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FINAL REPORT

(Article 21 sub 1 National Ordinance Ombudsman)

Complainant: Complainant
Date complaint filed: 13 June 2014
Complaint No: 2014/00162

Ministry of Education, Culture, Sports and Youth
Department: Inspection Division
Department Head: Mrs. C Schaminee-Ringeling

Synopsis of Complaint:

Complainant's son was expelled from the St. Maarten Academy PSVE (PSVE), a school for Secondary Vocational Education, by means of a letter dated 3 December 2013. Complainant does not agree with the expulsion of her son, because she is of the opinion that her son has the right to compulsory education.

Therefore, Complainant visited several secondary schools requesting that her son be admitted, however he was denied admittance. Complainant spoke to the Head of the Inspection Division of the Ministry of Education, Culture, Sports and Youth Affairs (Ministry of OCJS) and claims that she was told that her son cannot be admitted to any secondary school on the island.

Complainant feels that her son's right to compulsory education is not guaranteed by the Inspection Division of the Ministry of OCJS.

Findings:

In a report from the Student Care Coordinator of PSVE dated 3 April 2013, it was stated that Complainant's son *"has been in several altercations since he started school, in which the police had to be involved. (... ..) In addition (...) comes to school everyday and skips several classes on a regular basis. There are days that he attends no classes at all. It would appear that as though the mother has no control of him. This is evidence in the way he speaks to her and his overall attitude to her."*



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The following recommendations were given in the aforementioned report:

- Counseling sessions on Social Skills; and
- Active Parenting Sessions

On 10 April 2013 Complainant's son was suspended for 3 days because he *“was seen on the road during school hours without permission. Furthermore, he was seen by a gentleman residing nearby the school in the yard of his house.”*

A letter requesting the expulsion of Complainant's son dated 27 May 2013 was submitted to the board members of PSVE. The reason for the request was due to the fact that Complainant's son was *“constantly in fights and situation which he always started. Every time, after one of these incidents, he would jump the wall and disappear just like he did again.”*

A 'Student Behavior Contract' dated 23 August 2013, was signed between Complainant, Complainant's son, the principal of PSVE and the Student Care Coordinator. The contract stipulated ten goals that Complainant's son was to meet, as well as the consequences of not meeting the set goals. The consequence of not meeting the set goals, as stipulated in said contract, was expulsion.

In an incident report dated 23 October 2013 Complainant's son was suspended for 3 days. According to the incident report, Complainant's son was disrespectful towards the Vice-Principal, the detention teacher and the security guard; he had also erased a teacher's lesson on the black board, was showing up late and skipping classes.

The report also stated that Complainant's son had been in a fight on 18 October 2013. During the fight, Complainant's son had bitten the other student and used an object to scratch that student in the face.

The report went on to request the expulsion of Complainant's son.

On 27 November 2013 Complainant's son was suspended for 1 day for *“not following instruction and not coming to do his detention.”* The incident report related to the suspension stated, *“Student was told by his homeroom teacher to put his shirt in his pants. He didn't do so and walked off. ... was warned by the Police early this morning for taking a phone that was passed over the fence. Further investigation: police opened the phone and smelled the scene of marijuana on the phone. He let us know how the marijuana has been put in the*



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phone now a days. This time the phone didn't have no marijuana, because it was already taken out of it. Student is suspended for 1 day. (...)"

On 3 December 2013 Complainant's son was suspended for refusing *"to abide by the rules and regulations."*

In a second incident report dated 3 December 2013, Complainant's son was said to have been found in the possession of a bag with a number of prohibited items. According to the report, the police was informed of the incident, however Complainant's son had jumped over the fence before they arrived. The police went in search of Complainant's son and took the bag Complainant's son was found to be in possession of. The incident report also asked that a request for expulsion be sent to the School Board, because nothing had changed after signing the school contract: *"After signing the schoolcontract this student has been breaking the schoolrules and regulations regularly. We kept meetings over and over with the parents. We have been sending suspension letters to the Inspectors, but nothing has been changed since than*

Mrs. Duncan this student has to be expelled. Please, send a request for expulsion to the School Board."

Complainant's son was suspended for 5 days for the incident described above.

In the letter of expulsion also written on 3 December 2013, the board of the Foundation for Academic and Vocational Education (FAVE) stated *"Based on the ZERO tolerance for the use of drugs in school, the Board of St. Maarten Academy FAVE, has decided to expel (...) from the St. Maarten Academy PSVE effective immediately."*

On 9 December 2013 a meeting was held with the Inspectorate of Education, Complainant and Complainant's son. During the meeting, Complainant's son was informed of the accusations against him. Complainant's son claimed that he had not been at school because he was suspended on that day. After being told by Complainant to tell the truth, Complainant's son admitted to being near the school, but said that he had not entered the premises.

Complainant was then informed that the school was seeking expulsion and that she needed to look for another school for her son to attend. Complainant was also told that the Vocational School was the only school that might accept him. Complainant was then advised to visit the school after the 5-day suspension to *"see what the school tells her."*



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On 3 February 2014 Complainant was approached by a representative of the PSVE to sign the documents relating to the expulsion of Complainant's son. Complainant refused to sign to the documents at that time.

