



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Ref: HRC-RES-BULLYING

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CAYMAN ISLANDS

Via e-mail: Cheryl.Neblett@gov.ky

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Dear Mrs. Neblett,

RE: Response of HRC to the Law Reform Commission (“the LRC”) *Bullying: Legislation, Policy or Both? Issues Paper* (“the Paper”) dated 20 January 2016

The Commission appreciates the opportunity to provide feedback on this important issue and apologises for our delayed response in submitted feedback/comments. Our responses are structured in the same format as the questions asked by the paper.

Overall Views

The Commission is of the view that there should be both a statutory and a policy intervention to deal with this matter.

In order to achieve this, the Education Law (“the Law”) should be amended to include a discrete ‘Part’ to deal with the issue of bullying. In doing so the Ministry of Education should be tasked with regulatory oversight and the term “bullying” should be defined. The Commission offers the following definition for consideration.

“Bullying is behaviour by a person in a position of actual, or perceived, power or influence, that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to the body, feelings, self-esteem, reputation or property of a person in an actual, or perceived, position of weakness.”

The LRC might also consider adding a requirement that, before an educational institution can intervene, for the behaviour to *“create a hostile environment at school for the victim and/or materially disrupt the education process or the orderly operation of the school.”*

The Commission does not consider that repetition is required to be an element of the offence. Additionally, we note that cyberbullying is referred to in the Paper separately, but the Commission considers that cyberbullying is covered by the general definition of bullying suggested above.

In addition, each school should be required by the Law to draft and publish a written policy on bullying to be approved by the Ministry of Education. These policies should be based on mandatory minimum requirements which should be set out in a policy document drafted by the Ministry.

For way of illustration only, the policies might be required to include the following:

- i. A definition of bullying which complies with the Law.
- ii. Annual teacher training (dealing with the new legal requirements, the causes and effects of bullying, how to detect bullying, and how to deal with bullying in accordance with Ministry/school policy (i.e. possible disciplinary options based on proportionality)).
- iii. An annual student educational seminar/assembly advising and educating them on this topic and providing them with a structured, anonymous route for reporting instances of bullying.
- iv. A written procedure on how and when to report bullying to the principal and/or the referral of incidents to other agencies such as RCIPS, Counselling Services, or the Department of Children and Family Services.
- v. A legal obligation for teachers to make a report in writing to the Principal if they have reasonable grounds to suspect serious issues of bullying.
- vi. A requirement for the Principal to record in writing (perhaps in a log book) any complaints received (with annual inspection of this log book by the Ministry).
- vii. A requirement for the Principal to inform the parents of the suspected bully and victim of any incidents.

Questions for Consideration (paragraph 71 of the Paper)

- (a) Should legislation be introduced to deal with bullying and cyberbullying?

HRC Response: Yes, and should take into account the above comments.

If so, should the relevant provisions form part of the Education Law or be the subject of discrete legislation?

HRC Response: Yes. The Education Bill presents the perfect opportunity to incorporate such measures.

- (b) Should the Education Law, in an effort to further demonstrate the importance attached to education, explicitly provide that the Ministry of Education aims to build and maintain a positive and inclusive school environment and promote school safety and discipline along with bullying awareness and prevention?

HRC Response: Perhaps this could be incorporated into the preamble.

- (c) Should legislation define bullying as repeated behaviour that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another person's body, feelings, self-esteem, reputation or property?

HRC Response: Repetition should not be a pre-requisite. See suggested definition of bullying above.

- (d) Should the jurisdiction of the school to deal with bullying be defined in a manner that provides that a principal shall have jurisdiction to discipline a student if he believes that the student has engaged in misconduct including bullying or cyberbullying activities, while at school, at a school-related activity or in other circumstances away from the school where engaging in the activity will have a detrimental impact on the school climate?

HRC Response: See comments above.

- (e) Should bullying be treated as a human rights issue?

HRC Response: It is a human rights issue. The State has an obligation to provide an education for every child and also has an obligation to protect a child's physical and mental well-being whilst in the state's care.

