

Agenda – Children, Young People and Education Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Thursday, 16 March
2017

Meeting time: 09.30

For further information contact:

Jon Antoniazzi

Committee Clerk

0300 200 6565

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Pre-meeting (09.15 – 09.30)

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 10

(09.30 – 10.20)

(Pages 1 – 67)

Iestyn Davies, Chief Executive – Colegau Cymru

Joe Baldwin, Director of Learner Services, Bridgend College

Humie Webbe, Equality and Diversity Champion – NTFW

Attached Documents:

Research Brief

CYPE(5)–09–17 – Papur | Paper 1 – ColegauCymru

CYPE(5)–09–17 – Papur | Paper 2 – National Training Federation for Wales
(NTfW)



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

3 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 11

(10.20 – 11.10)

(Pages 68 – 94)

Eleri Griffiths, Policy Manager – Mudiad Meithrin

Claire Protheroe, Direct Services Manager (Wales) – PACEY

Jane O’Kane, Professional Head of Health Visiting– All Wales Health Visitor Forum

Jayne Morris, Lead Health Visitor for Children with Disabilities

Andrea Wright, lead manager for Additional Learning Needs – Wales PPA

Attached Documents:

CYPE(5)–09–17 – Papur | Paper 3 – Mudiad Meithrin (for internal purposes only)

CYPE(5)–09–17 – Papur | Paper 3 – Mudiad Meithrin

CYPE(5)–09–17 – Papur | Paper 4 – PACEY Cymru

CYPE(5)–09–17 – Papur | Paper 5 – Wales Preschool Providers Association

Break (11.10 – 11.20)

4 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 12

(11.20 – 12.00)

(Pages 95 – 120)

Sara Moran, Policy and Public Affairs Manager – Diabetes UK

Dr Justin Warner, RCPCH member in Wales and consultant at UHW

Mandy East, National Coordinator – Anaphylaxis Campaign

Ann Sivapatham, Wales Manager – Epilepsy Action

Attached Documents:

CYPE(5)–09–17– Papur | Paper 6 – Diabetes UK

CYPE(5)–09–17– Papur | Paper 7 – RCPCH

CYPE(5)–09–17– Papur | Paper 8 – Anaphylaxis Campaign

CYPE(5)–09–17– Papur | Paper 9 – Epilepsy Action

5 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 13

(12.05 – 12.55)

(Pages 121 – 132)

Dr Dave Williams, Divisional Director Family and Therapy Services, Aneurin Bevan University Health Board

Rosemarie Whittle, Head of Operations and Delivery, Community Child Health Directorate, Cardiff and Vale University Health Board

Ellis Peters, Lead for Paediatric Occupational Therapy, Transition and Learning Disabilities OT Service, Powys Teaching Health Board

Attached Documents:

CYPE(5)-09-17- Papur | Paper 10 – NHS Confederation

CYPE(5)-09-17- Papur | Paper 11 – Aneurin Bevan University Health Board

6 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 14

(12.55 – 13.45)

(Pages 133 – 137)

Alison Davies, Associate Director, Professional Practice – Royal College of Nursing Wales

Lisa Turnbull, Policy and Public Affairs Adviser – Royal College of Nursing Wales

Attached Documents:

CYPE(5)-09-17- Papur | Paper 12 – Royal College Nursing

Lunch (13.45 – 14.40)

7 Additional Learning Needs and Education Tribunal (Wales) Bill – evidence session 15

(14.40 – 15.30)

(Pages 138 – 154)

Dr Karina Dancza, Professional Advisor, Children and Young People, College of Occupational Therapists

Sarah Lewis–Simms, Principal Occupational Therapist for Children, Cwm Taff LHB
and a Member of the College of Occupation Therapists

Kate Fallon, General Secretary – Association of Educational Psychologists

Mary Greening, Nation lead in Wales – Association of Educational Psychologists

Dr Alison Stroud, Head of Wales Office – Royal College of Speech and Language
Therapists

Pippa Cotterill, Professional lead for school aged children – Royal College of
Speech and Language Therapists

Attached Documents:

CYPE(5)–09–17– Papur | Paper 13 – College of Occupational Therapists

CYPE(5)–09–17– Papur | Paper 14 – Association of Ed Psychologists

CYPE(5)–09–17– Papur | Paper 15 – Royal College of Speech and Language
Therapists (RCSLT)

8 Paper(s) to note

(15.30)

**Letter from the Chair to the Cabinet Secretary for Education and Cabinet Secretary
for Health, Wellbeing and Sport**

(Pages 155 – 156)

Attached Documents:

CYPE(5)–09–17 – Papur | Paper 16 – i'w nodi | to note

**Letter from the Chair to the Cabinet Secretary for Health, Wellbeing and Sport
following the meeting on 18 January**

(Pages 157 – 158)

Attached Documents:

CYPE(5)–09–17 – Papur | Paper 17 – i'w nodi | to note

Letter from the Minister for Lifelong Learning and Welsh Language – Update on the Supporting Learners with Health Care Needs Guidance

(Pages 159 – 160)

Attached Documents:

CYPE(5)-09-17 – Papur | Paper 18 – i'w nodi | to note

Letter from the Minister for Lifelong Learning and Welsh Language – further financial information on the Additional Learning Needs and Education Tribunal (Wales) Bill

(Pages 161 – 166)

Attached Documents:

CYPE(5)-09-17 – Papur | Paper 19 – i'w nodi | to note

9 Motion under Standing Order 17.42 to resolve to exclude the public from Item 1 at the meeting on 22 March

(15.30)

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Response to National Assembly for Wales' Children, Young People and Education Committee:

Consultation on Additional Learning Needs and Education Tribunal (Wales) Bill

Mawrth/March 2017

Introduction

ColegauCymru welcomes the opportunity to respond to the National Assembly for Wales' Children, Young People and Education Committee inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill. ColegauCymru is a charity and limited company that represents the 14 Further Education (FE) colleges and FE institutions in Wales and exists to promote the public benefit of post compulsory education and learning.

ColegauCymru undertakes extensive research, develops policy and provides responses based on the best available evidence, utilising its network of educators and policy experts. It is the designated National Contact Point for Skills, a role which it discharges on behalf of the Welsh Government.

Its policy is informed by regular exchange of ideas and experiences facilitated by the European Commission's Erasmus+ programme and through participation in the British Council's International Education Programme.

Colleges are major providers of general education provision in Wales, helping to produce some of the best learner outcomes. Colleges are the predominant providers of funded vocational and technical education in Wales, providing about 85% of the total provision.

Additional Learning Needs and Education Tribunal (Wales) Bill

1. Principles and need for legislation

ColegauCymru supports the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and considers that there is a definite and long overdue need for an update to legislation and supports the need for effective collaboration, where provision should be planned well in advance and where 'learners must be supported to participate in mainstream education.... As fully as possible wherever this is feasible'. To deliver the Bill's stated policy objectives, new legislation is necessary.

2. Potential barriers to the implementation of the key provisions and whether the Bill takes account of them

In a written statement, the Minister for Lifelong Learning and Welsh Language announced a £20m support package for ALN. However, at strategic and ministerial level meetings, there is little mention or consideration of FE and the impact of the ALN Bill and Code on FE.

The significant lack of knowledge and understanding of Further Education Institutions (FEIs) and their role, capacity and limitations in educating and supporting learners with complex needs cannot be overlooked;

Awareness of the FE sector in preparing for changes in legislation – key provisions within this legislation will present new duties for FEIs and major change which will require considerable preparation. Many of those who are instrumental in implementing this new legislation have a background of working with pre-16 learners and associate special educational needs (SEN) work with school provision. Local Authorities and Regional Consortia are not currently in the habit of including FEIs in planning and in their training and project work. This needs to change both in preparation for legislation and for effective multi-agency working;

Effective information sharing between schools, colleges and other multi-agency partners. There is a need for much improved information sharing across all stakeholders to establish an efficient and effective partnership working;

Misunderstandings surrounding ALN terminology; there is a need for WG to review this and establish a standard terminology for all parties involved (e.g. moderate learning difficulties, general learning difficulties, complex needs);

Lack of consistency across Wales regarding entitlement to specialist/residential provision. There is a need to aim for greater consistency in the decision making about those learners that are going to residential when FE could accommodate, whilst recognising the core group that will require residential provision;

Uncertainties about who pays for what in terms of specialist services for learners needs to be resolved; there is a need to strengthen the role of health – including Health Boards and healthcare professionals working with learners – and to ensure that the health sector takes full account of the needs identified by FE;

Late transition processes and a poor flow of information regarding learners with ALN enrolling at FEIs. This has an impact on curriculum planning and timetabling. The current view that transition cannot be done earlier is not tenable and there has to be more flexibility. Consideration should be given to the sharing of classrooms and physical space, as well as staff, between schools and FE as part of the transition. Planning ahead without time tied into review too early is essential with a stipulation that specialist equipment follows the learner.

Local Authorities ensuring that they can bring all partners to the table to avoid agencies not understanding the decision-making process or contributing to it;

Lack of consistency regarding out of county issues and process. Although this affects only small numbers clarification is required.

3. Unintended consequences arising from the Bill

With the extension of the age range covered by the legislation, transition to FE post-16 and provision to the age of 25 may be seen by learners and their parents as a right. Avoiding this will require clear communication by multi-agency professionals, as well as some consistency of decision making, to avoid disagreement, resolution, time and costs;

Increases that will be required in ALN staffing in FEIs. Colleges face the challenge of staff who have skills, qualifications and experience retiring and thus losing their

expertise. The large number of learners will require more specialist staff, including transition specialist staff, requiring the necessary training, mentoring and support;

The risks of the impact of differences in the processes, data and paperwork, including Individual Development Plans (IDPs), between authorities for colleges working across more than one Local Authority and the impact on equality of opportunity for learners. This does recognise that there will be different IDPs relating both to learners' age and level of disability but a common electronic format would ease data recording, storage, security and transfer at the transition stages. This would require a data sharing protocol (DSP) and again the case is made for a common approach. The IDP storage and the demands and complexity of maintaining IDPs was highlighted. There needs to be a decision made about the time limit of IDP retention after a learner has left FE, recognising that some might return to education;

Impact on processes at the end of the journey. There is a need for clarity about Higher Education progression, resolution of the specific role of work-based learning and catering for support needs. Clarity will be required regarding the IDP, whether these are held by the learner, transferred to social services or whether colleges have a responsibility to retain them for a set period;

The need to maintain adult appropriate responses for FE by ensuring that the rights to exclude or include parents from the process and to opt out of having an IDP if they wish to, are protected;

The transition process needs to understand the profile of FE timetabling and how ALN learners' time in college is over four days. This enables some preparation for the purpose of the programme to be explored by spending the other day doing this (community activities, volunteering, independent living etc).

4. Financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum

Table 5 of the Explanatory Memorandum indicates an implementation grant that will be available to the FE sector. It details £70,000 for the current year and further funding for future years.¹ However, at present there has been no information given to FEIs with details of this funding. FEIs need to have time to plan – details of the allocation of funding.

FE will be required to carry out additional tasks and duties with a large (as yet unconfirmed) number of ALN learners. Most assessments carried out by FEIs suggest additional staff will need to be employed and trained to complete the work and while there may be grants available to cope with the transition, the lack of funding long-term will mean colleges are unlikely to be able to meet the requirements;

¹ *Additional Learning Needs and Education Tribunal (Wales) Bill: Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes* (December 2016), Table 5 – Welsh Government transition costs, page 124 [accessed 21 February 2017].

The amount of work and time required to participate in the reviews, with many colleges working across more than one authority. Colleges can struggle to sustain strong relationship with all their local schools at present and with this additional layer of work, colleges may require a ALNCO team working across schools clusters, led by an ALNCO, who is an overarching senior manager;

The costs of new staffing structure including the new ALNCO role and the need for more staff, administration, increased data storage exchanges / processing / reporting, staff training and qualification (managers, teaching, support staff and administration etc.). This is borne out by the experiences in England;

The need for some synergy of roles and structures within colleges with the funded training linked to these professional ALN roles. This must recognise the differences between ILS and mainstream provision for ALN learners. Colleges should undertake a skills audit and share training making effective use of the trainers already in the FE sector;

The case for joint training with partners was made quoting the examples of Educational Psychology training with FE (NPTC Group) and PATOSS (Professional Association of Teachers of Students with Specific Learning Difficulties) on areas including specific learning difficulty/dyslexia training using a cascading training model;

There are some uncertainties about who pays for what in terms of specialist services for learners and the potential costs to FE;

The need for adaptation to the physical environment and equipment to accommodate more complex needs.

5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

ColegauCymru considers that the powers in the Bill to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum) are appropriate.

In particular:

- The decision that the ALN Code, as the principal document used by those responsible for delivering the new system at the operational level is included. Provisions included within the code should be laid out before the National Assembly so that the Assembly has the opportunity to accept or reject them;
- The regulations surrounding transfer of IDPs – as these may need amending;
- The regulations surrounding the ALNCo qualifications, experience and duties – as these may need amending.
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Conclusion

The ALN profile of FEIs needs to be raised to highlight what FE can and is already doing for ALN learners. FEIs full involvement is intrinsic to this ALN reform and it

requires commitment and collaboration by all partners to secure the best possible service for all ALN learners in Wales.

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National Training Federation for Wales (NTfW) Response to the Additional Learning Needs and Education Tribunal (Wales) Bill

The following is an overall response to the terms of reference outlined in the consultation document.

- 1. The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;**
 - I. NTfW is a membership organisation of over 100 organisations involved in the delivery of learning in the workplace. It is a Wales wide representative body for all those organisations or individuals involved in the training industry.
 - II. Members range from small specialist training providers to national and international organisations, as well as Local Authorities, Further Education Institutions and Charities
 - III. NTfW welcomes the opportunity to comment on the impending ALN and Education Tribunal (Wales) Bill and considers that the underlining principle of collaborative working provides an opportunity for the Work Based Learning (WBL) sector to foster stronger links with Local Authorities and to contribute strategically to the learner's IDP.
 - IV. NTfW agree that this change is needed and that 0-25 will be a positive step forwards. We think that this provision should also be accessible to Apprenticeship learners and that the types of support available should be diverse to meet the needs of all FE Training options to include Work-Based learning.
 - V. NTfW feels that work based learning merits inclusion in the Bill to reflect provision for those learners who opt for an alternative route to their career development in the post 16 compulsory education system.
 - VI. In principle ensuring IDP's for all learners is good practice. However from a WBL perspective the Bill needs to clearly reference how and when transitional support for learners in the work place can be accessed.

VII. The WBL provider network welcomes the opportunity for stronger relationships with Local Authorities and feels that currently there is very little involvement with learners who are post 16 within Work-Based Training. Clarifications therefore are needed in the Bill around

- the capacity for transitional support
- clear lines of responsibility for the local authority and the work based learning provider.
- Managing consistency with pointed guidance on what happens if the learner changes providers and who tracks their progress?