In an incident report from the Inspectorate of Education, dated 6 February 2014, the situation regarding the expulsion of Complainant's son was documented as follows:

“Based on the Law on Compulsory Education article 2 sections 1a & 1b AB 2013 GT no. 590 parents are obligated to enroll the youngsters in their care into a school.

(...) was enrolled at St. Maarten Academy PSVE on August 20, 2012 and was expelled based on the 'Zero Tolerance Rule' for the use of Drugs in School on December 2013. The objective of this meeting was to get an update from the mother, (...), on what school she had tried to enroll her son (...) in. Presently (...) is not attending any school.

(...) stated that she had gone to the NIPA (SBO). There (...) was informed by Mr. Vernon Richards, Director of the NIPA that her son (...) is too young to attend. (...) was also informed that the NIPA does not have space, even if (...) had been of age. This was confirmed by inspector Hyman who did call the school and spoke to Mr. Richards who stated the same. (...) also stated that she had spoken to Mr. Rogers, Executive Director SVOBE. Mr. Rogers had indicated that SVOBE was looking to see what they can do for (...). (...) presented us with Mr. Roger's business card.

Inspector Marie Gittens told (...) that on Monday February 17, 2014 (...) must be enrolled in a school.

After the meeting I, Inspector Sachael Hyman, called the St. Maarten Vocational Training School and spoke to Mrs. Astrigt Hermelijn, interim principal. Mrs Astrigt Hermelijn arranged a meeting for (...) and (...) for Tuesday February 11, 2014 at 12:00pm.”

A Notification of Complaint (NOC), dated 13 June 2014, was sent to the Inspection Division of OCJS. A response was received on 8 August 2014. The response entailed the following:

- *The Inspection Division is aware of the complaint*



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- *Complainant has been in contact with Truancy Officers since December 9, 2013 in regard to her son's expulsion from the Sint Maarten Academy PSVE;*
- *Complainant was informed of the existing possibilities by Truancy Officers and assisted in establishing an intake meeting with the St. Maarten Vocational Training School (the "SMVTS");*
- *The Truancy officers made it clear to the Complainant that as the parent of (...), Complainant was responsible to ensure that her son is enrolled in a school based on article 2 sub section 1a of the "Leerplichtlandsverordening" AB 2013 GT no.590;*
- *Complainant appeared at the Inspectorate's Office and I spoke to her in regard to the matter. Complainant indicated that, after a substantial amount of time, her son's file has been forwarded by the Sint Maarten Academy PSVE to the SMVT, resulting in Complainant not attending the meeting on February 11, 2014 with the acting principal of SMVTS, which was arranged by one of the Truancy Officers. Complainant stated that she did speak to the acting principal of the SMVTS and was informed that her son could not be enrolled at the SMVTS, I informed Complainant that she was experiencing difficulty in enrolling her son into another VSBO-PKL/PKL/PBL school as a result of him being expelled for being in possession of narcotics. The SVOBE & Fave school boards are both against accepting students who have been expelled in regard to possession of narcotics. Complainant was explained that due to the late stage of the school year she could temporarily place her son in a privately funded school. But that for the new school year her son must be enrolled in a suitable school or abroad.*
- *I conclude as a result that the Inspection division has assisted Complainant by providing information, guidance, arranging an intake meeting and following - up with her on the progress made.*
- *This issue can only be resolved through enrollment of Complainant's son in a school. The options where are available to Complainant, have been indicated on numerous occasions, are:*
 - *SMVTS possibly form 2;*
 - *NIPA level-1;*
 - *Privately funded school*

Complainant should make an appointment with the principal of the SMVTS to discuss the enrollment of her son for the 2014-2015 academic year.

- *A (secondary) school has the right to expel a student on their established "student Rules Book". Contrary to the "Landsverordening funderend onderwijs" AB 2013GT*



no. 796 article 20 sub-section 4 which states that primary schools must ensure enrollment in another primary school for the student they will expel. Secondary schools are not obligated to seek placement of a student they will have/will expel in another secondary school. This is the sole responsibility of the parent(s);

