



## **NAHT (NI) response Education Committee call for evidence: Addressing Bullying in Schools Bill**

**Closing date: Tuesday 5<sup>th</sup> January 2016**

### **Introduction**

NAHT (NI) welcomes the opportunity to respond to this call for evidence. In addition to our written response, we would be happy to provide oral evidence to the Committee.

NAHT is an independent trade union and professional association with 29,000 members in England, Wales and Northern Ireland. Members include principals, vice principals, assistant head teachers, bursars and school business managers. They hold leadership positions in early years, primary, special, secondary and independent schools, sixth form colleges, outdoor education centres, pupil referral units, social service establishments and other education settings. The membership represents 40 per cent of secondary and 85 per cent of primary schools in England, Wales and Northern Ireland. Since September 2014, we also represent middle leaders in schools through NAHT Edge. This places the NAHT in an excellent position to provide an informed practitioner position which covers the viewpoint of leaders across all phases of education.

NAHT (NI) welcomes the proposal to bring forward new initiatives that will support school leaders tackling bullying in schools. We have, however, a number of concerns regarding the proposed legislation as outlined below. This response follows concerns raised in our February 2015 response to the "DENI Addressing Bullying in Schools Consultation". Currently, responsibility lies with the Principal in the first instance to ensure that a school's discipline policy is followed. Therefore, it is essential that the views contained in this response are carefully considered.

From the outset, it must be acknowledged that much good practice exists within schools in Northern Ireland and that the development and implementation of such initiatives has been driven by school leaders. Many schools have stand-alone anti-bullying policies in addition to their discipline policies. While such initiatives should be highly commended,

it is recognised that bullying continues to be a persistent problem within schools for a variety of complex reasons.

Tackling bullying must be a government priority. Every child must feel safe and secure in their school environment in order to get the best start in life. School leaders must be supported in developing tailored initiatives to consider the needs of their schools as this is addressed. It must be acknowledged that considering the needs of children and young people goes beyond the remit of individual schools. NAHT(NI) believes all stakeholders concerned with the wellbeing and development of children must work collaboratively to address bullying and, in this respect, tackling bullying is beyond the limited scope of the proposed legislation.

NAHT (NI) wishes to provide comment on each of the following clauses of the Bill as outlined below;

## **Clause 1: Definition of Bullying**

### **1. Provision of a common definition of bullying**

#### **a. Concerns in respect of placing the proposed definition on a statutory footing**

NAHT (NI) welcomes the development of a definition of bullying yet we are concerned at potential unintended consequences of placing such a definition on a statutory footing. Currently, there is not a common definition of bullying, however, it is recognised that schools do have legally defined responsibilities. Greater clarity would be welcomed in respect of these responsibilities. Schools must be provided with guidance in the form of a clear statement of responsibilities incorporating a definition of bullying. Such a definition will assist school leaders in ensuring the rights of all children are upheld in conjunction with obligations.<sup>1</sup>

In administering such a definition, consideration should be given to the fact that different schools have different circumstances. While a definition is welcome, uniformly holding each school to account under the same legal standard will not reflect the different challenges faced by schools throughout Northern Ireland.

In particular, we are concerned that applying a mainstream bullying definition to a special school may have unintended detrimental consequences. Many special school leaders and staff tailor specialist bullying policies to reflect the highly complex needs of

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<sup>1</sup> contained within the United Nations Convention on the Rights of the Child (UNCRC) notably Article 28 which states that children have a right to an education and that school discipline must be administered 'in a manner consistent with the child's human dignity'.

the children within their often greatly diverse educational setting. All stakeholders involved with pupil wellbeing, including governors, parents and staff, must work collaboratively to address bullying. Therefore, tackling bullying in such a content is beyond the limited scope of the proposed legislation and a uniform statutory definition. For a more detailed explanation of the acute difficulties in applying a statutory definition to a special school setting, NAHT would endorse the submission made by Tor Bank School to this consultation.

In addition, we are concerned that putting this definition on a statutory footing may have unintended consequences for vulnerable learners in any school setting that have above average rates of behavioural issues and disadvantage. Such schools may have excellent policies and procedures and staff initiatives in place, yet barriers and factors beyond the control of the school may mean the school will struggle to fulfil the legislative requirements. This may have implications with regard to inspection, thus damaging staff morale and inhibiting tailored initiatives.