2. Any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

- I. The WBL sector have considerable experience of supporting learners with ALN and we have many examples of the variety of support give to our learners on the Traineeship programme.
- II. Currently WBL providers can apply for Additional Learning Support (mainly resulting in 1-1 support) for learners who are deemed by Careers Wales to need it. However the process is not particularly straightforward and neither is the funding mechanism.
- III. Outside this however the Engagement programme in particular focuses on breaking down barriers to learning and to that end is very much concerned with the additional learning needs of the individuals.
- IV. How else can WBL meet our commitment to Learner Wellbeing. The reality is that learners with the most complex barriers are not those who go to college – they very often end up in work based learning.
- V. A ‘successful’ Work Based Learner could end up in training for 3-5 years (or more) if following through from traineeship to an apprenticeship programme and working through the different levels available. The proposed system therefore needs to include such a learner.

3. Whether there are any unintended consequences arising from the Bill;

- I. Where is the transitional support for Work Based Learners? There needs to be clearer guidance on how and where learners who opt to continue their learning in the work place may access support if and when needed.

- II. How will these learners be tracked? The process needs to be easy enough that these learners can move around education and the support continues with them, not having to stop and start again each time they move provider/educational establishment. It would be great to see ALS staff come with the learners!

- III. Extending this to 25 is great although we promote life-long learning opportunities. Should this not be available to all Post 16 learners regardless of age?

4. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, and the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum

- I. ALN is not properly funded under the WBL contract and the process to access a funding for learners with additional needs are not clear and can be quite complex.

- II. In relation to apprenticeship for example it might be appropriate to have access to funding for specialist equipment and/or software to support learners with Dyslexia.

This response has been compiled by the National Training Federation for Wales on behalf of the Work Based Learning Provider Network.

3 March 2017

Agenda Item 3

By virtue of paragraph(s) vi of Standing Order 17.42

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Galwad am Dystiolaeth Pwyllgor Plant, Pobl Ifanc ac Addysg Cynulliad Cenedlaethol Cymru Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)	
Eich enw	Eleri Griffiths
Rôl	Rheolwr polisi
Sefydliad	Mudiad Meithrin
E-bost cyswllt	Eleri.griffiths@mudiad.cymru
Cyfeiriad	Canolfan Integredig Mudiad Meithrin, Boulevard de Saint-Brieuc, Aberystwyth Ceredigion SY23 1PD
Cefndir Mudiad Meithrin	

Mudiad Meithrin yw'r prif ddarparwr gofal ac addysg cyfrwng Cymraeg yn y sector wirfoddol drwy rwydwaith genedlaethol o gylchoedd meithrin, cylchoedd Ti a Fi, gofal cofleidiol a meithrinfeydd dydd cyfrwng Cymraeg.

Sefydlwyd Mudiad Meithrin ym 1971. Ein prif nod yw rhoi cyfle i bob plentyn ifanc yng Nghymru fanteisio ar wasanaethau a phrofiadau blynyddoedd cynnar trwy gyfrwng y Gymraeg. Credwn hefyd ei bod yn bwysig sicrhau cyfle i bob plentyn elwa o brofiadau a gweithgareddau blynyddoedd cynnar yn ei gymuned leol.

Mae Mudiad Meithrin yn cynnal Cynlluniau Cyfeirio ar draws Cymru sy'n cefnogi plant ag anghenion ychwanegol yn y cylchoedd meithrin. Mae'r cynlluniau hyn yn cyflogi Cysylltwyr sy'n gweithio mewn partneriaeth ag asiantaethau a'r cylchoedd meithrin er budd plant a'u teuluoedd.

Gall gwasanaethau'r cynlluniau gynnwys:

- Cyfle i'r plentyn chwarae a phlant eraill yn y gymuned leol.
- Cefnogaeth aelod ychwanegol o staff yn y Cylch os oes angen
- Cyfle i drafod cefnogaeth addas i'r plentyn gyda'r Cysylltydd
- Amser rhydd i'r rhiant gyda'r sicrwydd fod plentyn yn derbyn gofal o ansawdd uchel
- Offer arbenigol
- Cyfle i'r plentyn ymuno yn yr hwyl a gwneud ffrindiau mewn awyrgylch hapus a diogel

Erbyn hyn, mae yna 551 o gylchoedd meithrin yn cynnig sesiynau gofal ac addysg ddyddiol ar gyfer plant 2 - 5 mlwydd oed a 44 meithrinfa dydd yn darparu gofal dydd llawn i blant ar draws Cymru. Mae 358 o gylchoedd Ti a Fi ledled Cymru sy'n cynnig cyfle gwych i blant o enedigaeth hyd at oed ysgol a'u rhieni gwrdd unwaith yr wythnos. Mae'r gwasanaethau yn darparu profiadau blynyddoedd cynnar i oddeutu 19,000 o blant bob wythnos.