- *The law on compulsory education states that “ all youngsters between the ages of 4-18, residing on St. Maarten must be enrolled and attending school” article 3 sub-sections 1&2 of the “Leerplichtslandsverordening” AB 2013 GT no.590 (appendix 2);*
- *The law also states that the school must have their admittance criteria. This is stated in article 29 sub-section 1 of the “Landsverordening voortgezet onderwijs” AB 2013 GT no.794 (appendix 3) which states: “... kunnen voor elke sort van scholen of voor afdelingen van die scholen voorwaarden voor de toelating en voorschriften omtrent verwijdering en bevordering worden vastgesteld.”*
- *The law also states that the School Board decides on admittance of students. This is stated in Chapter 2 article 2 sub- section 1 of the “Landsbesluit scholen vwo, havo en vsbo” AB 2013 GT no.558 (appendix 4) which states: “Het bevoegd gezag beslist over de toelating ...”*
- *Even though the law on compulsory education exists, school boards are in their right to admit youngsters. The school boards are legal entities that provide education.*
- *Unfortunately, despite the enforcement of the law on compulsory education, school boards cannot be obligated to enroll a youngster. It remains a dialogue that takes place between the Truancy Officers/Inspectorate and the Executive Director of a school board.*
- *The Truancy Officers investigated both requests concerning the expulsion of Complainant’s son. The first request was based on the many detentions and suspensions given to Complainant’s son for inappropriate behavior, skipping of classes, bullying students and fighting, among others. However, this request for expulsion was not accepted by the Inspection division because the proper procedures had not been adhered to.*
- *The second request from FAVE to expel Complainant’s son was based on narcotics and a pair of scissors, among other things, having been found in his back pack. The FAVE school board adhered to the procedures pertaining to requesting his expulsion. The complete file on Complainant’s son was forwarded to the Inspection Division. Complainant’s son’s file contained detention and incident reports as well as a signed student’s behavior contract. Based on the “Student Rule Book’ August 2013, version 3.4 page 21 chapter 2.13 (appendix 5) titled ‘Items not allowed’ the following items*



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are mentioned: scissors, knives drugs and all related materials, matches The consequences as stated entails: “confiscation & expulsion procedure.”

After meeting with school board representative, Mr. R. Arrindell, and principal of the St. Maarten Academy PSVE Mrs. Duncan-Trona and on a separate occasion with Complainant and Complainant’s son the Truancy Officer accepted the decision of FAVE to expel Complainant’s son.

- *Complainant’s son is required to attend school. However he was expelled based on applicable school rules.*
- *It is the responsibility of the parent to enroll a youngster into school article 2 subsection 1a of the “Leerplichtlandsverordening“ AB 2013 GT no.590.”*

A Hearing was convened on 6 October 2014 in order to acquire more information regarding the complaint. Present at the Hearing were the Ombudsman, the Complaint Officer handling the case, the Department Head of the Inspection Division (the Department Head) and the Truancy Officer in this case. The Complainant did not attend the Hearing, notwithstanding having received an invitation to attend.

Hereto attached is the synopsis of Minutes of the Hearing drafted by the Complaint Officer, including remarks from the Department Head, which forms an integral part of this Final Report.

The Ombudsman concluded that the situation, with regard to safeguarding the interest of students, needs to be looked into by the Inspection Division of OCJS:

- How can parents be assisted with enrolling their child in a school, when the school is allowed to refuse admittance of the child?
- How far does the authority of the Inspection Division go in situations when a school board wants to expel a student? Are there any coercive means?

In a follow-up conversation in November 2014, Complainant confirmed that her son was enrolled at and is attending classes at NIPA since September 2014.

The NIPA is classified as a vocational school offering advanced vocational and technical education. According to the information found on the institution’s website (last accessed 29 May 2015), the courses given at NIPA are open to students between 16 and 18 years old, provided they have completed their secondary education, and adults 18 years and older.



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On 20 February 2015 the Preliminary Findings Report (PFR) was sent to Mrs. C. Schaminee-Ringeling, the Department Head of the Inspection Division of the Ministry of OCJS. In the PFR, the Ombudsman issued the following recommendations:

- Review the effect of the provisions stated in the National Ordinance regulating Secondary Education and the National Decree containing general orders for the implementation of articles 11, 21 and 29 in relation to the National Ordinance containing general orders for the Regulation of Compulsory Education, to safeguard the interest of students not having reached the age of 18 years. In particular where it pertains to the authority of schoolboards to establish and implement regulations for the admittance and expulsion of youngsters subject to compulsory education.

The Department Head was requested to respond to the findings outlined in the PFR by 6 March 2015.

By letter dated 19 March 2015 the Department Head responded to the PFR after having been granted postponement upon request. The Department Head commented on specific interpretations and conclusions stated in the PFR to illustrate why the Department did not agree with all content of the report.

- Page 7/15: “The courses given at NIPA are open to students between 16-18 years old, provided they have completed their secondary education and adults 18 years and older.

Comment:

“The “Landsverordening Secundair Beroepsonderwijs & Educatie” article 42 subsection 4 AB 2013 GT # 795 states that level 1 & 2 programs as well as adult education courses do not have admittance criteria. Therefore a youngster as of the age of 16 who has not completed secondary school can be enrolled.”

- Page 11/15 article 15 section 1: (“Landsbesluit Houdende Algemene Maatregelen ter uitvoering van de artikelen 11,21 & 29 van de Landsverordening voortgezet onderwijs”) However a student may not be removed from school during the course of a school year. Page 13/15 paragraph 6: Moreover, expulsion during the course of the school year should have been prohibited.

Comment:

*“The article in question states and I quote: “Een leerling wordt op grond van onvoldoende vorderingen niet in de loop van een schooljaar verwijderd.” (...) was not expelled or removed from the St. Maarten Academy PSVE based on **poor***



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academic performance. He was expelled based on article 3.3. Zero Tolerance Policy of August 2014, version 3.4 Student Rule Book of the St. Maarten Academy PSVE. Therefore, the aforementioned article is not applicable in this case.”

