

Providing a Safe Educational Environment Protected by Law: Experiences from The Netherlands

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ABSTRACT

This paper describes – after a short overview of the Dutch education system and some major changes in education policy- the legislative measures against bullying in the Netherlands. We examine the way the Inspectorate of Schools, Dutch courts, and mediating organizations in education, have interpreted the duty of care for school boards. In what way has the law provided for a safer environment for students? What evidence do we have at present, two years since the law was introduced? We will also discuss the complexity of multiple duties for governing boards which have occurred, such as providing ample care for students with disabilities or special needs, while at the same time providing a safe and orderly environment for every child in school. We conclude with some further steps which could be taken to enhance education laws, aiming at safeguarding students.

KEYWORDS

Dutch Education Law; Anti-Bullying laws; Safety measures for students

1 THE DUTCH EDUCATIONAL SYSTEM

1.1 Primary and secondary education

Primary education in the Netherlands encompasses mainstream primary schools and primary schools for children with special needs. Primary education is intended for all children aged four to approximately twelve years. Mainstream and special needs schools in the Netherlands offer secondary education. There are

four types of secondary education that prepare for either work and further vocational training or further higher education (e.g. university). Entrance is based on a national test in the final year of primary school.

Secondary education encompasses schools providing:

- Practical Training (PRO; age 12-18).
- Pre-vocational secondary education (VMBO; 4 years, age 12-16).
- Senior general secondary education (HAVO; 5 years; age 12-17).
- Pre-university education (VWO; 6 years, age 12-18).

All four types of secondary education are for children aged twelve and over.

According to Dutch law children must go to school from the age of five years old, but most children start school when they are four years of age. Young people must attend school until the age of eighteen or until they have obtained a basic qualification (a HAVO, VWO or MBO, prevocational training level 2 diploma).

1.2 Constitutional characteristics

In the Netherlands there is freedom of education, i.e. the freedom to found schools, to organise the teaching in schools and to determine the principles on which they are based (see also Zoontjens & Glenn 2012). This is described in article 23 of the Dutch constitution. Partly because of this the Dutch educational system consists of state schools and denominational schools. State schools are run by the government. They do not work on the basis of a denomination or philosophy of life and are accessible for all children and teachers. Denominational schools are founded by individuals or private organisations. Often these schools are run as an association, of which parents can become members, or as a foundation. Denominational schools are allowed to refuse students and teachers on grounds of principle. Both public authority schools and denominational schools are free to organise their education according to certain pedagogical principles, such as Dalton or Montessori. The Ministry of Education, Culture and Science finances all types of schools.

In order to receive state funding private schools have to meet certain conditions - a minimum number of students; quality standards; labour conditions etc. However these conditions may not restrict the essence of the freedom to provide denominational education, nor may they restrict the right to admit and refuse students and select teachers on denominational grounds (Article 23, paragraphs 5 and 6).

Public-authority schools, being freely accessible to all students, have a certain primacy in that the State has to guarantee that within a certain distance there is a public school for every pupil that wants to attend such a school (article 23, paragraph 4: the guarantee function or 'refugee island' function of the public school). Otherwise both sub-systems have an equal status. The public-authority schools and private schools that fulfil the conditions sketched above are funded according to the same criteria (article 23, paragraphs 5 to 7).

2 SOME FUNDAMENTAL CHANGES IN DUTCH EDUCATION LAW AND POLICY

2.1 Parents as consumers: focus on accountability

In recent years, the Dutch education system has undergone a fundamental change: the development of an extensive formalization of the rights and duties of the educational consumer, in conjunction with more financial autonomy and accountability for schools. In addition: collective forms of participation have been developed, and there has been an advocacy of developing an individual learning path in educational policy (see also Huisman, 2014).