Rydym yn cydweithio gyda rhaglen Dechrau'n Deg i ddarparu cyfleoedd yn yr ardaloedd mwyaf difreintiedig, a rydym yn cydweithio gyda phob Awdurdod Addysg lleol i gynnig addysg rhan amser i blant 3 oed yn eu cymuned leol. Er mwyn cyflawni hyn, mae Mudiad Meithrin yn elusen gofrestrdedig sy'n cyflogi dros 200 o bobl, yn staff cenedlaethol a sirol yn ogystal â mewn meithrinfeydd dydd, gyda 2000 o staff ychwanegol yn gweithio yn y cylchoedd ei hunain. Cefnogir y cylchoedd gan rwydwaith cenedlaethol o staff proffesiynol sy'n eu cynghori ar amrediad o faterion er enghraifft hybu ymarfer da, hyfforddiant staff a chyswllt ag awdurdodau Lleol. Yn ogystal, mae'r Mudiad yn gweithio yn agos iawn gyda rhieni er mwyn darparu cymorth a chynghori i'w galluogi i ddatblygu a chefnogi gwaith y cylchoedd yn y cartref.

Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)

Y Cyd-destun

Yn gyffredinol mae mudiad meithrin yn ymwybodol fod yr heriau canlynol yn effeithio ar brofiadau a chyfleoedd plant bach sydd ag ADY yng Nghymru ac sydd yn siarad Cymraeg:

Prinder mewn arbenigwyr sydd yn gallu darparu eu gwasanaethau i blant trwy gyfrwng y Gymraeg e.e. therapyddion iaith a llefaredd, ymwelwyr iechyd, seicolegwyr addysg, cynghorwyr cwnsela.

Prinder mewn cyfleoedd i gynorthwyrwyr meithrin i dderbyn hyfforddiant arbenigol ar anawsterau dysgu penodol trwy gyfrwng y Gymraeg

Prinder mewn arbenigedd ynglŷn â chefnogi datblygiad ieithyddol plant mewn cyd-destun dwyieithog.

Prinder asesiadau safonol i asesu anghenion dysgu ychwanegol trwy gyfrwng y Gymraeg

Prinder adnoddau arbenigol i gefnogi plant a phobl ifanc sydd yn derbyn addysg yn Gymraeg neu yn siaradwyr Cymraeg gartref.

Prinder mewn asesiadau arbenigol addysgiadol a datblygiad plant ar gael yn Gymraeg

Prinder mewn adnoddau i ganiatâi i blant o dan 3 oed ag ADY dwys i dderbyn cyfleoedd meithrin cyffelyb i'w cyfoedion.

Edrychwn ymlaen at weld cynnwys y Cod Ymarfer newydd maes o law ac i weld gwelliannau hanfodol i'r Bil i sicrhau fod trefniadau a chyfrifoldebau ar gyfer cefnogi plant ag ADY yn gadarn o'r cychwyn cyntaf. O safbwynt capasiti'r gweithle i roi trefniadau newydd ar waith nid ydym yn gallu dehongli eto o'r wybodaeth sydd ar gael faint o ddisgwyliadau ychwanegol fydd yn debygol o godi, ond yn ddi-os dylai rhaglenni hyfforddiant i'r gweithle gynnwys cyfleoedd i fagu arbenigedd ymarferwyr y blynyddoedd cynnar mewn materion yn ymwneud a ADY.

Egwyddorion cyffredinol ac amcanion y Bil

Cred Mudiad Meithrin y dylai'r Bil gael ei osod yn gadarn yng nghyd-destun hawliau plant trwy gynnwys cyfeiriad at Gonfensiwn y Cenhedloedd Unedig ar Hawliau Plant ar flaen y Bil fel y gwnaethpwyd gyda'r Ddeddf Gwasanaethau Cymdeithasol a Llesiant 2004 (gweler isod)

(2) Rhaid i berson sy'n arfer swyddogaethau o dan y Ddeddf hon mewn perthynas â phlentyn sy'n dod o fewn adran 6(1)(a), (b) neu (c) roi sylw dyladwy i Ran 1 o

Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn a fabwysiadwyd ac a agorwyd i'w lofnodi, ei gadarnhau a'i gytuno drwy benderfyniad y Cynulliad Cyffredinol 44/25 dyddiedig 20 Tachwedd 1989 ("y Confensiwn").

Croesawn yr egwyddor yn y Bil hwn i ddiwygio ein system ni yng Nghymru er mwyn cynnig darpariaeth dysgu ychwanegol i blant o 0-25 oed. Da hefyd yw gweld y bydd hyn yn pennu cyfrifoldebau statudol i ddiwallu angen pob plentyn a pherson ifanc sydd ag anghenion dysgu ychwanegol o unrhyw fath. Mae Mudiad Meithrin yn cytuno fod deddfwriaeth yn hollbwysig i gyflawni hyn.