If so, should the Ministry of Education and the Human Rights Commission develop a protocol whereby issues of bullying and cyberbullying in schools can be referred to the Human Rights Commission?

HRC Response: No. This is beyond the HRC's constitutional mandate. Issues of bullying should be dealt with within schools or the other places where they occur. Where instances are sufficiently serious they should be referred to the police.

- (f) Will a policy which provides that a perpetrator of bullying is to be excluded from school be a violation of a student's right to education and if so, should appropriate facilities be put in place to ensure that the education of the bully is not compromised notwithstanding his conduct?

HRC Response: Exclusion should be a last resort. The Ministry policy should include a staged disciplinary process starting with mandatory education and counselling and moving to increasingly more stringent disciplinary measures. If the bully continues to be unresponsive this could ultimately result in exclusion from the school. In such a situation appropriate arrangements to ensure continuity of the bully's education should be in place.

- (g) Is there a need to implement policies which require the perpetrator of bullying conduct to undergo counselling before returning to school?

HRC Response: Counselling is sensible in appropriate cases but should not necessarily be a requirement *before* returning to school.

- (h) Should bullying be treated as a criminal offence under the Penal Code?

HRC Response: In certain cases it can already constitute an offence. Various offences exist in statutes which are capable of dealing with bullying. Examples include section 88 Penal Code

(public order offences of causing a person harassment, alarm and/or distress) and section 90 ICTA Law (use of an ICT service to defraud, abuse, annoy, threaten or harass). Teachers should be educated to be made aware of these provisions, and each case should be dealt with individually.

- (i) Should bullying attract criminal and civil penalties?

HRC Response: A bully should be *liable* for prosecution (or civil action) however it may not be in the public interest for the Crown to prosecute (given the age and potential consequences for the young persons involved) save in clear cases.

- (j) What should be the penalty if a victim is injured, suffers mental distress or commits suicide as a result of the bullying?

HRC Response:

Where bullying constitutes a crime, and a prosecution is appropriate, the penalties currently provided under the law provide the courts with sufficient sentencing powers adequately to meet the gravity of the crime committed.

- (k) Should bullying be looked at as a matter which involves mental health concerns requiring that the Health Services Authority and Education Ministry partner with other relevant organisations to produce policy guidelines for prevention, identification and intervention on bullying issues within school, sport, recreation and other youth organisations?

HRC Response: Yes in appropriate cases.

- (l) Is there a need to legally oblige schools to ensure that victims of bullying and their families are involved in decisions affecting their right to education and their right to personal security?

HRC Response: They should be notified but careful consideration should be given as to whether they should be involved in the 'decision' and this may be something for consideration on an individual basis.

- (m) Should there be a legal requirement for an employee of a school to report to the principal misconduct involving bullying and cyberbullying that may have a detrimental effect on the school climate?

HRC Response: Yes.

- (n) Should the Education Law be amended to include a provision requiring that the principal investigate promptly, reports of bullying and take appropriate action as deemed necessary after having informed parents or guardians of the misconduct and the investigation?

HRC Response: Yes. The principal should have the discretion not to involve parents if documented, good, reasons are provided.

- (o) Should the Education Law be amended to include a provision requiring parents to take reasonable steps to be aware of their children’s online activities to the extent that such activities may detrimentally affect the school climate?

HRC Response: No. This would be virtually impossible to police or enforce.

- (p) Is there a need for universal policies formulated by the Ministry of Education to ensure that clear guidance is given to school officials about what constitutes bullying and cyberbullying, the types of off-site behaviour that will be captured, the appropriate actions to take in each circumstance and the use of the internet, cell-phone and other digital devices?

HRC Response: Yes.

- (q) Should the Education Law be amended to require school boards to develop and implement policies, responses and programs to address bullying and cyberbullying behaviours, consistent with the Ministry of Education’s definitions and policies with respect to bullying and cyberbullying?

HRC Response: Yes.