It must be recognised that a definition alone cannot prevent bullying: such a new policy/legislative change must be supported by guidance and adequate resourcing as part of a collaborative, inter-departmental strategy. As it is the intention of the Assembly to develop a statutory definition, we have commented in this response as to how this definition could be strengthened. We would, however, recommend that further consultation and piloting of the definition in schools is undertaken before it is placed on a statutory footing.

**b. Concerns in respect of the content of the draft definition:**

- i) Omission of “Power imbalance” from the definition;

International best practice recognises that there are three key defining criteria for bullying, namely repetition, intent and power imbalance.<sup>2</sup> Whilst the proposed definition of the Bill does include reference to intent and repetition, (referred to below) it does not reference the key element of a power imbalance. We wish to know the rationale for this highly concerning omission. Schools and school leaders possess a great deal of experience and expertise with regard to pupil relations and are capable of distinguishing between bullying (where there is an imbalance of power) and deliberate, repeated aggressive behaviour between equals (e.g. playground fights). Those who are closest to the children are often best placed to identify situations. To omit such a crucial aspect of the definition will have detrimental consequences and will undoubtedly lead to schools having to record many more (non-bullying) incidents than necessary, thus inflating the statistics.

- ii) Clause 1. (1) a) use of “repeated”

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<sup>2</sup> See footnote 17 of Assembly research paper NIAR 612-15

We are cautious that the Bill identifies repetition as a key criterion for bullying. Whilst repetition can be a crucial element in many instances of bullying, it must be acknowledged that the actions of the perpetrator are central, whether they act once or repeatedly. In order to address scenarios related to the complexity of cyberbullying, we would also recommend the committee should explore a provision to allow for single acts which may be shared repeatedly. In consideration of this, the actions and intent of the original perpetrator should remain central.

iii) Clause 1. (1) a) use of “electronic communication”

NAHT (NI) recognises that the increasing use of technology can add to the insidious nature of the problem of bullying, therefore, clear guidance on this complex area is necessary. It is beyond the scope of this legislation to adequately address all the ramifications of such a multi-faceted and legally complex emerging area. We recommend that DENI develop a separate policy and accompanying consultation process on tackling cyber-bullying. This is an area of significant concern to our members and, as such, DENI must provide clarity as a priority.

iv) Clause 1 (1) d) use of “intention”

We welcome that the definition recognises the intention to cause physical harm, whilst emotional harm may be a consequence of bullying. Further clarification as to what is meant by this is required. Accompanying guidance should give recognition of the impact of the bullying behaviour upon the victim (as it does in Scotland). This must be accounted for in initiatives leading on from the Bill.

A statutory definition incorporating intent could cause unintended detrimental consequences within a special school setting. This concept needs to be carefully applied in the context of children with behavioural and learning difficulties. For example, children with severe learning difficulties often do not “intentionally” hit out in an attempt to bully another person. A staff member with a high degree of experience and expertise who knows the child best is in the best position to be able to distinguish what is bullying as opposed to uniform application of a statutory definition.

## **Clause 2 : Duty of Board of Governors to secure measures to prevent bullying**

As the Assembly research paper highlights, a review of the effectiveness of legislated bullying definitions in the US found that a key component of any effective law was the requirements for the development and implementation of local policy.<sup>3</sup> We welcome that the Bill enables individual schools to continue to develop their own policy. In addition, we also welcome that this section of the legislation sets out the scope in which it operates. However, there are a number of areas in which greater clarity is required;

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<sup>3</sup> Assembly research paper NIAR 612-15

i) Clause 2 (1) b) i) use of “during the school day”

We welcome that the legislation defines the scope of the school’s responsibility as that which involves “registered pupils at the school... on the premises of the school during the school day”. In the experience of our members, parents frequently approach schools to request they deal with incidents (more frequently cyber bullying) that have happened out of school hours. Schools and school leaders cannot be responsible for what happens outside of the school day. However, school leaders do recognise that bullying can be complex and what may start outside of school can have consequences within school.

