered employment varies greatly but is generally aimed at generating income, providing meaningful activity and teaching employable skills, as well as toward working on the open employment market in some cases. The employment activities must be “relevant to the employment market,”<sup>318</sup> meaning the functions and skills in the manufacturing and service sectors which are also in demand in the open employment market. Activities engaged in the sheltered employment providers include park and green maintenance, cleaning, manufacturing of goods and construction. Sheltered employment companies can be divided into departments such as lawn care, cleaning, production of goods, and construction. Employment can be performed in a protected workplace or via “*detaching*” in which crews of SEA employees are detached to a workplace to perform specific tasks for a private employer or for a non-profit organisation. At the end of 2002 approximately 81,700 people who qualified for sheltered employment worked in sheltered workplaces within the firm, 12,200 people were detached to work outside the sheltered employment firm, and 1,090 worked with job support in the open employment market.<sup>319</sup>

A contract for sheltered employment with a sheltered employment provider is regarded as a standard employment contract. A pay system of 12 salary scales, as well as other employment benefits such as vacation, sick leave and pension are regulated by a collective labour agreement negotiated between the Association of Dutch Municipal Governments and the labour unions.<sup>320</sup>

The first 20 years of the Sheltered Employment Act reflect the values of a generous social welfare system, and subsequent amendments to the Act reflect moves to decentralise control of the programme, to reduce government expense, and to give sheltered employment a stronger position in and vis-à-vis the open employment market. Unfortunately, these changes have not led to greater participation in open-

<sup>317</sup> Ministry of Social Affairs and Employment Opportunity, cited in a report from the Secretary to the Lower House, 7 September 2002, p. 2.

<sup>318</sup> E-mail correspondence with Heleen Hoensbroek, 9 July 2004.

<sup>319</sup> Ministry of Social Affairs and Employment Opportunity, cited in report from the Secretary to the Lower House of Parliament, 7 September 2002, p. 2. These figures are very close to figures cited by the Council for Work and Income for the year 2001: 86 per cent of sheltered employment employees worked in sheltered workplaces within the sheltered employment firm, 13 per cent were assigned to tasks outside of the sheltered workplace, and 1 per cent of the employees were employed in supported employment on the open market.

<sup>320</sup> *De Kleine Gids voor de Nederlands Sociale Zekerheid, 2004.1*, Kluwer, pp. 51–52.



market employment. For example, the inclusion of job-coaching under the Sheltered Employment Act has not led to more people moving into regular employment on the open market.<sup>321</sup> Nor has the position of the client and development of employment skills become more central to the approach.<sup>322</sup> In comparison with five other countries studied, including Australia, Denmark, the UK, Austria and Sweden, the Netherlands has the highest number of persons with employment disabilities in sheltered employment (one per cent of the potential working population) and spends the largest amount of GDP on sheltered employment.<sup>323</sup> The reasons given for the relatively high incidence of sheltered employment in the Netherlands are given as follows:

- of the European countries, the Dutch Government makes a relatively large amount of money available for employment in the sheltered workplaces of the sheltered employment firm instead of for employment in the open market via job coaching and *detaching* outside the firm;
- the resources available in other countries for supported employment were sufficient to make supported employment a reasonable alternative to employment in the sheltered workplace;
- other countries are more innovative and have succeeded in developing effective instruments for providing support;
- integration in the other countries is easier because the instruments for support are not as separated from each other as the services are in the Netherlands (where, for example, the Reintegration Act services are sharply divided from the SEA services).<sup>324</sup>

The danger of relying too heavily on supported employment in the open market must not be discounted, however, and is particularly relevant to people with more severe intellectual disabilities: “where supported employment is almost the only form available, employment is not very accessible to the less able of the target population. (...) There, many older people and people with an intellectual disability in particular fall out of the boat.”<sup>325</sup>

While more than 90,000 employees are employed under the provisions of the Sheltered Employment Act, in mid-2002 some 5,200 persons were waiting for a job under the Act, a decrease from more than 20,000 people on the waiting list in 1997. The long wait for placement in either sheltered employment in a sheltered workplace (in the firm or detailed to work outside the firm) or for supported employment on the open market is a serious problem. The average waiting time in 2002 was 16 months, with 30 per

<sup>321</sup> RWI study, citing research on p. 12.