- Page 13/15 paragraph 6: The Department should not have allowed the expulsion of Complainant’s son to proceed before he had been admitted to another school.

Comment:

“The condition referred to is applicable in Primary & Advanced Secondary Vocational education institutions based on article 20 sub-section 4 of the “Landsverordening funderend onders” AB 2013 GT # 796 and in the “Landsverordening secundair beroepsonderwijs en educatie” AB 2013 GT # 795 art 40 sub-section 5. It is not incorporated in the “Landsverordening voortgezet onderwijs” AB 2013 GT #794. Therefore, this condition cannot be adopted or inferred to be applicable (...).”

Legal Basis:

The **National Ordinance Ombudsman (AB 2010, no. 20):**

Pursuant to article 19 section 1 of the **National Ordinance Ombudsman (Landsverordening Ombudsman, AB 2010, GT no. 20)** the Ombudsman is authorized to request from government bodies, civil servants (as experts or witnesses), the complainant, all information and or documents pertaining to the investigation.

The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“*verschoningsrecht*” - see article 19 section 4).

The **Constitution** of Sint Maarten (AB 2010, GT no. 1):

Article 18 section 1 **Constitution** of Sint Maarten (AB 2010, GT no. 1) provides that the government’s constant concern is directed at the protection of children and young people and the promotion of their right to education, welfare, cultural development and leisure activities.

The **National Ordinance containing general orders for the Regulation of Compulsory Education (Landsverordening houdende bepalingen tot regeling van de leerplicht, AB 2013 GT no. 590):**

Article 1 provides a definition for the terms used in the ordinance. The definitions given are as follows:



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- a. Minister: the Minister of Education, Culture, Youth and Sports
- b. School:
 - 1. A school for foundation (based) education as defined in the National Ordinance on Foundation Based Education;
 - 2. A school for secondary education as defined in the National Ordinance on Secondary Education; or
 - 3. An institute for secondary vocational training and education as defined in the National Ordinance on Secondary Vocational Training and Education, as far as it provides a recognized education.
- c. Head: the person responsible for the management of the school
- d. Supervisory authority: The institution charged, under article 6 of this national ordinance, with and responsible for the monitoring of compliance with this national ordinance.

Article 2 section 1 provides that the person responsible for a minor residing in Sint Maarten and the person who cares for such a minor is responsible for:

- a. The enrolment of that minor as a student at a school; and
- b. The minor attending classes intended for said minor at the school referred to in part a.

Section 3 of the same article provides that youngsters who have reached the age of twelve are obliged to follow classes at the school where they are enrolled conform the stipulations given in the said National Ordinance.

Article 3 section 1 states that the obligation stipulated in article 2 section 1, is applicable from the first school year beginning on or after the date that the youngster has turned four years of age.

Article 3 section 2 provides that the obligation mentioned in article 2 section 1 is valid/applicable until the end of the school year:

- a. In which the youngster turns 18 years of age; or
- b. In which the youngster has received a diploma for preparatory secondary vocational education (*VSBO*), senior general secondary education (*HAVO*), pre-university education (*VWO*), or a diploma from a school found to be similarly accredited/recognized by the minister.



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Article 6 provides for the manner in which the monitoring of compliance with this national ordinance is done, and the provisions thereof are regulated by national decree containing general regulations.

In any case, the institute charged with monitoring and the manner in which enrollment and expulsion of a youngster as a student at a school, and the registration of absenteeism with and without exemption as provided under article 4 section 1 or 2, or article 5 section 1 will be regulated.

The National Ordinance on Foundation Based Education (*Landsverordening funderend onderwijs, AB 2013GT no. 796*):

Article 2 section 1 states that foundation (based) education is meant for children from the age of 4, and lays the basis for secondary education.

Article 19 section 1 provides that to be admitted to a school as a pupil, a child must be 4 years old.

Section 3 provides that in principle a pupil leaves school at the end of the school year in which the age of 12 is reached, but no later than the end of the school year in which the age of 14 years is reached.

Article 20 section 4 provides that before a decision is made to suspend a student (up to the age of 14 years) for more than three days or to expel a student, a meeting should be held with the division for school inspection, the school attendance officer (Truancy Officer), the teachers involved and the parents. A student cannot be expelled until the relevant authority has found another school that is willing to enroll said student.

The National Ordinance regulating Secondary Education (*Landsverordening regelende het voortgezet onderwijs, AB 2013, GT no. 794*):

Article 2 section 1 states that supervision of secondary education and its efficacy is entrusted to the Minister (of OCJS). It (supervision) is carried out by the division for school inspection in accordance with the Minister's guidelines.

According to section 2, the division for school inspection, and civil servants charged by the Minister with the task of supervision always have access to the schools.

Section 3 provides that the relevant authoritative bodies are obligated to provide the Minister and the civil servants appointed by him with all requested information.