The school board can be held accountable, which is underlined for instance in the Primary and Secondary Education Act, Article 10 WPO (Wet primair onderwijs) and in secondary education, Article 23a WVO (Wet voortgezet onderwijs) which states that the ‘competent authority’ (governing board) has a duty of care for the quality of education. The minimal requirement is that at least the school plan (which concerns the educational and staff policy of the school) is implemented and monitored "in a way that the legal responsibilities for education and the objectives, as described by the school board, are realized". In addition, Article 13 and Article 24a WPO and WVO obligates the school board to provide parents with a school guide, in which the program, objectives, rights and obligations are mentioned. Under Article 14 WPO and Article 24b WVO, parents or guardians of a pupil with a complaint about the conduct and decisions of the school board or the staff, including discrimination, or failure to conduct and failure to take decisions by the board or the staff have right to file a complaint at a (local or national) complaints committee. The school board must ensure the complaints procedure. The committee is ruling on the merits of the complaint and shares this view in writing to the complainant, the person or school board. The judgment of the committee is a non-binding opinion. The opinions of these committees, who are organized on a national level along denominational lines, go beyond a limited review. For instance, in an opinion by the National Complaints Committee for Public Education, the committee discussed unprofessional teaching of a teacher, in the sense that he had been insufficiently clear about his approach to the curriculum.

2.2 Expanding rights of individual students with special needs

On 9th October 2012 the Dutch Senate adopted the Act on Inclusive Education. The law has come into effect on 1st August 2014. From then onwards schools have a duty to care. This means that schools have the responsibility to provide a suitable learning place to every child. Mainstream and special needs schools must co-operate in regional alliances to offer children a learning place at one of the mainstream schools, if needed with extra support in the class room, or at a school for children with special needs. The schools should closely involve parents in this matter.

In practice this implies that if parents sign up their child for a school, the school's board of governors concerned must offer a suitable learning place at its school or at another school for mainstream or special needs education within the regional alliance. The board must also offer extra educational support at school if needed. The removal of students' educational limitations should be the starting point instead of diagnosed disorders. The government has abolished the national assessment standards in order to give school governors more freedom. It is not necessary anymore to diagnose disorders by child welfare services in order to get funding for extra educational support or a learning place at a special needs school. Schools will compose a so-called educational support profile in which they outline the educational support that they can offer to students.

2.3 Safety issues: some facts, figures and discussions

Intimidation, bullying, cyber-bullying, repression, threats, discrimination, homophobia and all forms of violence, including corporal punishment and sexual violence, reflect the downsides to life in contemporary society. Manifestations of these phenomena can therefore also be found in schools and learning institutions. Every child nevertheless has a right to be protected from violence and to develop and realize his/her full potential in a safe, healthy, inclusive and non-discriminating learning environment.

Students in The Netherlands generally feel safe at school (Dutch Inspectorate, 2016). However, this does not apply to everyone. Some schools also experience serious incidents with far-reaching consequences. Several incidents occurred. In 2012, the Netherlands experienced a sad case of suicide by a teenager, similar to the Amanda Todd case in Canada. A boy named Tim Ribbink took his own life after allegedly having been bullied for being gay. The question was if the school could (also) be held accountable, for not intervening or acting promptly.

Students expect schools and teachers to take action and contribute to a safe learning environment. Confidential inspectors are receiving increasingly complex and urgent reports. The number of reports of sexual abuse is rising, especially at secondary schools. The number of reports of emotional and physical abuse at primary schools is decreasing. Schools that have successfully implemented basic preconditions such as safety policies and monitoring are less likely to experience incidents.

Research by the Dutch Inspectorate (2016) showed that an average of 6 percent of all primary school students felt unsafe, as compared to 11 percent of secondary school students. An average of one to three students per class experienced bullying. Six percent of all secondary school students claim to have been bullied on the basis of their ethnicity, skin colour, religion or sexual preference. Six percent also feel discriminated against. Some 13 percent of all students were kicked or struck. The same applies to one quarter of all primary school students. Here, over 20 percent reported that they were occasionally fearful of other students. The degree to which students feel unsafe depends on their school. The frequency of bullying also varies from school to

school. The Inspectorate identified differences between schools and institutions across all sectors. For

example, at least one in twenty students at more than half of all primary schools reported that they felt unsafe,

whereas the entire pupil population felt safe at 20 percent of all schools. Such differences between schools and

school types are also common in the secondary education sector. At 8 percent of all schools more than a quarter of students feel unsafe, while for approximately one third of schools this was 5 percent or less. Students expect their school to do more. According to the Inspectorate 32 percent of all secondary school students feel teachers are not doing enough to prevent bullying. The same applies to 9 percent of all primary school students. Although primary and secondary special education institutions also regularly experience incidents, the majority of students at these schools tend to feel safe. A large number of students at special

education schools suffer from social and/or emotional problems, resulting in behavioural issues. This calls for

management boards and team members with a high level of specialised pedagogical skills.