<sup>322</sup> RWI study, p. 13.

<sup>323</sup> RWI study, p. 15.

<sup>324</sup> RWI study, pp. 52–53.

<sup>325</sup> RWI study, 55.

cent of those on the list waiting for more than two years. The Commission for a Working Perspective cites the wait as a weak link in the chain of service provision,<sup>326</sup> reflecting the bureaucratic problems arising from coordinating among several ministries, agencies and service providers.

**Table 7. Statistics as of mid 2002 for SEA employees**

Type of employment disability	Waiting list candidates for sheltered employment (per cent)	Sheltered employment employees (per cent)	Supported workers (per cent)
Psychiatric	47	21	39
Physical	30	41	29
Intellectual	23	33	32

Source: NOSW, *Branche Report 2002*, p. 12.

The Ministry of Social Affairs and Employment aims to improve the results sought under the Sheltered Employment Act.<sup>327</sup> A first step is to move the assessment procedure to the Centres for Work and Income, which is the national registration point for job seekers. This is not expected to increase the numbers of jobs but to increase the quality, neutrality and consistency of the assessment procedures. A second step will be to change substantive aspects of the Act, which changes are expected to take effect by January 2007. The supported employment provision of the act should be more actively promoted, and the process should focus much more on the needs and capacities of the employee, and on providing information and services to the employer who is willing to hire an employee with intellectual disabilities.<sup>328</sup>

### 3.4 Employment-like activities in adult day care centres

Some 15,000 people with intellectual disabilities engage in “work” in adult day care centres; these programmes are generally for people considered unable to meet the production requirements of sheltered employment. Employment-like activities in day care centres are varied, from very routine to very creative, and often rewarding for the individuals “employed” in them. They range from jewellery making, painting and sculpture, to restaurant work, cooking and serving, to washing bottles or other cleaning

<sup>326</sup> Report of the Commission for a Working Perspective, May 2004, p. 12.

<sup>327</sup> Telephone interview with John van Dongen, 17 March 2004.

<sup>328</sup> These are two aspects of supported employment programmes which are identified as strengths in comparison with the Dutch provisions. RWI Study, p. 55.

work, to simple packaging work.<sup>329</sup> It is difficult to get a very clear picture of just what “employment-like” means or to evaluate the quality of programmes providing such activities. There seem to be large contrasts among adult day care providers, from extremely innovative to extremely traditional. The abilities of social and care workers to assess the employment interests and capabilities of adults with disabilities vary as well.

It is not at all clear who is entitled to “earnings” for artistic compositions or other employment efforts for which day care centres are compensated by private sector employers or buyers of their work. A local director of day centres for adults with intellectual disabilities reports that parents are becoming more vocal about claiming a right to the proceeds or profits for their children.<sup>330</sup> Parents of people participating in day activities, as well as a consultant to parents via a national NGO do not note a similar increase in activism,<sup>331</sup> but agree that it is a point for attention. The question of who is legally entitled to these proceeds should be resolved; in keeping with people’s basic right to work for a living, it is important to ensure that people in day care are also entitled to keep the income earned from their work, potentially offset by a corresponding reduction in cash benefits. The Federation for Parents Organizations recently issued a booklet on this subject (*Sale of Art*), in which it concludes that persons with intellectual disabilities have ownership and copyrights to the creative work they produce.

The Ministry of Public Health actively supports programmes to improve the possibilities for disabled adults to move from adult day care to paid work in the employment market. One such initiative is a “stimulation programme”, *Moving from Day Care to Work*,<sup>332</sup> carried out by the Work and Disability Section of the National Institute for Care and Welfare.<sup>333</sup> This programme grew out of agreements made in 1999 between the health care sector and the Ministry of Public Health, in which the Ministry agreed to finance a policy of stimulating employment opportunities for

<sup>329</sup> Sample of activities in day care centres run by the care provider Radar in South Limburg. Interview with Director R. Lusterman, Director of Adult Services for Service Provider RADAR, Maastricht, 5 March 2004.

<sup>330</sup> Interview with Richard Lusterman, Director of Adult Services for Service Provider RADAR, Maastricht, 5 March 2004.