- (r) Should the Ministry of Education create or adopt online safety programs for primary and high school students and their parents or guardians with the view to changing attitudes and values and making such programs a prerequisite for continued access to school computers?

HRC Response: Yes.

- (s) Is there a need to assess what are the short and long-term effects of bullying on victims and aggressors and what impact policies which exist in schools have on the number of occurrences of bullying and the academic progress of both the victim and aggressors?

HRC Response: In an ideal world, but legislative intervention need not await any such assessment.

- (t) Is there a need for the Ministry of Education, universities and colleges to establish measures for collecting data to determine the scope and prevalence of bullying and cyberbullying in order to assess the effectiveness of any current programs aimed at bullying?

HRC Response: See our suggestion above of a log book, written policies and procedures and an annual ‘audit’ by the Ministry.

- (u) Is there a need for policies which require the Ministry of Education, the RCIPS and Internet service providers to work together to develop a protocol to facilitate police access to information during the investigation of bullying and cyberbullying cases?

HRC Response: The police already have these powers. The views of the RCIPS Management should be canvassed. But if a protocol is not already in place consideration should be given to creating one.

- (v) Should the Ministry of Education, in collaboration with the policing authorities, explore and support educational initiatives in which schools and police co-operate in delivering youth-focused programs?
HRC Response: Yes.
- (w) Is there a need for schools to apply restorative justice principles and develop behaviour management programmes that allow for all students to be managed and relational issues to be dealt with within the school?
HRC Response: Yes.
- (x) Should the Ministry of Education create an anti-bullying website and social media platform, for the purpose of disseminating information, sharing resources and providing online learning tools for young children, parents and the community?
HRC Response: Ideally, though we recognise the reality of limited resources.
- (y) Should the Ministry of Education organise annual conferences on bullying and cyberbullying and include issues such as poverty, race, gender, disabilities and mental health so as to sensitise the young on the issues of human differences which often times are the reasons for bullying conduct?
HRC Response: Ideally, though we recognise the reality of limited resources.
- (z) Should all sports, recreation and other organisations working with children and funded or otherwise supported by Government be required to adopt and publish formal policies and protocols addressing bullying and cyberbullying issues and provide education and training sessions on identification, intervention, policy and protocols with respect to bullying and cyberbullying, as part of training for all employees, volunteers, and officials working with children in the above organisations?
HRC Response: Ideally, though we recognise the reality of limited resources.
- (aa) Should service organisations, internet service providers, media organisations, charitable organisations and private sector partners examine the issues of bullying to forge partnerships and networks in order to provide an effective community response to bullying?
HRC Response: Ideally, though we recognise the reality of limited resources.
- (bb) Should the Ministry of Education create or adopt programs to improve technological and digital literacy for parents and community members to assist in reducing the gap between adults and young persons with respect to the forms and language of social media and virtual reality?
HRC Response: Ideally, though we recognise the reality of limited resources.
- (cc) Should the Ministry and school associations partner to create a digital and printed parents' guide to combating bullying and cyberbullying that will be made available to parents upon school registration?

HRC Response: Ideally, though we recognise the reality of limited resources.

- (dd) Should the Ministry of Education examine current curriculum offerings to identify opportunities to incorporate programmes relating to emotional learning, mental health literacy, inclusive education, restorative justice approaches and anti-bullying strategies, as part of mandatory teacher education?

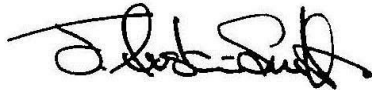
HRC Response: Ideally, though we recognise the reality of limited resources.

- (ee) Should the Ministry incorporate into all aspects of the school curriculum from kindergarten to the end of high school a focus on teaching social competence, positive interpersonal skills, anger management, nonviolent communication and conflict resolution?

HRC Response: Ideally, though we recognise the reality of limited resources.

The Commission trusts these feedback/comments will be helpful as the LRC continues to find solutions to this important issue.

Yours sincerely,



James Austin-Smith
Chairman, Human Rights Commission