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Article 3 states that secondary education encompasses the education given after foundation based education, with the exception of that which is provided in the National Ordinance on Secondary Vocational Training and Education.

Article 29 section 1 provides that conditions for admission and regulations regarding expulsion and promotion for each type of school or departments of schools can be established by national decree containing general regulations. However, admittance may not be dependent financial contributions from parents.

The National Decree containing general regulations for the Implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education (*Landsbesluit houdende algemene maatregelen, ter uitvoering van de artikelen 11, 21 en 29 van de Landsverordening voortgezet onderwijs/Landsbesluit dagscholen vwo, havo en vsbo, AB 2013 GT no.558*):

Article 1 provides that the inspector is responsible for supervision of the institution. The article further describes the relevant authority of a public school to be the Minister or the public body charged by national ordinance with the task, whereas the relevant authority for a private school (non-government school) is the school board.

Article 2 section 1 provides that the relevant authority decides on the admittance and establishes an admissions committee consisting of the principal or director, or an individual chosen by them and at least two teachers from the school. School heads and teachers from foundation (based) education may also be members of the admissions committee.

According to section 2 of this article, the relevant authority can choose one of three options regarding the relationship between the relevant authority and the admissions committee.

These are:

- a. The admissions committee has an advisory role with regard to admission. The relevant authority decides on admission on the basis of the advice given; or
- b. The admission committee decides initially. An objection can be filed against the decision by the relevant authority; or
- c. The relevant authority allows the admissions committee to make initial and final decisions.

Section 3 states that the relevant authority is to provide written regulations with the authorities and tasks of the admissions committee.



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Section 4 provides that if the relevant authority is responsible for two or more secondary schools, a joint admissions committee may be established for some or all of the schools. A joint admissions committee can also be established by more than one relevant authority. In such cases, it is not necessary for all principals or directors of the schools or an individual chosen by them or teachers of all schools to be a member of the body. The second and third sections of this article also apply.

Article 15 section 1 provides that the relevant authority (in this case, the school board) may expel a student under the condition that the expulsion is motivated and that the parents/guardians are given the opportunity to discuss the matter. A student may not be removed during the course of the school year based on performance.

Section 2 provides that the expulsion cannot be carried out until the situation has been discussed with the division for school inspection.

Section 3 states that the relevant authority is to inform the inspector and the parents/guardians of the expulsion in writing.

The National Ordinance establishing regulations for Secondary Vocational Training and Education (*Landsverordening tot vaststelling van een regeling met betrekking tot het secundair beroepsonderwijs en de educatie, AB 2013, GT no. 795*):

Article 2 section 1 of the states that, secondary vocational training is focused on the theoretical and practical preparation for occupations for which professional qualification is required or useful. It also states that secondary vocational training furthers the general shaping and personal development of the participants and contributes to their social functioning. Secondary vocational training is in line with (follows) the preparatory secondary vocational education. Vocational Education does not include higher education.

According to Article 40 section 5 the expulsion of a participant that of school age (obliged to attend school), cannot take place until the competent authority has ensured that another institution, whether or not for the purposes of this ordinance, is willing to admit the participant. If it can be shown that during a period of eight weeks another institute cannot be found, the expulsion can proceed in defect of the first (full) sentence.



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Article 42 outlines the previous education necessary to register in Secondary Vocational Training and Education.

Section 4 states that there is no previous education required to register for assistant-training, basic vocational training or a course.

Standard(s) of proper conduct:

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *Legal Certainty* and *Safeguarding Fundamental Human Rights*.

The standard of *Legal Certainty* provides that government should be compliant with the laws of the land and decisions of the Court, and that government honors legitimate expectations. Organizational issues may not be an excuse for non-compliance. Moreover, court decisions and the laws of the land have to be followed with ample precision.

The standard of *Safeguarding Fundamental Human Rights* provides that government is to treat all its citizens with equal care and respect. Generally, this means that similar cases get similar treatment and cases not being similar cannot be handled in the same manner. If a public body does not act accordingly, it violates the principle of equality. Distinction made in the treatment of citizens may only serve a set purpose.

Examples can be found in selectively checking of citizens, not being clear or consistent in the application of procedures, discrimination should in particular be avoided in service to the public when it comes to age, gender, nationality, language etc.

Conclusion:

Complainant's son was expelled from the St. Maarten Academy PSVE, a school for Secondary Vocational Education, by means of a letter dated 3 December 2013. Complainant does not agree with the expulsion of her son, because she is of the opinion that her son has the right to compulsory education.

In the letter of expulsion dated 3 December 2013, the PSVE referred to its ZERO tolerance policy for the use of drugs as the grounds for expulsion. In response to the NOC and during the Hearing with the Ombudsman, the Department (Head) of Inspection Division asserted



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that a secondary school can expel a student based on applicable school rules; and that it was the responsibility of the parent to enroll a youngster into a school.

Pursuant to article 18 section 1 Constitution of Sint Maarten (AB 2010, GT no. 1) the government is tasked with the protection of children and young people and the promotion of their right to education, welfare, cultural development and leisure activities.