<sup>331</sup> Telephone interviews with: W. de Heer, chairman of local chapter of VOGG, the Association for Parents of children with intellectual disabilities, with approximately 120 members, 8 April 2004; Gerrie Beumer, consultant to four regions of the national Association for Parents of Children with Intellectual Disabilities, a member organisation of the Federation of Parent Organisations, 8 April 2004.

<sup>332</sup> T. Otte, *Werken aan Doorstroom, Doorstroom van dagbesteding naar werk* (From Day Care to Work), End Report, Utrecht: NIZW/Werk en Handicap, February 2004 (hereafter, T. Otte, End report *From Day Care to Work*).

<sup>333</sup> NIZW/Werk en Handicap, <http://www.nizw.nl/werkenhandicap> (accessed 9 February 2005). This section of the NIZW is very active in stimulating service providers in the healthcare sector to think more in terms of providing meaningful activity, than just providing care to adults who qualify for full-time care under the national social insurance law.

disabled adults in day centres, with a commitment of €3.5 million annually starting in 2000.<sup>334</sup> A portion of this funding has gone to the project *From Day Care to Work*, which was carried out as a national project for four years, described in an End Report in April 2004. A number of individuals in day care were selected for assessment and placement in work on the open employment market. They were given support and the success of their placement was monitored. Quarterly newsletters went to day care providers in the healthcare sector, expert meetings and national conferences were held and several publications containing concrete assessment and employment support information were widely distributed throughout the healthcare sector.<sup>335</sup> Schools for special education were also targeted in the programme. Service providers have agreed to assume a duty to make efforts to provide employment-like activities in day care programmes at adult day centres.

While it is very difficult to quantify change in this area, the End Report does report a number of positive statistics.<sup>336</sup> For example, employment consultants from the national MEE organisation advised 793 young persons finishing Cluster 3 education in 2002, in comparison to 169 in 1999. In 2001, 218 young persons leaving Cluster 3 schools found paid work on the open market, up from 73 in 1999. An increasing number of persons in adult day care also has a form of paid employment (from 1.8 per cent to 6.7 per cent), of which one per cent in a sheltered workplace or supported employment via the SEA and 1.2 per cent via the Reintegration Act. In addition, 2.6 per cent do volunteer work for an employer on the open market. Nonetheless, concludes the report, adults with disabilities are not leaving day care in any significant numbers. This will require much more sustained efforts.<sup>337</sup>

What has been shown in other projects carried out by the National Institute for Care and Welfare is that with the proper training and sufficient support even adults with severe disabilities are capable of making the transition from care to employment.<sup>338</sup> A number of factors are found to play an important role in facilitating employment for adults in day centres, including having confidence in the capabilities of people with disabilities, finding out what the interests and capabilities of the person are, getting parents positively involved, investing in training, and making the subject of employment a part of a daily activity schedule.<sup>339</sup>

<sup>334</sup> T. Otte, End report, *From Day Care to Work*, p. 7.

<sup>335</sup> T. Otte, End Report, *From Day Care to Work*, Activities listed on pp. 13–14.

<sup>336</sup> T. Otte, End Report, *From Day Care to Work*, pp. 18–19.

<sup>337</sup> T. Otte, End Report, *From Day Care to Work*, p. 19.

<sup>338</sup> See, for example, M. Cuijpers, et al, *Talent moet je benutten, Rapportage ontwikkeltraject Mogelijkheden Deelnemers* (Take Advantage of Talent, Doing More with the Capabilities of Participants in Projects to Facilitate the Move from Care to Work), Utrecht: NIZW/Werk en Handicap, March 2004 (hereafter, Cuijpers *et al.*, *Take Advantage of Talent*).

<sup>339</sup> Cuijpers et al., *Take Advantage of Talent*, pp. 35–37.

## V. Conclusions

The Netherlands has developed intricate and wide-ranging policies to protect the rights of people with disabilities in general. As a party to most international instruments relating to people with disabilities, and with some of the most advanced anti-discrimination legislation in Europe, the Netherlands has clearly demonstrated its intent to safeguard equal rights among people with disabilities. As highly developed and well established as these systems are, however, they are failing to meet the needs of people with intellectual disabilities. While the concept of inclusion has been incorporated into the legislative framework, in practice, people with intellectual disabilities remain in segregated educational and employment settings. Recent policy developments do move towards improving integration, particularly in schools, but more fundamental and far-reaching changes are needed to truly promote inclusion in education and employment.