The Department must thoroughly inform parents of the remit of school responsibility. When incidents have occurred which are beyond the remit of the school, parents should be provided with guidance and means of support to ensure situations are dealt with effectively. Tackling bullying effectively requires action by all agencies with responsibility for the welfare of children. A co-ordinated, inter-agency approach must be developed with the welfare of children its central priority.

ii) Clause 2 (ii) While travelling to or from school during the school term

Schools cannot be responsible for incidents that take place during journeys over which they have no control. Greater clarity is needed in respect of this provision, including the responsibilities of transport providers.

i) Clause 2, 3 (3)a) ii: Removal of the Principal’s duty in respect of bullying

Part II of the Education (NI) Order 1998 currently affords head teachers discretion in determining measures to regulate pupil conduct on a day to day basis in line with the school’s overall scheme of management. The Education Order already provides that the Board of Governors is responsible for policies for good behaviour and discipline of pupils. While central guidance to ensure consistency of approach would be helpful, autonomy of school leaders to tackle the acute issues faced in their schools must be given. Boards of Governors cannot be on site to implement policies on a daily basis and nor should they. NAHT(NI), therefore, is concerned at the proposed shift of legal responsibility to Boards of Governors.

The financial memorandum of the Bill states that this duty is removed in order to “prevent any conflict”. We are concerned that increased liability for voluntary boards of governors has the potential to increase conflict as opposed to preventing it. Whilst legislatively, the responsibility will lie with the governors, practically, the responsibility will lie with the school leader. Whilst governors provide an essential supportive function to schools, practically, governors are further removed from the day to day life of the school and therefore would not have the direct contact with pupils and parents that the school leader has that enables them to deal swiftly and effectively with incidents of bullying when they arise.

Whilst it may be useful to have a dedicated member of the Board of Governors with responsibility for anti-bullying policies, we would be concerned that this may be an unduly onerous burden on schools with smaller boards. Greater responsibilities on governors will lead to greater training needs which could potentially lead to difficulties in recruiting new governors. NAHT (NI) would support an initiative, where appropriate, to incorporate the role of a bullying policy coordinator into the existing Board of Governors child protection officer role. This would ensure that knowledge and expertise is developed within the Board of Governors without over-burdening with limited capacity.

### **Clause 3: Duty to keep a record of incidents of bullying**

#### i) Clause 3 (1) & (2) Keeping a record of incidents

NAHT (NI) recognises the importance and value of centrally recording complaints of bullying. We have, however, concerns regarding the appropriate implementation of this initiative that could have the potential for duplication of existing practice and the impact on workload generally. In addition, we are also concerned at the potential development of a misleading “league table of bullying” which may occur as a consequence of the publication of statistics from a central record.

A key aspect of effective school leadership is the ability to handle difficult situations: handling accusations of bullying from parents and pupils requires strong interpersonal skills. When every aspect of a conversation has to be recorded as a mandatory requirement with a high level of detail, interpersonal diplomacy may become limited. This will hinder the ability of educational professionals to avert situations before they escalate. As the assembly research paper highlights, effective recording of incidents is usually dealt with by policy, not legislation, as a flexible approach is required in order to be effective, as opposed to rigorous bureaucratic monitoring.

While recording incidents is important, whether the recording happens during or after a meeting to address the incident is important. It is also essential to consider the level of detail required and whether duplications of recordings are likely. Head teachers and teachers already record and report on incidents of bullying through a variety of mechanisms. While in theory we welcome the development of a more efficient, concise method of recording incidents, this must not be done with the result of de-personalising the parent-teacher/pupil-teacher relationship and the introduction of an overly onerous, bureaucratic burden on an already over-stretched and under-resourced profession.

NAHT (NI) recognises that there is a clear and legitimate need for schools to record information on allegations of bullying, especially in respect of increasing litigation. Litigation can be costly and time-consuming and can result in increased stress for all parties involved. It can also delay the resolution of an incident thus compromising a child’s right to education. It should, therefore, be avoided where possible.

The recent case of Ryan Collins vs Trustees for the time being of Abbey Christian Brothers Grammar school (June 2014), found that the events in question had



“overwhelmed the principal and his staff”. In this case, the judge commented that the mother of the bullying victim in question had kept records of events that were of much higher quality than those kept by the school. The judge furthermore stated that the record-keeping efforts of the school “lacked a certain amount of structure”. Clear guidelines on how to structure and record incidents, along with adequate release time, would help to avoid such situations in future.