Nodwn fod y diffiniad o'r amcanion sydd yn ymddangos yn y memorandwm yn annigonol, i ddiwallu'r egwyddorion cyffredinol. Yn benodol mae paragraff 3.3 yn datgan y bydd y Bil yn creu:

a) fframwaith deddfwriaethol unedig ar gyfer cefnogi pob plentyn ag ADY sydd o oedran ysgol orfodol neu'n iau a phob person ifanc sydd ag ADY sydd mewn ysgol neu addysg bellach (AB);

b) proses integredig a chydweithredol o asesu, cynllunio a monitro sy'n hwyluso ymyriadau cynnar, amserol ac effeithiol;

Gan ddilyn y nodau craidd a amlinellir yn y memorandwm hoffai Mudiad Meithrin godi'r materion canlynol:

AMCAN CRAIDD 1

3.5 Cyflwyno'r term Anghenion Dysgu Ychwanegol (ADY)

Mae'r diffiniad sydd yn cael ei gynnig yn y Bil yn dehongli ADY yng nghyd-destun cyrhaeddiad disgwylidiedig plentyn erbyn eu bod yn cyrraedd oed ysgol yn unig. Mae hyn yn ddiffiniad cul o 'ddysgu' sydd ddim yn cydnabod y broses o sut mae babanod a phlant yn datblygu. Wrth lynu at ddiffiniadau sydd yn ddibynnol ar gyd-destun addysg ffurfiol, mae perygl i anghenion plant am symbyliad (stimulation) anogaeth a rhyngweithio cymdeithasol (sydd yn gwbl hanfodol i ddatblygiad ymenyddol plant bach) gael ei anwybyddu neu ei ddiystyru. Wrth ystyried asesu anghenion ychwanegol addysgol plant bach o dan dair oed, dylai eu mynediad i brofiadau cynnar holl bwysig (fel cymdeithasu a chwarae mewn lleoliad fel Cylch Ti a Fi neu Gylch Meithrin) fod yn ystyriaeth.

Weithiau bydd anghenion llawer mwy sylfaenol am wasanaethau arbenigol e.e.. Ffysio-therapi, Therapi Iaith a Llefaredd ac ati, ymhell cyn i'r plentyn gyrraedd oedran ysgol. Ni fydd y diffiniad hwn yn arwain at wasanaeth i'r plentyn oni bai bod modd dangos sut y byddai eu trafferthion yn effeithio ar allu 'dysgu' yn yr ysgol yn y dyfodol.

Byddai ehangu'r diffiniadau i fod yn gynhwysfawr tuag at fabanod a phlant bach trwy ddefnyddio gwybodaeth am ddatblygiad plant yn hytrach nag 'addysg' plant

yn unig yn gwella ansawdd a defnydd y diffiniad yn y Bil hwn.

AMCAN CRAIDD 2

3.6 Ystod oedran 0 i 25: Mae'r Bil yn dwyn ynghyd y systemau deddfwriaethol presennol a gwahanol ar gyfer cefnogi:

a) plant a phobl ifanc o oedran ysgol orfodol sydd ag AAA;

b) pobl ifanc mewn addysg bellach sydd ag anableddau a/neu anawsterau dysgu.

Er ei fod yn fwriad gan y Bil i gysoni asesu a chefnogi plant o 0 - 25, mae yna rwystrau penodol a bylchau yn y Bil lle nad oes digon o wybodaeth. Nid yw'n eglur sut y bydd y systemau newydd yn effeithio ar blant a babanod (cyn iddynt gyrraedd ysgolion a gynhelir neu ysgolion prif ffrwd). O ystyried y diffiniad uchod a ymddengys yn y memorandwm (t10), gellid tybio nad yw'n fwriad i gynnwys plant o dan oedran ysgol orfodol o gwbl!

Cydnabyddwn fod cyfeiriadau achlysurol yn y Bil ei hun at blant o dan oedran ysgol. Maent yn anghyson serch hynny ac ni cheir darlun clir o sut dylai babanod a phlant (a'i rhieni/gofalwyr) ddod i gysylltiad â'r gwasanaethau cywir cyn cyrraedd oed ysgol.

Gan ddyfynnu o'r Bil:

3 (2) Ystyr "darpariaeth ddysgu ychwanegol" i blentyn sy'n iau na thair oed yw darpariaeth

addysgol o unrhyw fath.

Fel yr ydym eisoes wedi nodi nid yw'r diffiniad hwn yn ddigonol i gwmpasu anghenion datblygiad plant o dan dair oed, lle bod posibilrwydd fod cefnogaeth addas y tu hwnt i ddiffiniad cefnogaeth 'addysgiadol'. Mae ystod eang o ymyraethau priodol ar gael i helpu datblygiad babanod a phlant (therapi iaith a llfaredd, cefnogaeth heriau ymddygiadol neu anawsterau emosiynol; anghenion synhwyraidd neu gorfforol heb ddiagnosis, problemau clyw, problemau gweld, anawsterau cyfathrebu ac ati) Byddai'r rhain oll yn rhwystr i'r plentyn ac yn effeithio ar ei g/allu i ddatblygu perthnasau cymdeithasol ac i ddysgu yn y pendraw. Darperir y gwasanaethau hyn gan y gwasanaethau iechyd fel arfer.

(Mae'n wir i nodi hefyd nad ydy'r ddarpariaeth i bobl ifanc dros 16 yn ddigonol gan nad ydyw'n delio gyda'r sefyllfa pan fo pobl ifanc yn ceisio mynychu addysgu uwch neu gyfleoedd prentisiaethau, neu yn derbyn addysg trwy gorff wedi ei is-gontractio i ysgol neu goleg addysg pellach.)