The right to education is considered a fundamental human right and is recognized by a number of international bodies such as United Nations Educational, Scientific and Cultural Organization and the International Covenant on Economic, Social and Cultural Rights, and anchored in the National Ordinance containing general orders for the Regulation of Compulsory Education.

The **National Ordinance containing general orders for the Regulation of Compulsory Education** provides that all youngsters between the ages of 4 and 18 years are subject to compulsory education (article 2 in conjunction with article 3). The obligation as stipulated in the law is valid until the youngster turns 18 years, or is in possession of a secondary education diploma recognized by the Minister of OCJS.

Complainant's son, age 15, had not attended school from 3 December 2013 when he was expelled to September 2014 when he began classes at NIPA. As such, Complainant's son's right to education was impeded as he was not (initially) afforded the opportunity to complete his secondary vocational education in accordance with the National Ordinance of Compulsory Education.

Based on the aforementioned, Complainant's expectation that Government should ensure that her son receives an education is founded.

Considering the standard of *Legal Certainty* the Department should ensure that the laws regarding compulsory education on Sint Maarten were upheld. The Department should not have allowed the expulsion of Complainant's son to proceed before he had been admitted to another school. Moreover, based on propriety, expulsion during the course of the school year before he had been accepted into another institution should have been prohibited.

As such the standards of *Legal Certainty* and *Safeguarding Fundamental Human Rights* were violated by the Department of Inspection at the Ministry of OCJS (the Department).



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Complainant's son was not removed from the St. Maarten Academy PSVE (a school for Secondary Vocational Education) as a result of poor academic performance as stated in the National Decree regulating the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education, but based on the Zero Tolerance Policy stated in the Student Rule Book of the St. Maarten Academy PSVE. This is contrary to the **National Ordinance establishing regulations for Secondary Vocational Training and Education**, as confirmed by the Department Head of Inspection in the notes to the PFR; the prohibition of expulsion before admittance to another school is applicable to "*Primary & Advanced Secondary Vocational education institutions (...)*".

As confirmed by the Department Head in her notes dated 19 March 2015, article 29 in the **National Ordinance regulating Secondary Education** provides that conditions for admission and regulations regarding expulsion can be established by national decree, which allows the relevant authority (government and/or schoolboards) to regulate the admittance and expulsion of students. In contrast the **National Ordinance establishing regulations for Secondary Vocational Training and Education** (article 40 section 5) provides that a participant of Secondary Vocational Training and Education of school age (obliged to attend school) can be expelled if it can be shown that during a period of eight weeks another institute could not be found for said participant. According to the National Ordinance establishing regulations for Secondary Vocational Training and Education, said training and education is geared towards the general shaping and personal development of students and requires no previous education to register at such institutions, thereby guaranteeing basic education to youngsters.

Article 20 section 4 of the **National Ordinance on Foundation Based Education** provides however that a youngster up to the age 14 years cannot be expelled until the relevant authority (be it the Minister, a public body charged with the task, or the school board) has found another school willing to enroll the expelled student.

Although article 3 in conjunction with article 2 of the **National Ordinance containing general orders for the Regulation of Compulsory Education** provides that all youngsters between the ages of 4 and 18 years are subject to compulsory education, this is not properly safeguarded in the **National Ordinance regulating Secondary Education** and the **National Ordinance establishing regulations for Secondary Vocational Training and Education** with regard to the expulsion of students.



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The above stated discrepancies within the various ordinances regarding compulsory education gives reason for Government to review:

- The realities of article 15 section 1 in conjunction with article 1 of the National Decree containing general orders for the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education and article 40 section 5 of National Ordinance establishing regulations for Secondary Vocational Training and Education versus the National Ordinance containing general orders for the Regulation of Compulsory Education;
- The authority of the Inspection Division, in cases where a school board wants to expel a student. Consultation of the Inspector as provided for by article 15 of the National Decree containing general orders for the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education and the National Ordinance establishing regulations for Secondary Vocational Training and Education do not seem to adequately safeguard the right to education as provided for by international and national law.

Judgment:

The complaint filed by Complainant that her son's right to compulsory education until the age of 18 years, has not been guaranteed by the Inspection Division of the Ministry of OCJS is founded, albeit that the respective laws inadvertently provide the possibility to divert. The standards of proper conduct *Legal Certainty* and *Safeguarding Fundamental Human Rights* have been violated.

Recommendation(s):

- Review the effect of the provisions stated in the National Ordinance regulating Secondary Education, the National Decree containing general orders for the implementation of articles 11, 21 and 29 of the National Ordinance on Secondary Education, and the National Ordinance establishing regulations for Secondary Vocational Training and Education in relation to the National Ordinance containing general orders for the Regulation of Compulsory Education, to safeguard the interest of students under the age of 18 years. In particular where it pertains to the authority of schoolboards to establish and implement regulations for the admittance and expulsion of youngsters subject to compulsory education.



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The Ombudsman requests a status report on the recommendation(s) **within three (3) months** from the date of this letter, **however no later than 25 November 2015**.

