

# **TOR BANK SCHOOL (Special School) response Education Committee call for evidence: Addressing Bullying in Schools Bill**

## **General Remarks in relation to Special Schools and SEN under Inclusion Agenda**

Governors and staff welcome the proposal to bring forward any new initiatives that will support school governors, staff and leaders tackling bullying in Special Schools and other mainstream schools.

**Contextual elements of a Special School.** Tor Bank is an ‘Outstanding’ all age Special School which caters for 192 children and young people with severe to complex learning difficulties and acute medical needs. All pupils have more than one special need and/or disability and may also have a wide range of impairments affecting normal development. Children or young people therefore have one or more of the following special needs or disabilities: physical, communication, educational, emotional, behavioural, medial and/or social. Over 60% of these children are on the ASD spectrum and have associated sensory, communication and behavioural needs requiring specialist one to one intensive support. Most of the children and young people attending Tor Bank also have IQ levels of 50 and this often impacts on levels of understanding, comprehension levels, language development and emotional development.

**Programmes used to address bullying.** Tor Bank prides itself on being proactive in addressing the well-being and often complex pastoral needs of all children and young people. This is done through either individual or whole class programmes which are specifically designed to address individual needs. Bullying related issues are mainly addressed as part of the PDMU programmes, social and life skills programmes, health and well -being programmes and other personal effectiveness programmes throughout the school. They are also addressed within the individual articles and philosophy contained within UNICEF ‘Rights Respecting School’ charter (Tor Bank has got the highest award – level 2 status). The articles and principles have been interwoven into the all aspects of curriculum programme design, planning and delivery at both individual pupil, whole class level and whole school level and this has helped to staff and children alike to identify and eliminate ‘ intentional bullying-related’ behaviours immediately. Anti-bullying poster are clearly visible on walls throughout the school as are playground charters, all presented in a way in which children with low levels of literacy and reading can understand. We have therefore a number of concerns regarding the proposed legislation and its possible impact on a special school environment. These are summarised and highlighted below.

**Applying a Mainstream Bullying Definition to a Special School – reservations.** Governors trust and respect the specialist knowledge, skills and expertise of school staff, led by the Principal and Vice principal, to address ‘bullying’ proactively within the supportive nurturing framework they provide for all children. They are therefore

extremely happy with current specialist interventions, strategies and teaching methods being used to deliver such a successful on-site approach to supporting the welfare of children effectively. They have faith in the ability of the Principal and the Vice Principal in the first instance to monitor and deal with such incidents while ensuring that the school's discipline policy and appropriate support mechanisms are also followed. Being a special school Governors are actively involved in the monitoring of 'bullying-type' incidents and also receive regular feedback at Board of Governor meetings on individual cases as they arise. They also receive support programme updates as part of the on-going safeguarding procedures.

Like many other schools, Tor Bank Governors are pleased to be able to report that their stand-alone anti-bullying policies in addition to their discipline policies are also integrated and interwoven into all pastoral care programmes and policies focused on pupil well-being. While such initiatives should be highly commended, they recognise that bullying can still be a persistent problem within other schools for a variety of reasons.

While Governors appreciate that while tackling bullying must be a government priority, they also believe that every child with SEN must also feel safe and secure in their school environment in order to get the best start in life. Governors at Tor Bank School (Special School) believe that all stakeholders concerned with the concept of wellbeing must work collaboratively to address bullying and, in this respect, tackling bullying is beyond the limited scope of the proposed legislation.

## **Clause 1: Definition of Bullying – General Concerns for Special Schools**

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

#### **a. Concerns in respect of placing the proposed definition on a statutory footing for all children and young people, including those with SEN in Special Schools**

While Governors and staff welcome the development of a definition of bullying they remain concerned at the potential unintended consequences of placing such a definition on a statutory footing. It may have serious implications for Special Schools like Tor Bank School who have a complex schooling population with severe to complex needs.

Although currently there is not a common definition of bullying, it is recognised that schools do have legally defined responsibilities and Governors and staff at Tor Bank strongly believe that they undertake these in a highly beneficial and competent manner considering the resourcing limitations and constraints imposed upon them within a partially delegated framework. However, Governors and staff also welcome any proposals to give greater clarity in respect of these responsibilities confident that their on-going work in this field will be formally recognised as 'good practice' within a school for children with severe learning difficulties. They look forward to Special Schools and their complex SEN populations being provided with specialist guidance in the form of a clear statement of responsibilities incorporating a definition of bullying and how this can be applied to a special school They recognise that such a

definition will assist the Principal, Vice Principal and school staff with ensuring the rights of all children are upheld in conjunction with obligations.