The lack of a consistent definition or terminology for intellectual disability in various relevant laws has not been a source of concern, as it is widely accepted that an IQ score defines intellectual disability. While the level of statistical data on people with intellectual disabilities in the Netherlands is low, a number of studies conducted in the past four years indicate a population of between 103,000 and 112,000 people with an IQ below 70. However, the procedures for diagnosis and assessment of disability are complex, extensive, and bureaucratic, and specific procedures are required to establish eligibility for each type of school or support. Consequently, there are considerable waiting lists for assessment and placement in special education, although these delays appear to be decreasing.

De-institutionalisation is a necessary prerequisite for improving social inclusion for this group. While the number of placements in community care has recently begun to increase more rapidly than placements in institutions, the Government should closely monitor this situation to ensure that this trend continues.

New legislation specifically guarantees equal treatment on the grounds of disability; however, at present this law does not apply to childhood education. Thousands of children are thought to be outside the educational system, most in day centres, but many others remain at home, although recent legislative changes prohibit special schools from denying placement to a child with a low developmental age or IQ. In 2003, measures were enacted to provide student-specific funding to children with disabilities, to cover the cost of support for study in mainstream schools. However, parents and advocates have raised concerns that this funding is not sufficient to meet the needs of children with intellectual disabilities: although the costs of support and materials for children with intellectual disabilities are often higher than for children with other forms of disability, the level of personal funding is lower. Moreover, mainstream schools can still refuse to admit a child if the school finds it cannot provide an appropriate education. While the personal allowance measure, the “backpack”, is an

important step in the direction towards inclusion, it is not a full departure from the two-track approach the Netherlands has developed and maintained for decades.

Resources and support to enhance inclusion in the classroom are still under-developed. Teachers receive little training in the adaptation of lessons and curricula for individualised learning. Even teachers in special schools are not required to participate in in-service training once they have met their initial qualification requirements. Experts have also recognised the need to give parents a greater role in the educational process. The special education system has been criticised for failing to set concrete goals for each student and poorly tracking each child's progress.

Of the two secondary education options available to people with disabilities, the "practical education" route demonstrates a high rate of job placement after students complete the course. One sample group of such graduates showed 30 per cent had found work on the open market. However, the vocational training route has been less successful, and with the elimination of student-specific support to this route, little support is available to students with intellectual disabilities. Regional training centres (RTC) do not appear to be able to meet the needs of people with intellectual disabilities, and the Government has indicated that the concerns regarding these centres must be resolved directly with the RTCs, potentially through litigation.

The majority of people with intellectual disabilities do qualify for one or more programmes offering sheltered or supported employment. These programmes offer substantial financial support to employers, training, and job coaching for people with disabilities. However, the level of employment among people with intellectual disabilities remains low. Even organisations working with this group tend to focus on care arrangements rather than employment opportunities. In the context of decreasing social welfare benefits, the burden on families is growing, while the opportunities for people with intellectual disabilities to support themselves and live independently are shrinking.

Money available through the EU has not been put to good use in the Netherlands; indeed, much of the funding available for vocational training and other employment initiatives has gone unspent in recent years. Arbitrary restrictions for participation have been cited as one cause for poor utilisation, as has the limited capacity of local governments to meet the application requirements. As a first step, however, the national Government should ensure that adequate co-funding is allocated, to meet the terms of the EU allocation.

As in education, employment for people with intellectual disabilities in the Netherlands takes a two-track approach. Both supported and sheltered employment programmes have been developed. In theory, almost one-third of people who qualify for benefits under the Sheltered Employment Act are also eligible for supported employment, but only eight per cent have actually been placed in jobs on the open market. The majority of people with intellectual disabilities who do work are in sheltered workplaces, which are a long-established institution in the Netherlands.

