



Black and Minority Ethnic  
Women's Network

**Submission to the Department of  
Education**

**Addressing Bullying in Schools Bill**

**January 2016**

## **Introduction**

- 1.1 The Black and Minority Ethnic Women's Network (BMEWN) is a women led organisation that advocates for change on issues affecting black and minority ethnic (BME) women in Northern Ireland (NI). The aim of the network is to develop the capacity of ethnic minority women so that they can support and assist their communities in accessing services, furthering their human rights and developing sustainable community based leadership.
- 1.2 The Network welcomes the opportunity to report on the 'Addressing Bullying in Schools Bill' and notes the particular difficulty of racial bullying that many BME pupils face within schools in Northern Ireland.<sup>1</sup> The Network also notes the importance of educational achievement in maximising employment opportunities and life chances. To this end, the Network is concerned that increasing numbers of BME pupils are underperforming at school and previous high levels of achievement are decreasing.<sup>2</sup> Research by NICEM has indicated that many BME pupils face racial harassment at school which is unaddressed.<sup>3</sup> This has led to many BME pupils feeling estranged from the school community as they do not feel that school promotes a safe learning environment and as a result their education suffers.<sup>4</sup>

## **Legal Framework**

- 2.1 The Network notes that a number of human rights instruments are applicable in relation to children's right to an education, discrimination and the protection from all forms of violence. In particular, the UN Convention on the Rights of the Child (UNCRC); Article 28 – the right to an education which may be breached if schools do not implement anti bullying policies which adequately address 'drop out' rates of children due to bullying, Article 19 – protection from all forms of violence which may be breached if schools do not implement anti

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<sup>1</sup> P Connolly and M Keenan, 'The Hidden Truth: Racist Harassment in Northern Ireland' Northern Ireland Statistics and Research Agency 2001 page 9

<sup>2</sup> Equality Commission 'Key Inequalities in Education' 2015  
[http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Education-KeyInequalities\\_DraftStatement.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Education-KeyInequalities_DraftStatement.pdf) page 14 - 19

<sup>3</sup> NICEM 'Promoting Racial Equality in Northern Ireland's Post Primary Schools' page 28

<sup>4</sup> Equality Commission (n-2) page 14

bullying policies which adequately address the physical and psychological harm caused to children by bullying, Article 2 – protection from discrimination which may be breached schools do not adopt sufficient anti bullying policies to address when a child is bullied due to difference or perceived difference.

- 3.1 The European Convention on Human Rights is also applicable; Article 3 prohibits inhuman and degrading treatment – many children subjected to bullying find that it is akin to torture, Article 14 prohibits discrimination and the individual’s ability to enjoy other rights.

### ***Definition of Bullying***

- 4.1 The Network welcomes the effort to provide a legal definition of bullying in schools. However, it notes three areas in which the proposed definition is too narrow in scope and in which it may be in breach of human rights obligations. Firstly, the Bill defines bullying as a ‘repeated act’;

(Bullying is...)**(a) the repeated use of a verbal, written or electronic communication or a physical act (or a combination of those)**

- 4.2 To define bullying in this way does not allow for a ‘single act’ to be classed as such. This is particularly relevant for instances of racial bullying. Research has indicated, for example, that a distinction can be made between ‘hot and cold’ racial harassment; ‘cold’ racial harassment has a calculated intent to cause harm to an individual because of their racial identity whereas ‘hot’ racial harassment usually occurs in the heat of the moment - with the intention of causing harm to an individual because of their racial identity in a single act which is not repeated.<sup>5</sup> Either way, hot or cold, repeated or singular act, the intention of the bully is cause harm.
- 4.3 This can be evidenced in pupil responses to the frequency in which they take part in bullying activities. For example, 23.9% of Year 9 boys admitted bullying other pupils once or twice yet only 4.2% of Year 9 boys bullied in a

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<sup>5</sup> Connolly and Keenan (n-1) 18

more frequent repetitive fashion.<sup>6</sup> Similar responses are recorded for Year 9 girls; 15.2% admitted bullying behaviour once or twice while only 1.7% bullied in a more frequent repetitive fashion.<sup>7</sup>