In finalising and issuing such a definition however, Governors and school staff believe that consideration should be given to the fact that Special Schools have uniquely different populations than many mainstream schools which makes a common definition and interpretation of bullying extremely difficult to apply in a special school context which is often sensitive and complex. For example, often children with severe learning difficulties and challenging behaviours do not 'intentionally' hit out in an attempt to bully another person, but may do so as a response to non-compliance, sensory problems, motor control problems or ADHD. The staff member with a high degree of experience and expertise, and who knows the child best, is in the best position to be able to distinguish between bullying (where there is an in-balance of power) and deliberate, repeated aggressive behaviours between equals. The ability to use staff expertise and to trust staff opinion must be clearly contained within any definition otherwise this will cause major problems for Tor Bank and will lead to an increase in suspensions and expulsions.

While a definition is welcome, uniformly holding Tor Bank School to account under the same legal standard as mainstream provision will not reflect the different challenges faced by staff within the school in defining bullying under such limitations and this may also prove to be the case with high number of children with SEN throughout Special Schools and mainstream schools in Northern Ireland.

We are concerned that putting this definition on a statutory footing may have unintended consequences for vulnerable learners with SEN in schools that have above average rates of SEN children and young people with complex behavioural issues associated with their diagnosis and learning conditions. While schools like Tor Bank School may have excellent policies, strategies, interventions, procedures and staff initiatives in place, yet circumstances, barriers and factors (medical or otherwise) beyond the control of the school may mean Tor Bank staff will struggle to fulfil any future legislative requirements. This may also have implications with regard to inspection thus damaging staff, pupil and parental morale.

Governors would like to point out that a recognised definition alone cannot prevent bullying: such a new policy/legislative change must be supported by guidance and adequate staff training and appropriate resourcing as part of a collaborative, inter-departmental/agency Government strategy. Because of the severity of the needs of many of the children who attend Tor Bank School, Governors strongly believe that any behaviours deemed to be bullying, can best be supported in collaboration with Health Trusts and Counsellors who can provide additional specialist therapeutic input and expertise, training and input both within and outside the school context.

As it is the intention of the Assembly to develop a statutory definition, Governors have worked in collaboration with the Principal Mr Colm Davis and Vice Principal, Mrs Claire Breen and the NAHT and discussed how this definition could be strengthened ( see section 'b' onwards of NAHT submission). Tor Bank recommends however, that further consultation and piloting of definitions should be undertaken in Special Schools and those schools with a high proportion of SEN children with

Statements before it is placed on a statutory footing. SEN should not be left to the end and treated as an 'add on'. Governors and staff are more than happy to work with ETI to get an insight as to how 'bullying' is addressed at all levels within a special school and we're confident that other special schools will be happy to be included in such a survey.

Governors would also recommend that the Assembly should carry out more research into SEN and Bullying in both mainstream and Special Schools as part of any present or future consultation process. Some research particularly worth studying relates to the work undertaken by University of Cambridge on behalf of the Anti-bullying Alliance in 2010 which focused on responding to Bullying among Children with Special Educational Needs and/or Disabilities before any definition is agreed and guidance issued. There are also interesting articles in the British Journal of Special Education written by Norah Fredrickson for a NASEN publication in 2010 and other article produced by MENCAP before making any final decisions and to ensure that the needs of all pupils are being met successfully within any future legal definition.

Over the last number of years, Tor Bank has participated in such campaigns as Mencap's 'Don't stick it, stop it' and Anti-bullying weeks organised by Anti-bullying Alliance and these too have been successful. Researchers have generally found that there was a substantially higher risk of being bullied 'all the time' for disabled children in mainstream schools compared to non-disabled children. Factors such as cognitive ability, age within the school year, socio-economic background – were taken into account and disabled children were at a higher risk of being bullied. Maybe the Assembly should look into running their own campaigns for SEN students in mainstream schools and Special Schools in the future. These projects should also be aimed at local communities too where the young person with SEN or disability struggles to cope with being included within their local community. There have been recent cases of physical violence, harassment and intimidation resulting in young people hospitalised and one of these cases received significant media attention over the past few years.

**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>1</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

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<sup>1</sup> See footnote 17 of Assembly research paper NIAR 612-15

identify situations. To omit such a crucial aspect of the definition will have detrimental consequences.

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

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 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 or emotional harm. 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.

## **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>2</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;

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

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<sup>2</sup> Assembly research paper NIAR 612-15

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. 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 be developed. These should be created in partnership with stakeholders, including school leaders. 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 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>3</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

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



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>4</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 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 and 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.

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<sup>4</sup> Gavin Boyd presentation at NAHT (NI) annual conference May 2015

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 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.