We recommend that an efficient, effective mechanism collating existing reporting mechanisms with robust guidelines and templates be developed. These should be created in partnership with stakeholders, including school leaders and should refer to the methods of bullying used and the motivation with any aggravating factors. Any new guidance or methodology must be piloted and all stakeholders must be consulted on its effectiveness. There should be clear steps for addressing incidents and definitions of terminology must be included in any such guidance.

Schools must be supported to promote a proactive, preventative approach as well as an efficient reactionary approach where incidents do occur. As pupils are more likely to report incidents to other pupils, we recommend that schools be supported to encourage a culture of reporting incidents. Peers could be encouraged to report if the victim feels they are unable to speak out themselves. Once again, to be effective, this requires a sensitive approach utilising staff interpersonal skills as opposed to new bureaucratic systems. Research shows that open condemnation of bullying leads to a reduction in its occurrence. Schools should be supported and resourced to develop approaches in partnership with parents, pupils and teaching and non-teaching staff to tackle issues holistically and foster an overall healthy school environment.

#### Clause 3 (2) & (4) The recording of sensitive data

Bullying records may contain sensitive data in respect of data protection and equality and human rights law. There must be clear guidance on the manner in which data should be kept to comply with requirements, including its retention and destruction. Guidance must be provided regarding the recording of witness statements and evidence in respect of incidents. The complications of recording such information regarding cyberbullying must also be considered.

Given the lack of clarity concerning this aspect of the Bill, we would recommend that Clause 3, article 4 be strengthened to compel DENI to publish guidance within a specified time scale.

#### ii) Clause 3) (3) motivation for bullying as a perceived characteristic of the victim

We welcome that this article gives recognition to the fact that bullying may be motivated or aggravated by a perceived characteristic of the victim. However, there should be recognition within the legislation that there may be additional aggravating factors beyond the scope of those listed. A power imbalance can relate to such factors along with physical strength, virtue of numbers, appearance, academic performance and

popularity within a peer group.<sup>4</sup> There should be explicit mention of guidance in relation to section 75 categories including homophobic, racist, sexist, transphobic, sectarian and disability related bullying and bullying that may arise through having dependents. Beyond the scope of section 75, the guidance should incorporate bullying that may arise from a child's socio-economic status and bullying that may arise through association or being "looked after". There should also be recognition of the fact that children with special educational needs are often more vulnerable in such situations.

We recommend that the department develop clear supporting guidance. Such guidance should give explicit mention to the fact that the primary motivation for bullying behaviour can often be prejudice or discrimination on the basis of actual or perceived difference with respect to, but not limited to, the various groups listed within Section 75 of the Northern Ireland Act 1998.

### **Provision and cost of adequate support and training in respect of the Bill**

The development of training courses to be rolled out identically across schools will not deal adequately with the acute bullying scenarios within each individual school. Expertise exists amongst school leaders in tackling and identifying bullying. School leaders must be given the autonomy, resources and support to tailor the most effective approach to meet the needs of their individual school.

Any new initiatives must be adequately resourced to ensure school staff and Boards of Governors are adequately equipped to deliver its implementation. The financial memorandum of the Bill states there will be additional costs involved with the new Bill in adapting and maintaining IT systems to record incidents; there is an estimate of £40k for this work which will be sought from existing 2015/16 resources.

Firstly, we wish to know, in the current overstretched budgetary climate, from where within the existing budget allocation this money will come from. With school budgets already overstretched, funding for new CPD initiatives to meet the needs of legislative duties must come from centralised funds. At the moment, 1% of the overall EA budget is allocated to teacher professional development.<sup>5</sup> We want schools to have the funding option to either buy in the centralised School Improvement Services or to be supported, funded and empowered to find and develop CPD that best meets the needs of their school. Resourcing schools adequately is vital if bullying is to be effectively addressed.