- 4.4 The definition of bullying should not, therefore, place additional weight on the repetitiveness of an action at the expense of the intention of the bully's actions and the harm caused to the recipient of the bullying; it is simply irrelevant whether the harm caused is through a repeated or a single act.
- 4.5 To record a single act as bullying would also give schools a chance to direct early intervention measures at the child/children engaging in bullying behaviour. If, as suggested, bullying is a pattern of behaviour then an early intervention offers the best chance to challenge this before it becomes a repetitive activity.
- 4.6 Further, if bullying is defined as a repetitive action then it is suggested that singular acts actioned by a pupil against another pupil should be defined as 'aggressive behaviour' and subjected to individual schools' internal disciplinary processes.<sup>8</sup> The Education and Libraries (NI) Order 2003 requires grant aided schools to introduce an anti-bullying component to their discipline policy, but as schools are not deemed public authorities and are therefore unaccountable, it is unclear whether all grant aided schools in Northern Ireland follow equality guidelines and give due regard to section 75 in formulating their disciplinary processes. This is particularly important if there is a racial element to the 'aggressive behaviour' as vulnerable BME pupils may clearly be subject to racial harassment but because it is defined by a school as a single incident it is termed instead as aggressive behaviour. BME pupils may therefore not be receiving the support and guidance they require when faced with racial harassment and schools may not be taking any steps to address racial harassment through their disciplinary processes. This may be in breach of the UK's human rights obligations (see paragraphs 2.1 and 3.1).

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<sup>6</sup> G Livesey et al, DOE, 'The Nature and Extent of Bullying in Schools in the North of Ireland' 2007 page 46

<sup>7</sup> Ibid

<sup>8</sup> Consultation Document DOE 'Addressing Bullying in Schools' 15

4.7 Secondly, the Network notes that the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 Article 4A defines racial harassment as;

(1) A person (A) subjects another person (B) to harassment in any circumstances relevant for the purposes referred to in Article 3 (1B) where, on the grounds of race or ethnic or national origins, A engages in unwanted conduct which has the purpose or effect of – (a) violating B’s dignity, or 9b) creating an intimidating, hostile, degrading or offensive environment for B. (2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should be reasonably considered as having that effect.’

This is a much wider framework than the proposed definition for bullying. It eliminates the bully’s ‘intent’ and replaces with ‘purpose and effect’, it places more weight on how the recipient of the bullying perceives the bullying and it recognises that racial harassment creates an ‘intimidating, hostile, degrading or offensive environment.’ This is of particular importance in the school environment as racial bullying is often excused as ‘everyday banter’ and ‘kids being kids.’<sup>9</sup> For those BME children who are subjected to this kind of bullying it increases a sense of ‘otherness’ and erodes a sense of belonging within the community. The Network proposes therefore that the definition of bullying should be;

**(a) the *singular* or repeated use of a verbal, written or electronic communication or a physical act (or a combination of those), (b) by a pupil or a group of pupils or *teacher/staff*, (c) against another pupil or group of pupils or *teacher/staff* (d) with the *purpose and effect* of causing physical or emotional harm to that pupil or group of pupils or *creating an intimidating, hostile, degrading or offensive environment for that pupil or groups of pupils.***

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<sup>9</sup> Connolly and Keenan (n-1) page 25

4.8 Thirdly, the Network notes that the proposed definition of bullying is limited to between pupils only.

**(b) by a pupil or a group of pupils, (c) against another pupil or group of pupils, (d) with the intention of causing physical or emotional harm to that pupil or group of pupils. (2) For the purposes of subsection (1), “act” includes “omission”.**

Academic guidelines suggest that a power imbalance is inherent within bullying<sup>10</sup> and as such a definition of bullying should include pupil toward teacher/staff and also staff/teacher toward pupil. The current proposals suggest that these should be classified as ‘aggressive behaviour’ and should, as before, in para 4.6 be dealt with under the individual school’s internal disciplinary processes.<sup>11</sup> As before, if there is a racial element to the ‘aggressive behaviour’ then this may not be recorded as such by the school under their discipline policy. This may be in breach of equality and human rights guidelines. (see para 4.6)

## **Proposed Changes**

4.9 the definition of bullying should be widened to:

**(a) the *singular* or repeated use of a verbal, written or electronic communication or a physical act (or a combination of those), (b) by a pupil or a group of pupils or *teacher/staff*, (c) against another pupil or group of pupils or *teacher/staff* (d) with the *purpose and effect* of causing physical or emotional harm to that pupil or group of pupils or *creating an intimidating, hostile, degrading or offensive environment for that pupil or groups of pupils.***

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<sup>10</sup> N Purdy and C McGuckin ‘*Cyberbullying and the Law*’ 2013  
<http://www.stran.ac.uk/nont4docs/PurdyandMcGuckinCyberbullyingandtheLaw.pdf> page 6