Philipsburg, 25 August 2015

Dr. R. (Nilda) J.A. Arduin
Ombudsman



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SYNOPSIS MINUTES MEETING/HEARING:

(Article 18 sub 1 National Ordinance Ombudsman)

Complainant: Complainant
Complaint nr: 2014/00162
Ministry of OCJS
Department: Inspection Division
Date of the hearing: October 6, 2014

Philipsburg, October 10, 2014

Conclusion of the hearing held with the following persons and the complainant:

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| Names: | Function: | Employed at: |
| Dr. R.J.A. Arduin | Ombudsman | N/A |
| Ms. C. Bell | Complaint Officer | Bureau Ombudsman |
| Mrs. C. Schaminee- Ringeling | Department Head | Inspection Division |
| Ms. M. Gittens | Truancy Officer | Inspection Division |

Complainant was invited, but did not attend the hearing.

| | TOPICS: | ELUCIDATION: |
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| 1. | Synopsis case filed: | <p>Complainant’s son was expelled from the St. Maarten Academy School by means of a letter dated December 3, 2013. Complainant does not agree with the expulsion of her son, because she is of the opinion that her son has the right to compulsory education.</p> <p>Therefore, Complainant visited several Secondary Schools requesting her son be admitted, however he was denied admittance. Complainant spoke to the Head of the Inspection Division of the Ministry of Education, Culture, Sports and Youth Affairs (the “Ministry of OCJS”) and claims that she was told that her son cannot be admitted to any secondary school on</p> |



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| | | the island. |
| 2. | Summary Elucidation by Civil Servant/Expert/Other: | <p>The Ombudsman began the hearing by stating that she felt it was important not to just hold the hearing in regard to the complaint, but that she is also trying to obtain a total picture and would like to know how the law on compulsory education (vs. related laws) is being implemented and if there are bottlenecks. She stated she observed a contradiction in the law vs. the law of secondary education, and was wondering how it is really being implemented. She also stated that she saw that the <i>Landsverordening (the “LV”) funderend onderwijs</i> is up to the age of 12 years. Mrs. C. Schaminee Ringeling added that it can also refer to children up to the age of 14. The “<i>LV funderend onderwijs</i>” states that if a child is to be expelled, the school has to make sure that there is an alternative school provided for the child. However in regard to a High school, if a school expels a child it is expected that the parent looks for alternative schooling because the “<i>LV leerplicht</i>” states that the parents have the responsibility to enroll a youngster in a school.</p> <p>The Ombudsman asked Mrs. Schaminee- Ringeling to explain how it really works in practice and also inform her in regard to any complications she may have experienced.</p> <p>Mrs. Schaminee- Ringeling went on to explain that in Primary School’s cases of expulsion are very few, and the School Boards have made sure that there are alternatives for the children attending Primary schools on the island. Mrs. Gittens further stated that in one case, in discussion with School Management it was</p> |