Recent survey based research carried out by the NAHT(NI) has highlighted that a lack of investment in professional development for teachers is damaging the profession. Over half of respondents rated Education Authority support as poor with the majority stating increased CPD opportunities, with corresponding release time to undertake development opportunities, were needed. We are aware that DE intends to publish their

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<sup>4</sup> Footnote 3 in Assembly research paper NIAR 612-15

<sup>5</sup> Gavin Boyd presentation at NAHT (NI) annual conference May 2015



strategy for “Teacher Professional Learning” imminently. This strategy must include effective means of supporting professional learning for teachers and school leaders. The complement of over 300 curriculum support officers has been reduced to 47 throughout Northern Ireland. We need to know what support mechanisms will be put in place to ensure schools can fulfil any new policy or legislated requirements.

Secondly, NAHT(NI) is highly concerned that warnings from the contractor delivering the IT system for monitoring, that such costs needed to be reviewed and are not accounted for, therefore, implying that the likely costs could be much higher. This figure should be reviewed and a thorough cost analysis undertaken before any legislative changes can occur.

In addition, there are other under considered resourcing issues in relation to the Bill, namely the periodic review of the school’s measures to prevent bullying, the consultation with the principal, parents and pupils and dissemination of information on bullying prevention measures to all relevant parties. A cost analysis must also be considered here. The current economic climate means that school budgets are already stretched to the limit. Without additional specified resources, schools cannot be expected to absorb the costs within existing funds.

### **Other areas of concern**

NAHT (NI) is concerned at other areas not raised in the Bill such as teacher-pupil, pupil-teacher and teacher-staff bullying. We would agree that such issues may be beyond the scope of the current Bill but we assert that these are matters which must be addressed more fully. Wider discussion and consultation is required with stakeholders to ascertain what form this consultation should take.

### **Conclusion**

Overall, we are concerned that if legislation is implemented without consideration of all ramifications and consequences, it will be of grave detriment to all staff, pupils, parents and stakeholders and may serve to exacerbate the serious problem of bullying. Schools and school leaders must be assured that adequate resources and support will be provided so they can implement any new legislative requirements. Implementation must be realistic and schools must be supported to meet requirements and ensure they are able to perform with regard to the on-going ETI inspection process.

In finding appropriate solutions, the Department must dedicate resources to develop detailed guidance and provide appropriate support, resources and assistance to school leaders to enable them to develop autonomous, tailored solutions to best address the acute needs of their pupils.

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## **NAHT(NI) Summary:**

### **Committee for Education call for evidence: Addressing Bullying in Schools Bill**

In addition to our full submission, please see below, a summary of our key points which we will address in our oral statement ;

1. We are concerned at the potential unintended consequences of placing a definition of bullying on a statutory footing given the complexity of the issue, and the different challenges faced by schools throughout Northern Ireland.
2. We are concerned that the proposal does not adequately acknowledge that addressing the needs of children and young people goes beyond the remit of individual schools. NAHT(NI) believes all stakeholders concerned with the wellbeing and development of children (including parents) must work collaboratively to address bullying.
3. We are concerned that the proposed definition does not incorporate international best practice by giving recognition to the key element of a power imbalance.
4. Whilst the Bill does address the issue of bullying by electronic communication, this legislation fails to adequately address all the ramifications of such a multi-faceted and legally complex emerging area. NAHT (NI) recommends that DENI develops a separate policy and accompanying consultation process to tackle cyber-bullying.
5. The Bill removes the Principal's duty to determine measures to prevent bullying as per the Education Order and confers the duty upon the Board Governors. We are concerned at the impact of increased liability for voluntary boards of governors. The Explanatory and Financial memorandum states that this duty has been removed "To prevent any conflict", it is not clear what is meant by this statement.
6. The Bill confers a duty to keep a record of incidents of bullying. NAHT (NI) recognises the importance and value of recording complaints, however, we have concerns regarding the appropriate implementation of this duty and the impact on workload and limited resources.
7. In addition, we are also concerned at the potential development of a misleading "league table of bullying" which may arise as a consequence of the publication of statistics from a central record. The creation of such a record would clearly be unacceptable as it would not reflect the widely varying circumstances of every school.
8. Lastly, we are concerned at resourcing issues in relation to the Bill. A cost analysis must also be considered. The current economic climate means that school budgets are already stretched to the limit. Without additional, specified resources, schools cannot be expected to absorb the costs of implementing this Bill within existing funds.