<sup>11</sup> Consultation Document DOE ‘Addressing Bullying in Schools’ page 3

### ***Duty of Board of Governors to secure measures to prevent bullying***

5.1 The Network welcomes the role of the Board of Governors in ensuring that policies designed to prevent bullying are pursued at schools and also in determining measures to be taken at schools to prevent bullying. However, section 2 (c) (1) proposes that the measures taken by the Board of Governors are reviewed from time to time. Given the speedy evolution of forums for bullying through internet social media and its ever growing dominance over young people, the statelier rate of review 'from time to time' of measures designed to prevent bullying will, perhaps, be inadequate. The Network suggests therefore that the Board of Governors review of preventative measures is conducted yearly, contained perhaps within an annual report which is made readily available to school staff, parents, pupils, DOE and any other interested party.

#### **Proposed Change**

**5.2 The Board of Governors should review its bullying preventative measures yearly and record this within an annual report.**

### ***Duty to keep a record of incidents of bullying***

6.1 The Network welcomes legislation placing a duty on schools to keep a record of incidents of bullying and to record the motivating factor for bullying. However, the Network notes two areas in which the proposed legislation should be clarified.

6.2 Firstly, the proposed bill will require schools to keep a record of bullying incidents that occur;

- (a) on the premises of the school during the school day;**
- (b) while travelling to or from the school during the school term; or (c) while the pupil is in the lawful control or charge of a member of the staff of the school**

This leaves a gap in which bullying may still take place through modern forms of social media (i.e. Twitter, Facebook) but outside of school hours, at the

weekend and during holidays. The Network acknowledges that this is a difficult legal area for schools in terms of responsibility for pupil's actions, especially when the bullying occurs on social media where the identity of the bully may not always be immediately apparent. However, if the identity of the bully can be ascertained then the Network suggests that schools should work in collaboration with the victim of the bullying and keep a record of the 'bullying event' (i.e. a screenshot of social media posts) so that it may be passed on to the relevant authorities (PSNI). The Network would also like to see schools strongly engaging with those pupils who are bullied in this way; offering support and guidance and ensuring that the pupil feels safe within the school environment. The Network further notes that outside of the context of the school environment, instances of 'bullying' that occur through social media are termed as harassment and can result in criminal prosecution; if the harassment is racial in content then it can result in a recorded hate incident. Schools should therefore form strong communication forums between pupils, parents and the PSNI to ensure that instances of this kind of behaviour are dealt with quickly; the safety and support of the victim should be paramount. Further guidance from schools working in collaboration with the PSNI should be issued to all parents and pupils regarding this difficult legal area.

- 6.3 Secondly, section 3 (3) requires that schools record a motivating factor for the bullying. While the Network welcomes that race is recognised as a motivating factor in school bullying it would encourage the addition of ethnicity to the list. Although the Race Relations Order 2003 recognises racial groups as including ethnic minority groups there may arise some situations in which a child is bullied for multiple reasons. The recording of bullying motivating factors in this way may provide some assistance to schools in recognising if children of a particular race or ethnicity are more vulnerable targets for bullying. In turn this may enhance early intervention or anti bullying education programmes schools could employ. The Network proposes therefore that the legislation should read 'race and/or ethnicity.'



## Proposed Changes

- 6.4 A clear set of guidelines should be drawn up (with involvement of DOE and PSNI) in relation to responsibility for pupil bullying that occurs out of school hours. The guidelines should be issued to all pupils and parents. For those pupils and parents whose first language is not English, the guidelines should be translated.
- 6.5 As the legal responsibilities for out of school hours bullying are currently unclear, the Network suggests that if the identity of the bully can be ascertained then the 'bully event' should still be recorded by the schools and then (if necessary) passed on to the relevant authorities (i.e. PSNI).
- 6.6 Section 3 (3) g should read race and/or ethnicity

### *Preventing bullying*

- 7.1 The Network notes that the proposed legislation makes no mention of measures to prevent bullying and would welcome proposals which schools could take to prevent racial bullying and promote a safe learning environment for all children. The KiVa programme offers a good practice example; 'holistic' behavioural modification (of the bully) reinforced throughout the whole school environment.<sup>12</sup>

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<sup>12</sup> K Laitinen 'Children's Rights and a Safe Learning Environment; KiVa A National Anti Bullying Programme for Finnish Schools' 2012  
[http://www.oph.fi/download/143565\\_Kristiina\\_Laitinen\\_Pestalozzi\\_KiVa\\_04\\_10\\_2012.pdf](http://www.oph.fi/download/143565_Kristiina_Laitinen_Pestalozzi_KiVa_04_10_2012.pdf)