The fact that bullying takes place and the lack of security experienced by some students underline the

importance of effective safety policies at schools. Depending on the sector, over 80 to 90 percent of schools

have (data from 2015) implemented safety policies aimed at the prevention and handling of incidents. Approximately 80 percent of schools have clear insight into perceptions of safety amongst their students and

staff. Although results are ultimately key, policies and monitoring represent key preconditions for a safe

school environment.

The Inspectorate concluded that aspects of safety policy were not been implemented at all schools. The

Inspectorate advised schools the following: "Regular monitoring and effective analysis can help schools

provide more targeted solutions, thus ensuring that a greater number of students get what they need. Schools must also develop a clearly-defined and broadly-supported vision on specialised pedagogical skills as part of

their efforts to prevent safety incidents". Because of the findings of the Inspectorate, and because of some

serious incidents at schools mentioned earlier, the legislator has adopted a new law. As of 1 August 2015, schools are legally required to ensure the social safety of their students.

3 THE LAW ON SAFETY IN SCHOOLS AND JURISPRUDENCE

3.1 Protection of students through different laws

An unsafe educational environment can have its influence on the participation in education and school career. Prevention and combatting social violence at school not only guarantees the right to education of children as defined under (international) law such as the International Convention of the Rights of the Child, article 29, which states that education provided by the state shall be directed to ‘the development of the child's personality, talents and mental and physical abilities to their fullest potential’. It is also important for social and economic reasons, and education policy in general (such as reducing drop-out rates).

The last years, the Dutch Ministry of Education has made quite an effort to put safety on the policy agenda. The Minister and State Secretary for Education stated in the past that school safety is a necessary condition ‘for quality of education’. This is confirmed by the Inspectorate: an effective safe environment in schools is one of the characteristics of excellent schools.

Since 1994 the Department of Education structurally invests almost 90 million euros in additional safety measures in schools and has imposed a number of measures, such as the obligation of the governing board to register incidents.

With respect to employees, there was already a clear responsibility for a safe working environment. Article 7:611 of the Civil Code stipulates that the employer should behave as ‘a good employer’ and Article 7:658, paragraph 1, of the Civil Code specifies this requirement by providing that the employer is obliged to take such measures and instructions as reasonably is necessary to protect the employee in the performance of his duties.

From August 1998 schools for primary and secondary education are obliged to have a complaint committee. They can also be addressed in case of complaints about bullying, aggression or other forms of unsafe educational circumstances. Students, parents and staff have a right to complain to a national or local organized committee. They don’t have the authority to impose a measure, only to give an advice to the school board.

Article 13, paragraph 1 under i, of the Primary Education Act (WPO), requires that the prospectus for parents, carers and students provide information which contains ‘policy regarding the security of students’. There are also legal obligations concerning safety skills of teachers. Teachers are obliged, according to article 2.5, paragraph 1, of the Competence Requirements for Teachers Act to acquire pedagogical knowledge and skills to, inter alia, “create a safe learning environment to which children can be developed into independent and responsible persons.”

Also mentioned here is special law concerning equal treatment, in case a person (teacher or learners) feels discriminated/bullied on grounds of religion, sex, race, gender etc. The Equal Treatment Act - in line with European Community legislation on equal treatment on grounds of gender - also covers besides direct discrimination, indirect discrimination. Indirect discrimination occurs when certain requirements, although neutral on their face, have a disparate impact on a group of people in relation to one of the discrimination grounds. The concept of indirect discrimination is designed to address systemic forms of discrimination. Indirect discrimination is forbidden unless it can be justified on grounds unrelated to any form of discrimination. The specific measure must correspond to a genuine need of the institution responsible for the discrimination. If a parent or student feels discriminated, they may file a complaint at the Netherlands Institute for Human Rights (NIHR), vested with powers to investigate, mediate, and give a (non-binding) judgment.

The law does not oblige applicants to approach the NIHR before filing a lawsuit with the court, nor do proceedings before the NIHR prevent court action.