These workshops are generally not open to people with severe and profound intellectual disabilities, however, as there are production requirements and limits on available support. While work in these sheltered environments has many of the characteristics of employment, including collective bargaining and pay scales, they do not appear to increase participants' chances of eventually finding work on the open market. Nevertheless, there are long waiting lists for placement in sheltered employment, primarily due to limited resources and high demand.

The Netherlands' extensive legal and policy framework related to people with disabilities clearly establishes an approach intended to foster active, independent living for this population, and to ensure its inclusion in the social fabric of the country. However, the experience of people with intellectual disabilities often does not live up to the promise of these policies. Initiatives to encourage a more integrated approach to education have not been in place long enough to assess their overall effectiveness, but these measures already appear inadequate to meet the specific needs of people with intellectual disabilities. Likewise in employment, Government programmes appear insufficient to increase the number of people with intellectual disabilities working on the open market.

The specific situation of people with intellectual disabilities needs to be a focus for continued Government concern. Too often, this group is not adequately addressed in policy for people with disabilities in general, and the programmes intended for their benefit fail to produce significant results. The Netherlands must ensure that its high standards of protection and pledges of equal treatment are realised for people with intellectual disabilities, as for all of Dutch society.

## ANNEX 1. Tables

**Table A1. Overview of structure of educational system  
(not disaggregated for type of disability)**

Type of school	Primary Education			Secondary Education		
	Number of students	Facilities	Per student cost	Number of students	Facilities	Per student cost
Special	33,566	270 Special Education Schools, in 33 RECs	€14,300	20,486 plus 3,300 ambulatory support from RECS	200 special education high schools in 33 RECs	€14,300
Special within the mixed system	52,000	411 Special primary schools, 250 WSNS <sup>340</sup> consortia	€8,200	115,000	115 PRO-schools <sup>341</sup> + 337 LWOO <sup>342</sup> depts., 90 VO consortia <sup>343</sup>	€7,800
Mainstream	1,543,000	7,000	€3,900	800,000	675	€4,400

Source: Ministry of Education, Core Statistics Primary Education 2004.

**Table A2. Number of students receiving ambulatory support  
from schools for special education**

	1999	2000	2001	2002	2003
In mainstream and special primary schools	6,300	6,800	7,500	8,400	9,600
In secondary schools	2,400	2,500	3,000	3,400	4,300

Source: Ministry of Education, Core Statistics Primary Education 2004

<sup>340</sup> Consortia under the programme "Back to School Together".

<sup>341</sup> Practical Education at the secondary school level, offered at schools for vocational preparatory education.

<sup>342</sup> Learning route supported education, a support for regular secondary education that takes place either in a regular high school setting at the vocational preparatory school, or in a separate learning centre.

<sup>343</sup> Vocational education



**Table A3. Demographic information on people in sheltered work and care**

	Demographic characteristics in percentages		
	Day care	Sheltered work	Total in sheltered work, including those without intellectual disabilities
<b>Age</b>			
18-25	15	11	38
26-35	29	28	25
36-45	23	34	22
46-55	18	22	14
>55	15	5	2
<b>Gender</b>			
Female	51	30	22
Male	49	70	78
<b>Country of origin</b>			
Netherlands	92	95	–
Other	8	5	–
<b>Degree of disability</b>			
Mild	39	65	29
Moderate	47	33	4
Severe	14	2	–

Source: SCP *Rapportage Gehandicapten 2002*, Table 3.19, p. 84.

## ANNEX 2. Legislation cited in the report

### Constitution

*Grondwet voor het Koninkrijk der Nederlanden of 24 August 1815*, last amended Stb. 2002, nr. 144

### Legislation

Dutch Civil Code

Compulsory School Attendance Act (1969), Stb. 1969, 303

Expertise Centres Act (2002), Stb. 2002, 631

Primary Education Act (1998), Stb. 1998, 495

Secondary Education Act (1998), Stb. 1998, 512

General Administrative Law Act (2002), Stb. 2002, 148

Law on Advisory Councils (1992), Stb. 1992, 663

Youth Employment Disability Benefits Act (1998)

Employment Disabled Reintegration Act (1998)

Structure of the Benefits Administration Act (2001)

Sheltered Employment Act (1998)

General Law on Extraordinary Costs of Illness(1968) last amended in Stb. 2004, 32.