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| | <p>decided that a particular child will receive counseling instead of being expelled. This is an alternative that can be utilized in order to see if they can get the child to adapt.</p> <p>The Ombudsman then asked if there are any other provisions which the school may have in place as an alternative to expulsion. Mrs Schaminee – Ringeling went on to explain that there are various stakeholders such as Psychologists, Court of Guardianship, SJIB and the Community Police Officers. Those are the second band of assistance who, according to the Inspectorate, are involved in those cases. The Court of Guardianship also has many other avenues that they can utilize, The Mental Health Foundation and also private psychologists. The Ombudsman then inquired as to whether the group of stakeholders already had to take action. Mrs. Schaminee- Ringeling stated that the cooperation is ongoing and is in its second year.</p> <p>The Ombudsman then followed with inquiries in regard to secondary education. Mrs. Schaminee-Ringeling stated that expulsion in Secondary schools are mostly related to the possession of drugs, alcohol or weapons in the school by students. Secondary schools have a zero tolerance policy in regard to the aforementioned areas. Parents sign for admittance of their child/children in the schools and then agree with the terms that are in the student handbook. The Inspection Division has been confronted with cases from primarily the PSVE section of the SXM Academy, Sint Maarten Vocational Training School and also the Milton Peters College, however not the St. Dominic High. Students have been found to be in possession of drugs, alcohol and weapons and as the law for secondary education states there has to be a</p> |
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| | <p>meeting with the school board representative, the Truancy officer, the school and the Inspector, if expulsion is a result of such situations. During that discussion, the truancy officer tries to find means to have the youngster remain in school, however under conditions. The conditions can be a combination of several things.</p> <ul style="list-style-type: none">• the youngster may have to attend counseling sessions by means of their SZV card;• A contract can be signed by the student in the case that if a case has been brought to the attention of the Prosecutor, SJIB, Court of Guardianship, the point of departure is to have the youngster stay in school . <p>There have been two case where the school had to retract their request for expulsion because the proper procedure was not followed. The Inspection Division has also been able to prevent two children from being expelled. There were other situations where the Inspection Division could not convince the school board otherwise and the expulsion of the youngsters had to be continued.</p> <p>The Ombudsman then asked what provision is there if the school continues with the expulsion of students.</p> <p>Mrs. Schaminee- Ringeling stated that the parent and youngster come to the office of the Inspection Division and they go through the list to see what other options may be available to them. The Inspection Division does their part and also make sure parents are aware that they are responsible for enrolling the child in a school.</p> <p>The Ombudsman asked what was done by the</p> |
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| | <p>Inspection Division concerning the complaint of Ms. ...</p> <p>.</p> <p>Mrs. Schaminee- Ringeling stated that three or four meetings were held with Complainant and her son. She further stated that the Milton Peters College would not accept the Complainant's son as a result of him being found to be in possession of drugs. The Sint Maarten Vocational Training School was the only alternative because he is a PBL student.</p> <p>The PSVE was to forward Complaint's son file and a date was established for the Complainant to visit the Sint Maarten Vocational Training School but they were informed that she did not show up. The reason that the Complainant did not attend the meeting is not known.</p> <p>Mrs. Schaminee- Ringeling stated that two youngsters visited Complainant at her place of work and informed her that the bag which was said to be her son's bag was not his, however this occurred after he was already expelled. Complainant then attempted to try to have her son reinstated in the Sint Maarten Academy , however the Inspection Division informed her that it was a lost cause, and that the school had already given her the expulsion letter. She was then told that another school had to be found for Complainant's son.</p> <p>It is not known if Complainant ever hired a lawyer, however, it was a possibility that Complainant brought up, Complainant's son apparently did not want to attend the Sint Maarten Vocational Training School, because he had issues with students attending the school.</p> <p>The National Institute for Professional Advancement</p> |
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| | <p>(the “NIPA”) was registering level 1 students, the Inspection Division contacted Complainant and advised her to enroll her son. Three weeks later they contacted the Complainant and were informed that her son was enrolled in NIPA.</p> <p>The Ombudsman then inquired as to what the procedure is if a secondary student over the year of 14 years has not been successful in being relocated to a school. Mrs. Gittens stated that there are two children who have not been placed in a school. Reason being that when the incident took place, there may already be a big file on the student, and it is up to the school to decide whether or not they will enroll the child in their school.</p> <p>There are cases where family members can send the children off island, but in a particular situation, one child was sent off island in order to attend school.</p> <p>The Ombudsman asked what happens when a parent cannot send a child off island?</p> <p>How would the Inspectorate deal with such a situation while the child is subject to compulsory education?</p> <p>The Ombudsman reiterated the following:</p> <ul style="list-style-type: none">• Compulsory education up to 18 years of age with situations where no school wants to accept a child, who may have been in possession of drugs, weapons and or alcohol• Parents are expected to have a child enrolled in a school, but yet the school can decide not to accept a child based on school rules of admittance and expulsion regarding possession of drugs, weapons and or alcohol. |
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| | | <p>Mrs. Schaminee- Ringeling stated that in many cases the schools seem to look at expulsion as the first option. Currently they are trying to get the schools along with the cooperation of the stakeholders to keep the child in school, and to provide them with a package. Such a package will mean that a child will get counseling etc. and remain enrolled in the school. Thus far there is one school board who seems to be more open to it than the others. Mrs. Schaminee- Ringeling stated that the school boards are independent entities/ legal entities and can establish their school rules. The Division of Inspection has not been able to get the school boards to understand that by denying a child the right to a education there will be social ramifications and as a result they are also infringing on the rights of the child. It has not come to the point where they have had to take a stand in regard to the expulsion of students, the Inspection Division has to look into how far their authority goes.</p> <p>The Ombudsman responded that it is unfair that parents can be fined when their child is not enrolled in a school, however if a school refuses to enroll their child there is nothing that they can do. Parents and children are then put in an unfair situation.</p> <p>The Ombudsman inquired as to what will be done the day this becomes a common problem. The Ombudsman stated that she recommends that this be pro-actively looked into by the Inspection Division.</p> |
| 3. | Conclusion(s)/Agreement(s): | The Ombudsman concluded that the situation in regard to safeguarding the interest of the students need to be |



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| | | <p>looked in to by the Inspection Division</p> <ul style="list-style-type: none">• How can parents be assisted in regard to enrolling their child in a school, when the school is allowed to refuse admittance of the child?• How far does the authority of the Inspection Division go in regard to when a school board wants to expel a student/Are there any coercive means? <p><i>“Artikel 15 lid 2 van de Landsbesluit dagscholen v.w.o, h.a.v.o, v.s.b.o geeft de volgende aan: De definitieve verwijdering geschiedt slechts na overleg met de inspecteur.”</i></p> |
| 4. | Follow up hearing with (name and department/entity): | Not applicable |
| 5. | Date follow up hearing: | Not applicable |
| 6. | Relevant Laws/Ordinances/ Policies: | <p>Leerplichtslandsverordening</p> <p>Landsverordening funderend onderwijs</p> <p>Landsbesluit dagscholen v.w.o, h.a.v.o, v.s.b.o</p> |

Signature Complaint Officer, C.Bell: _____