Finally, a teacher is obliged to report any case of sexual abuse of a minor to the school board immediately. The school board itself should then consult specialized inspectors (Section 4a WPO) and if there is a reasonable presumption that a felony has been committed, they should report it to the police.

3.2 Specific law on safety of students

In general, the governing board of the school must organize its educational provision in such a way “that students can undergo an unimpeded process of intellectual development, with teaching adapted to suit their progress” (according to the Primary and Secondary Education Act).

The Children's Ombudsman, the Ministry of Education and the Inspectorate after some serious incidents (mentioned above) and an increase of complaints from angry parents, students, teachers and school leaders on safety issues, especially the increase on cyberbullying, concluded that there was need for action, for a specific law. The government decided to intervene and to come up with a plan of action against bullying. On March 25, 2013 the government, on behalf of the Children's Ombudsman, sent a plan for action against bullying to the House of Representatives. The plan of action against bullying had been established in close consultation with students, parents, teachers, school leaders, school administrators and involved leaders in civil society. The plan of approach initiated three lines: setting standards and awareness, empowerment of schools and establishing a legal framework.

Eventually, the law passed both Chambers of Parliament in June 2015. According to the law, a governing board has a duty of care towards students, to foster “their social, psychological and physical safety” (Section 3c, WVO and similar provision in the WPO).

The law requires that, at the very least, the school compile and actually implement a safety policy covering social, psychological and physical factors, that this include a cohesive set of measures to prevent and deal with incidents and that it be rooted firmly in the school’s educational policy and day-to-day teaching practice. The official explanatory note to the amendment adding this provision to the statute book states that the minimum requirement for a school to qualify as “safe” is that the psychological, social and physical safety of its students are not compromised by the actions of other persons.

The law states that the school must monitor the safety of its students on an annual basis, using a tool able to provide a representative and current picture of the situation (Section 3b-1b, WVO). A school can only operate an effective policy in this area if it properly understands both the actual and the perceived safety and well-being of its students.

For parents and students alike, it is important that there be an accessible point of contact in the event of bullying incidents. For this reason, the law (Section 3b-1c, WVO) requires that every school entrust the following tasks to a nominated person:

- coordinating its anti-bullying policy; and,
- serving as point of contact for bullying-related matters.

Furthermore, the school’s educational provision must foster active citizenship and social integration (Section 17, WVO). To this end, verbal and other expressions by teachers should reflect the basic values of a democratic society and they should intervene in the event that students make statements at odds with those

values.

In sum: the school assures its students' social, psychological and physical safety on and around its premises throughout the school day. Amongst other things, this is evident from the students' own feeling of safety and well-being, which is measured by the school at least once a year.

The school must operate a safety policy, described in either the school plan or a separate document, designed to prevent, manage, record and evaluate any incidents. Should the findings of its monitoring procedures so dictate, the school takes adequate measures to improve the situation.

A school can also set its own standards, and ask the Inspectorate to – voluntarily- give a judgement on so called 'self-defined quality factors on safety'. This via the task has the school set itself in its school plan; how is it going about achieving this and is it succeeding? Possible factors are for instance:

- social media policy;
- preventive measures;
- coordination with relevant outside actors, for instance child protection.

3.3 First experiences with the law

Did the new law have an effect and impact? A research report in June 2016, so a year after the law was passed, questioned 847 teachers in primary and secondary education (DUO, 2016). They were asked whether the climate at their school since the introduction of this law had changed. A vast majority of teachers (primary education, 80%; secondary education, 79%), stated that the climate had not changed at school since the introduction of the law. Of the teachers who indicate that the climate had changed at school, the majority believed that the (social) atmosphere had become safer at school. This applied both to primary education and to secondary education.

In the yearly report of the Dutch Inspectorate, *The State of Education (2016)*, over the years 2014/2015 the Inspectorate reported that for the second consecutive year, confidential inspectors received a smaller number of reports. However, the reports they did receive concerned increasingly complex and urgent issues. For example, the number of reports on sexual abuse increased over the course of the past school year, and were more likely to concern teachers or other staff members. Reports are also taking on a more legal dimension, as parents are increasingly likely to involve a legal counsel in the proceedings. The reports also reflect current social developments. For instance, a rise in the number of reports on discrimination. The number of reports on radicalised youths also increased slightly and the notion of the first ever reports on students potentially seeking to travel to Syria to fight for ISIS.