AMCAN CRAIDD 3

3.8 Cynllun unedig

Mae Pennod 2 y mesur yn amlinellu'r cynlluniau a'r bwriadau o safbwynt paratoi a chynnal Cynlluniau Dysgu Unigol (CDU). Mae'n hanfodol bwysig fod plant o dan oedran ysgol yn gallu cael CDU yn ôl yr angen am y rhesymau a nodwyd eisoes uchod. Rydym yn gweld y bydd plant o dan oedran ysgol yn dod o dan gyfrifoldeb yr awdurdodau lleol a bydd dyletswydd arnynt i : (a) llunio a chynnal cynllun datblygu unigol

(11 Dyletswydd i benderfynu: awdurdodau lleol T.14 o'r Bil).

Braf fyddai gweld cyfeiriad cadarnhaol at ddyletswyddau'r awdurdod lleol tuag at blant 0-3 oed ar wyneb y Bil yn hytrach na bod yn rhaid dehongli pwy sydd yn gyfrifol am CDU plant yn y blynyddoedd cynnar, trwy ddadansoddi'r rhestr o'r rheiny nad sydd yn gymwys i dderbyn cynllun gan yr awdurdod lleol. Mae hyn yn ei wneud yn annelwig i deuluoedd yn ogystal ag i bobl broffesiynol. Cydnabyddwn fod hyn yn cael ei egluro yn fwy clir yn y Cod ymarfer.

Croesawn yr ymrwymiad isod i barchu dewisiadau ieithyddol y plentyn a'r teulu.

(5) Os yw'r awdurdod lleol yn llunio cynllun datblygu unigol ar gyfer plentyn neu berson ifanc, rhaid iddo—

(a) penderfynu a ddylai darpariaeth ddysgu ychwanegol gael ei darparu yn Gymraeg i'r plentyn neu'r person ifanc, a

Dylid cynnwys manylion pellach yn y canllawiau (Cod) am sut yn union y dylai'r awdurdod weithredu'r ddyletswydd hon tra'n hysbysu teuluoedd o fanteision dwyieithrwydd, pa wasanaethau sydd yn addas yn ieithyddol yn ogystal â dewis iaith addysgiadol y plentyn yn y dyfodol. Ni ellir trafod natur y gefnogaeth a chyfrwng iaith priodol y CDU na'r gwasanaethau heb ddealltwriaeth da o anghenion a dewisiadau ieithyddol y teulu.

Wrth lunio disgwyliadau am y broses o bennu ym mha iaith y bydd unrhyw ddarpariaeth ag asesiadau yn cael eu cynna; mae angen cyngor arbenigol yn rhan o'r Cod neu'r memorandwm ynglŷn a sut i wneud hyn. Mae angen ystyried iaith y cartref, cyfrwng iaith addysg neu ofal y plentyn, cyfrwng iaith yr ysgol y bydd y plentyn yn ei fynychu os nad ydynt wedi cyrraedd oed ysgol. Bydd angen arweiniad ar y materion hyn cyn i'r Bil ddod i rym.

Mae'r ffaith nad oes unrhyw gyfeiriad at leoliadau gofal plant nas cynhelir a'u swyddogaethau nhw wrth ymwneud a phlant fydd ag ADY yn destun pryder mawr. Mae arfer gref a chadarn wedi eu sefydlu ers blynyddoedd o gydweithio rhwng y Sector gwirfoddol a'r Awdurdodau lleol i leoli a chefnogi plant sydd angen darpariaeth dysgu ychwanegol. Trwy gynlluniau cyfeirio megis Law yn Llaw mae plant ar draws Cymru wedi ac yn cael profiadau addysg gynnar werthfawr ac addysgiadol. Mae perygl i'r diffyg cyfeiriad at hyn yn y Bil ac yn y memorandwm niweidio darpariaethau a phartneriaethau sydd eisoes yn bodoli a thrin gwasanaethau sydd yn holl bwysig i blant a'u teuluoedd fel rhywbeth gwbl ymylol i'r broses statudol o gefnogi plant sydd a ADY. Hoffai Mudiad meithrin weld y ddyletswydd statudol a fydd gan yr awdurdodau lleol yn cael ei ymestyn i gynnwys cydweithio gyda phartneriaid priodol i asesu a darparu'r gwasanaethau

ychwanegol i gefnogi plant ag ADY yn y blynyddoedd cynnar.

Cefnogwn yr alwad am dempled cenedlaethol ar gyfer Cynllun Datblygu Unigol a fydd yn mynd i'r afael a chysoni gwasanaethau rhywfaint ar lawr gwlad, Byddai hyn yn hwyluso'r broses o symud ardaloedd i blant a'u teuluoedd a hyfforddi'r gweithle ar draws Cymru.