Disability Services Act (1994)

Equal Treatment Act (1994), Stb. 1994, 230

Equal Treatment on the Grounds of Disability and Chronic Illness Act (2003), Stb. 2003, 206

Act to Reduce Vocational and Employment Disability Benefits Claims (1993)

### Regulations and instructions

Regulation for student-specific Financing, November 28, 2002, Stb. 631, 2002.

Referral criteria for special education, Gele Katern, nr. 1, 19 March 2003.

Regulation for the list of instruments which can be used in referral decisions for learning route and practical route education for the school year 2004–2005, Number 18 Gele Katern 77, 30 July 2003.

Student-specific financing, Stb. 2002, 631

## Parliamentary materials

### 1990–1991

Statement of Minister of Education on Policy Back to School Together (23 Oct. 1990), TK 1990/91, 21 860, nr. 1

### 1996–1997

*Report of Changes to Education Laws*, TK 1996/97, 25 409, nr. 3

### 2000–2001

*Motion of MP Rouvoet* (20 Dec. 2001), TK 2000/01, 28 000 XVI, nr. 63

### 2002–2003

*Letter from State Secretary of Education in response to motion to research problems in vocational Education* (22 May 2003), TK 2002/03, 24 578, nr. 50

*Fourth Progress Report Back to School Together* (31 Oct. 2002), TK 2002/03, 21 860, nr. 68

*Action Plan for Equal Treatment for Disabled Persons* (28 Nov. 2003), TK 2002/03, 29 355 nr. 1

### 2003–2004

*Fifth Progress Report on Back to School Together* (19 Dec. 2003), TK 2003/04, 27 728, nr. 60

*Re: Sheltered Employment Act* (3 Feb. 2004), TK 2003/04, 29 225, nr. 6

*Motion of MP to extend Student-specific financing to vocational education* (19 Feb. 2004), TK 2003/04, 27 728, nr. 64

*Letter of State Secretary of Education to Lower House re: Motion to extend Student-specific funding to vocational education* (25 May 2004), TK 2003/04, 21 860, nr. 70

*6<sup>th</sup> Progress Report on Back to School Together* (5 Apr. 2004), TK 2003/04, 21 860, nr. 72

*Letter of Minister of Social Affairs and Employment Opportunity in reaction to Report Commission for Working Perspective* (25 June 2004), TK 2003/04, 29 461, nr. 6

*Report of a general discussion between Minister Education and Commission on Education re: ambulatory support in special education* (3 Aug. 2004), TK 2003/04, 21 860, nr. 74

*First Progress Report on Student-Specific Funding* (30 Aug. 2004), TK 2003/04, 27 728, nr. 76

## ANNEX 3. Bibliography

- Blok, H., *De effectiviteit van thuisonderwijs: een overzicht van onderzoeksresultaten* (The Effectiveness of Homeschooling: an Overview of Research Conclusions), NTOR (Dutch Journal of Education Law) 4, December 2002
- Brekelmans, F.H.J.G., C.W. Noorlander, R.Verstegen, *Gelijke onderwijskansen* (Equal Educational Opportunity), Preadvis en co-referaat symposium Nederlandse Vereniging voor Onderwijsrecht 2003 (Den Haag: SDU uitgevers, 2003)
- Commission for a Working Perspective, *Een werkend perspectief voor jongeren met een arbeidshandicap* (A Working Perspective for Young Persons with an Employment Disability) (Hoofddorp 5 May 2004)
- Cuijpers, M., et al, *Talent moet je benutten, Rapportage ontwikkeltraject Mogelijkheden Deelnemers* (Take Advantage of Talent, Doing More with the Capabilities of Participants in Projects to Facilitate the Move from Care to Work) (Utrecht: NIZW/Werk en Handicap, March 2004)
- De Kleine Gids voor de Nederlandse Sociale Zekerheid* (The Little Guide to Dutch Social Security) (Deventer: Kluwer, 2004)
- Dutch Council of the Chronically Ill and Disabled (C-G Raad), *Onderzoek naar de gevolgen van de bezuinigingen op de Rijksbegroting 2004 voor chronische zieken en gehandicapten* (Study of the Effects of the Budget Cuts of National Budget 2004 on Chronically Ill and Disabled Persons), October 2004
- Education Inspectorate (Inspectie voor het Onderwijs), *Onderwijs verslagen over de jaren 2000–2004* (Inspection Reports for the Years 2000–2004), (The Hague: Education Inspectorate 2004)
- Education Inspectorate (Inspectie voor het Onderwijs), *De kwaliteit van het special basisonderwijs: nulmeting bij een nieuwe school type* (The Quality of Special Primary Education: A Baseline for a New Type of School) (Utrecht: Education Inspectorate, October 2002)
- Expert Group Kwaliteit van Zorg, *Eisen aan leerlingenzorg, Wet- en regelgeving rond leerlingenzorg* (Requirements for Special Needs Care, Law and regulations concerning special needs care) (Den Bosch: Expert Group Kwaliteit van Zorg, May 2002)
- Federation of Parents' Organisations, *De huishoudboekjes van Marlies, Ivar en Joost, Financiële gevolgen van de kabinetsplannen voor mensen met een verstandelijke handicap* (The Home Budgets of Marlies, Ivar and Joost, Financial Consequences of the Cabinet's Plans for Persons with an Intellectual Disability), 2003
- de Graaf, M., et al, *Financiering onderwijs aan deelnemers met een handicap in het Be veld* (Financing Education for Participants with a disability in the Field of Vocational and Adult Education) (Cinop 2002)