The number of reports of sexual harassment also increased. In most cases, these reports concern unwanted forms of touching, or undesirable behaviour on social media. The Inspectorate called upon the schools to take action: "This increase is a source of concern. We ask schools to take action against sexual violence against children and young people in order to guarantee their safety. Schools and institutions must ensure that their codes of conduct are consistently applied to all teachers, non-teaching staff and students. They must also provide appropriate sex education, encourage resilience amongst their students and prevent unsafe situations"

On the other hand, over the years 2014/15, the Inspectorate received fewer reports of physical and emotional abuse, especially from the primary education sector. An increased focus on safety and further measures in this area appeared to have had effect, even before the law was implemented. The reports received from secondary schools however included a growing number of incidents in the area of physical violence. More than half of

these cases concerned – in some cases severe – bodily harm.

The Inspectorate will make a full report on the legal obligations for schools concerning safety as of 2017, so the first real evidence based consequences of the law are expected in 2018.

3.4 Jurisprudence on harassment and bullying

The school has a duty to provide students a safe environment, where the risk of both mental and physical injury - as much as is reasonably possible - should be avoided. This obligation can be shaped by the monitoring. The supervisory task focuses both on preventing accidents and on protecting children against undesirable behaviour of other students (peer-to-peer harassment) or employees.

A general rule in Dutch jurisprudence is that older students have their own responsibility or duty of care. Foreseeability and avoidability of accidents and incidents in general are major standards of review. The degree of foreseeability of the occurrence of a given harmful result is therefore decisive for the teachers or counselors to standards of care of the required intervention.

When it comes to bullying or student-student-to-student harassment, Dutch courts already for a number of years, before the law on safety was put in place, imputed a duty on schools to develop anti-bullying policies and to make a reasonable effort to prevent bullying (Huisman, 2012). Up till now, a governing board has not been held liable, even in cases in which measures were proposed by that board and had failed. Only if in a specific situation at a school, the situation requires specific measures and the school board has failed to take those actions, there might be a case of negligence. If there is a general policy preventing and addressing bullying in the school, and bullying is discussed in the classroom by the group supervisor and the parents of the children concerned are informed, the court will likely come to the conclusion that the school board has done enough, even though these measures might not have any result. In a case where a pupil in secondary education was bullied by racist and anti-Semitic remarks, the court considered that the school board had taken sufficient measures by sending a letter to all teachers and telephoning fellow students, including the instigator of the harassment (Court of Utrecht, 25 of June 2008).

Completely uncertain are the obligations of the school board when the bullying has taken place wholly or partially outside the school and the school's playground. The case law on this point is unclear. In a judgment of the District Court of 's-Hertogenbosch, it was determined that a school cannot be blamed for bullying outside the school. In contrast, the court in the so called 'lover boy' case opened up the possibility that the school is responsible for situations that occur outside the school and the safety of the student at risk. In this particular case a girl sued a school for vocational training. She claimed she was recruited by a juvenile pimp at the age of 12 and in the four years that followed, she was forced to take part in criminal activities and prostitution. The mother complained that the school had failed to inform her about the truancy of her daughter. During three years this was not mentioned in the contacts between the mentor of the girl and the mother. During this absence, the girl allegedly was being forced to prostitute herself. The places where the alleged violence and drug trafficking should have occurred, were however not covered by a surveillance camera. In a procedure before a school complaints committee her complaints were acknowledged. Whereupon the mother sued for 74,000 euros in damages. The civil court of Zwolle ruled in 2010 that the school was not liable. Data from the school was such that in the first year, she claimed she was recruited by the 'loverboy' no records showed that there was a case of truancy. The other years, the number of hours of absence were not excessively high. The judge ruled that the care of a minor child primarily is a task of the parents and not the governing board of the school. This case shows that the parent will have to come with substantial evidence, if they sue

the school, on basis of a tort lawsuit.

Since the introduction of the internet, and the huge influence of social media on interaction between children, bullying has entered a new dimension. Cyberbullying is not materially different from face-to-face bullying, according to government officials. However, the question is what specific obligations the school boards have in this matter. It is not clearly defined in policy documents and there is, as far as known, no Dutch case law (yet) on cyber bullying. There are only some (non-binding) opinions from the National Complaints Committee (Landelijke klachtcommissie), such as a case concerning bullying via social media. The committee stated the following principle: "It's not the responsibility of the school to actively explore the sites on which students are active, and to check if they meet the standard or internet-protocol of the school. It is true that if the school receives signals of bullying via the internet, the school is free to visit the site (which is generally - by nature of the Internet- public) to check the allegations. In the case of [x] there was reason for the school to visit his site on Hyves [Dutch version of Facebook-PHSP] because, without the school itself being active on the Internet, it was found that, among other things, this site contained a poll titled "Who is the stupidest kid of the class." Precisely because in recent years there were problems in the classroom with bullying of children, it was understandable that the school had been committed to prevent bullying and subsequently contacted [x]. [The school] acted not improperly."

Probably a lot of cases concerning bullying on the internet are, when the school is involved, settled out of court. The aim will be to respect both the privacy of the students, as well as to prevent media-attention (a possible 'viral' on twitter), which can be harmful to the reputation of the school.

4 PROVIDING SAFETY BY EXPULSION AND THE SITUATION OF STUDENTS WITH SPECIAL NEEDS

4.1 Different obligations

In cases where students pose a threat to the safety of their fellow-students or teachers due to transgressive behaviour, the school may decide to issue a suspension. Schools are obliged to report any suspensions for a period of more than one day to the Inspectorate. This duty to notify the Inspectorate is new to primary schools and primary and secondary special education institutions.

In some cases, a student's behaviour is so serious that he or she must be sent to another school. The student will then be expelled or referred to another facility. This procedure is relatively complex, as the new school will also have to accommodate the student and parents will have to cooperate. This can result in delays, especially in cases where schools, governing boards of schools, partnerships and truancy officers fail to cooperate effectively and educational consultants are not – or only barely – involved in the process. Expulsions are a rare occurrence at primary and secondary special education institutions.

There is however a growing problem within schools, now the new laws on inclusive education are put in place (see par. 2.2). As a result of the growing emphasis on education for children with special needs, more students are currently attending regular schools while the populations at special education institutions are shrinking. The percentage of students attending special education institutions and special primary schools declined over the past two years (Dutch Inspectorate, 2016). Schools have indicated that administrative duties currently take up more time than the necessary consultations. New tasks relating to the provision of support to students also present a complex challenge. Schools perceive current workloads (in terms of the duration and complexity of procedures) to be greater. Parents on the other hand generally wish to be involved more intensively and do not

always have the sense that they are being taken seriously. Many parents find it difficult to determine the scope of their rights.

Providing 'suitable education' for children with special needs, a legal obligation, by keeping students with special needs as long as possible within regular education, puts governing bodies sometimes in a dilemma. Expulsion of a student with special needs is sometimes necessary in light of keeping other students safe, but the law imposes the obligation to find another school that the student wants to enrol. In a number (and possible in growing number of cases) – contravening the law- students are suspended for several months, not receiving any education. In this way, the duty of care for a safe environment can, at the same time, put pressure on the individual right of students with special needs.

4.2 The Johannes school case

An example of a case in which different interests had to be weighed is the following. The court in The Hague in 2013 (21 of March, C/09/437205 / KG ZA 13-167) ruled a case in which a group of parents sued the governing board of a Catholic school for primary education for a wrongful act. The board was about to enrol a child (7 years of age) who in the past had shown repeated cross-border sexual behaviour towards fellow students, in some cases with a serious character. The parents argued that their children would face a potential dangerous situation, and that repetition of the offence was not ruled out. They furthermore put forward that there was a breach of the special duty of care for the safety and health of the students entrusted to the care of the governing board.