- de Groot, R. et al., *Inclusief Onderwijs* (Inclusive Education) (Groningen: Wolters-Nordhoff, 1996)
- Hendriks, A.C., “From Social (In)Security to Equal Employment Opportunities – A Report from the Netherlands”, in M. Jones & L.A. Basser Marks (eds.), *Disability, Diversity and Legal Change* (Kluwer Law International, 1999)
- Hendriks, A.C., *Gelijke toegang tot de arbeid voor gehandicapten* (Equal Access to Employment for Persons with Disabilities) (Deventer: Kluwer, 1999)
- Hendriks, A.C., *Wet gelijk behandeling op grond van handicap of chronische ziekte* (The Equal Treatment on the Grounds of Disability and Chronic Illness Act) in de serie *Actualiteiten Sociaal Recht* (Deventer: Kluwer, 2004)
- Heeringa, N., M. Spierenburg, E. Hermans, “Kom op, in de takken!” *Analyse knelpunten en oplossingsrichtingen (in de uitvoering) van regelingen ten behoeve van de onderwijsdeelname van leerlingen met een handicap*, (“Come up Here, in the Branches!” An Analysis of Problems and Possible Solutions for Using Regulations in Education by Pupils with a Disability) (The Hague: Wegbereiders Expertisecentra LGF, April 2003)
- Heeringa N., and E. Hermans, *Het bos door de bomen, een overzicht van regelingen ten behoeve van leerlingen met een handicap in het onderwijs* (The Forest for the Trees, an overview of regulations benefiting children with a disability in education), (NIZW, April 2002)
- Hover, C. and R. Baarda, *Effectstudie toepassing Wet gelijk behandeling op grond van handicap of chronische ziekte in primair en voortgezet onderwijs* (Study of the Effects of Applying the Act for Equal Treatment on the Ground of Disability or Chronic Illness in Primary and Secondary Education), (Den Haag, October 2003)
- Interdepartementale Beleidsonderzoek, Eindrapport van de werkgroep Toekomst van de arbeidsmarktbeleid. Aan de Slag* (Interdepartmental Study, End report of the Work Group Future of the Labour Market. Let’s Get to Work) (Den Haag, 2001)
- Jepma, I., *De schoolloopbaan van risicoleerlingen in het primair onderwijs* (Educational Path for At Risk Pupils in Primary Education) (Amsterdam: ICO, 2003)
- de Klerk, M.M.Y., *Rapportage gehandicapten 2002, maatschappelijke positie van mensen met lichamelijke beperkingen of verstandelijke handicaps*, (SCP Report on Disability 2002, the Societal Position of Persons with Physical Limitations or Intellectual Disabilities) (Den Haag: Sociaal en Cultureel Planbureau, 2002)
- Krober, H. & H. van Dongen, *Mensen met een handicap en Betaalde Arbeid, Strategieën voor support* (People with a Disability and Paid Employment, Strategies for Support) (Soest: Uitgeverij Nelissen, 2003)
- Meijer, Cor J.W., *Effects of Financing of Special Needs Education, A Seventeen-country Study of the Relationship between Financing of Special Needs Education and Inclusion*, Brussels:

- European Agency for Development in Special Needs Education, (<http://www.european-agency.org>), 1999
- Ministry of Education, *Kerngegevens in het primaire onderwijs 2004* (Core Statistics for Primary and Secondary Education 2004), OCW 34.036/500, April 2004
- Ministry of Public Health, Welfare and Sport, *Brancherapport Care 2000–2003*, (prepared by the National Institute for Public Health and the Environment RIVM and Prismant) (Den Haag, 2004)
- Nederland, T. and J.W. Duyvendak, *De kunst van effectieve belangen-behartiging door de patiënten- en cliëntenbeweging*, (The Art of Effective Advocacy by the Patient and Client Movement) (Utrecht: Verwey Jonker Instituut, May 2004)
- NOSW/CEDRIS, *Branche Report 2002 Past, Present, Future* (Utrecht: NOSW/CEDRIS, March 2003)
- Otte, T., *Werken aan Doorstroom, Doorstroom van dagbesteding naar werk* (From Day Care to Work), End Report (Utrecht: NIZW/Werk en Handicap, February 2004)
- Otte, T., *Aan de slag met begeleid werken* (Getting to Work with Supported Employment) (NIZW/Werk en Handicap, 2004)
- Ouders over de rugzak, Onderzoek naar ervaringen van ouders met leerling gebonden financiering en de toegankelijkheid van het reguliere onderwijs* (Parents about the Backpack, Research into the experiences of parents with pupil-specific funding and access to regular schools) (Utrecht: FvO, September 2004)
- Poullisse, N., *Een wankel evenwicht, de integratie van kinderen met een verstandelijke handicap in het reguliere onderwijs* (A Shaky Balance, the Integration of Children with an Intellectual Disability in Regular Education) (Nijmegen: ITS, 2002)
- PVH, *Onderzoek naar personen met een verstandelijk beperking* (Study of Persons with an Intellectual Limitation), (Commissioned by the SCP, The Hague, 2000)
- Schoonheim, J.A., “The Right to Education in the Light of Disability”, in J.C.M. Willems, ed., *Developmental and Autonomy Rights of Children* (Antwerp: Intersentia, 2002)
- van Dongen, J., *Onrecht door Rechtspraak? Een evaluatie van de WVG* (Injustice through Judicial Decision-making? An Evaluation of the Disability Services Act) (Tilburg: Wetenschapswinkel Universiteit van Tilburg, November 2003)
- van Genabeek, et al., *Werkgelegenheidsvoorzieningen voor de Wsw-doelgroep: buitenlandse ervaringen* (Employment Opportunity Provisions for the SEA Target Population: Foreign Experiences) (TNO Arbeid, March 2003)
- van Lankvelt, E., *Inventarisatieonderzoek aanbod dagbesteding/arbeid Limburg* (Inventarization Study of day care/employment services in Limburg) (Maastricht: Provinciale Bestuurscommissie Onderzoek en Ontwikkeling, December 2002)

van Nes, P., et al., *Evaluatie van Begeleid Werken in het kader van de WSW, Eindrapport* (End-report Evaluation of Supported Employment in the Framework of the SEA) (Rotterdam: SEOR, May 2001)

Vreugdenhil-Tolsma, B., Kools, Q., de Wolf, A., *Uitstroom praktijkonderwijs in beeld, de ontwikkeling van een instrument en een meting van de uitstroom in 2001–2002 van leerlingen praktijkonderwijs* (A View of Pre-Vocational Education Output, the Development of an Instrument to Measure Output in 2001–2002 of Pre-Vocational Ed Students) (Tilburg: IVA, 2003)

Zoontjens, P.P.J., *Het beweeglijke recht op onderwijs* (The Dynamic Right to Education) (Den Haag: Boom Juridische Uitgevers, 2003)