The court in her decision ruled that the school “reasonably came to the decision to allow the student to attend the Johannes school. To this end, it is important that the student according to the experts who treated him currently, state that [x] does not pose a greater risk for sexual cross-border behaviour than any other random child. Furthermore, the implementation of the established safety plan, with the student being continuously supervised, provides sufficient safeguards for a safe school climate. Now, according to experts, there is no reason to place the student in special primary education, the governing board was not obliged to investigate the possibility to put him on a school for special education by a commission on special needs”. An important consideration by the court concerned the report of the board meeting, in which the board had taken the necessary steps to acquire knowledge of the relevant facts and had gathered the relevant interests to be considered and discussed and weighted the facts and interests. In addition, the experts in their opinions had emphasized the great importance of the student to participate in (mainstream) education because of the psychological consequences of constant social isolation. Thus, in this case the principal right of the governing board to select students, the right to enrol a student with a certain past, was upheld, given also the fact that the board acted carefully.

5 PROVIDING A SAFE ENVIRONMENT FOR STUDENTS: THE LAW AS A SOLUTION OR AN OBSTACLE?

A number of serious incidents at school involving suicides of students and various reports from the Inspectorate led to expanding the law on providing a safe environment, in a broad sense, for students. Is there a lack of clear responsibilities of the governing board concerning a safe educational environment? And is the so called 'risk-based supervision' by the Dutch Inspectorate also resulting in minimal monitoring of compliance with the legal obligations? Most of the criteria the inspection uses to assess the safety of a school

are paper criteria. Most schools consider it ‘red tape’. The Inspectorate only checks if a school has a plan, and not (until 2018) whether it’s effective. For the implementation and effectiveness, the Inspectorate is dependent on information from the school itself, any reports from parents and / or students or media reports.

One can also point to the fact that attention to school safety is usually limited to the purchase of a particular method or program, and often it is insufficiently clear which methods and approaches are effective and are matched for a specific school. In short, the actual situation in Dutch schools is often like this: there is a policy, but very few people in school are aware of it, or know how to deal with a situation of severe bullying or harassment when it occurs. Teachers sometimes lack the expertise and skills, for instance, to deal with new types of harassment via social media. Incidents concerning bullying or sexual abuse may be ‘covered up’, because of fear of possible consequences for the reputation of the school.

Should a school take more preventive measures? And should there be a specific legal obligation for schools concerning cyberbullying? The law, how extensive as it might be, can never rule out any form of harassment etc. Protection by the law should be weighed against the effect on teachers and possible juridification of education. Expectations should be managed; can a school be held accountable for all hazardous situations in the social and psychological sphere of students? Where does the responsibility of a school start and where does it end?

Legal protection is another important issue in this matter. Parents and students have to prove in a civil court case that the governing board was incompetent. Only in cases of gross negligence, will the school be held liable. There is therefore only a narrow opportunity to claim damages from schools which have not taken proper steps to ensure a safe and sound educational environment. In a legal dispute with the school board, parents and students have no access to the legal and financial resources the school boards or the employee, through his union, have at their disposal. It is therefore necessary that – instead of costly actions before a court- parents have easy access to for instance mediation. In the Netherlands we have taken that path, through accessible complaints committees.

One could argue that a case of severe bullying has as an ultimate effect, that is: the infringement of the international (practical and effective) right to education. Children who are afraid to go to school may be kept at home by their parents. Regarding Dutch Law, one of the goals of education, established by law, is the continuous development of students. Children who are victims of social violence or bullying are hindered in that development, and it is the task of the board to create a learning path, which enables them to continue their school career without any hindrance from other students.

Of course, new legislation and putting new obligations on school boards is not the final answer. It is also raising awareness of all those involved, which could lead the way forward; schools, teachers, parents, and students themselves should be involved in that process.

List of References

Huisman, P.W.A (2012), *Providing a safe educational environment; a scan of the legal situation in the Netherlands*, paper for the European Association for Education Law and Policy, Brussels

Huisman, P.W.A. (2014), *Education Law in the Netherlands*. In Ch.J. Russo (Ed.), *The yearbook of Education Law 2013*, Dayton: Education Law Association

Inspectorate of Education (2016), *The State of Education*, Inspectorate of Education, Utrecht Netherlands.

Van Grinsven, V, & Woud, L. van der (2016), *Sociale veiligheid op school*, DUO onderzoek, Utrecht, Netherlands.

Zoontjens, P.J.J. & Glenn, C,L (2012), *The Netherlands*, in: Balancing freedom, autonomy and accountability in education. Glenn, C. L. & De Groof, J. (eds.). Nijmegen: Wolf Legal Publishers (WLP), Vol. 2, p. 333-362.