AMCAN CRAIDD 4

3.9 Cynnwys plant a phobl ifanc yn fwy:

Croesawn y bwriad i sicrhau fod barn plant, eu rhieni a phobl ifanc yn cael ei hystyried bob amser fel rhan o'r broses gynllunio. Nid yw'n amlwg yn y Bil pa rannau o'r broses 'gynllunio' sydd yn berthnasol. Byddai'n welliant pe bai'r ddyletswydd hon yn cynnwys gwrando ar farn rhieni a phlant / pobl ifanc ynglŷn ag asesiadau priodol, ymyraethau priodol, dewis iaith y gwasanaeth, dewis iaith addysg y dyfodol a phrofiad y defnyddwyr o'r gwasanaethau dros y cyfnod pan fod CDU yn weithredol.

AMCAN CRAIDD 5

3.10 Dyheadau uchel a gwell deilliannau.

Mae mudiad meithrin yn cytuno â'r amcan hon.

AMCAN CRAIDD 6

3.11 System symlach sy'n achosi llai o wrthdaro

Mae mudiad meithrin yn cytuno â'r amcan hon

AMCAN CRAIDD 7

3.12 Rhagor o gydweithredu

Cytuna Mudiad Meithrin a'r amcan hon. Nid ydym o'r farn fod y trefniadau cyfeirio, asesu, cynllunio CDU a darparu sydd wedi eu nodi yn y Bil yn addas nac yn ddigonol at y blynyddoedd cynnar. Gan ddyfynnu o'r memorandwm:

'Er na fydd angen cymorth penodol ran iechyd ar y rhan fwyaf o blant ag ADY gan na fydd eu hanghenion ychwanegol yn gysylltiedig ag iechyd, os yw'n berthnasol ac yn briodol gellir cael cyngor a chymorth gan weithwyr iechyd proffesiynol'.

Yn y blynyddoedd cynnar mae'n debygol mae'r gwasanaethau iechyd fydd y cyntaf i adnabod anghenion dysgu ychwanegol. Mae'n bwysig fod y system newydd yn gallu ymgymryd yn gyflym ac amserol gyda chyfeiriadau oddi wrth wasanaethau iechyd at yr awdurdod lleol, i asesu a gosod CDU yn ei le (i gynnwys gwasanaethau iechyd).

Ar hyn o bryd nid oes unrhyw ddarpariaeth yn y Bil i ganiatâi i wasanaeth arall yn y blynyddoedd cynnar gyfeirio yn uniongyrchol at yr awdurdod lleol i ofyn am asesiad a chefnogaeth briodol i blant o dan oed ysgol. Dylid adolygu hyn a sicrhau fod modd i'r rheiny sydd yn darparu gofal plant gyfeirio at wasanaeth arbenigol lleol (gyda chefnogaeth

deuluol) i sicrhau fod unrhyw ADY yn cael eu hystyried a'u diwallu yn briodol.

Mae lleoliadau gofal plant fel meithrinfeydd a chylchoedd meithrin wedi magu profiad ac arbenigedd yn y maes cynhwysiant. Mae'r diffyg cydnabyddiaeth o hyn fel y gwelir yn y Bil ac yn y Memorandwm yn siomedig ac yn peryglu tanseilio'r gwaith da hanesyddol sydd wedi ei wneud mewn lleoliadau gofal plant.

Gan ystyried y cyd-destun polisi cyfredol i gynyddu niferoedd y plant sy'n derbyn gofal plant ag addysg gynnar (y Polisi 30 awr), mae'n bwysicach nag erioed fod llwybrau cyfathrebu a chyfeirio clir ar gael. Rhaid i rieni a gofalwyr; darparwyr gofal plant a darparwyr addysg gynnar wybod sut i gael help a chefnogaeth ar gychwyn profiadau dysgu plant bach pan fod amheuaeth am eu ADY.

AMCAN CRAIDD 8

3.13 Er mwyn hyrwyddo cydweithredu, mae'r Bil yn gosod dyletswydd newydd ar fyrdau iechyd i benodi Swyddog Arweiniol Clinigol Addysg Dynodedig (DECLO).

Cytunwn ei fod yn hollbwysig fod cyfrifoldebau ar awdurdodau iechyd i asesu a darparu gwasanaethau priodol i blant ag ADY. Croesawn yr angen i ystyried pa ddewis iaith sydd yn addas ar gyfer y gwasanaethau hyn. Nid yw'n eglur sut y bydd Cynllun Plentyn Iach Cymru yn cydweithio a chyd-reddeg gyda dyletswyddau'r awdurdod lleol. Pe bai disgwyl i'r DECLO ymdrin a phob achos unigol ble fod gwasanaethau iechyd yn cydweithio gyda'r awdurdod lleol gallai'r pwysau ar y system olygu arafwch ag oedi wrth geisio asesu a darparu gwasanaethau i blant ag ADY.

AMCAN CRAIDD 9

3.14 Osgoi anghytundebau a'u datrys yn gynharach

Mae Mudiad Meithrin yn cytuno mewn egwyddor. Ceir dyletswydd yn y Bil ar awdurdodau lleol i ddarparu gwasanaethau eirioli annibynnol ar gyfer plentyn neu berson ifanc. Dylsai hyn gynnwys gwasanaethau eirioli i rieni hefyd er mwyn ei bod yn gallu deall prosesau a phenderfyniadau a chyfranogi yn llawn. Nis oes cyfeiriad yn y Bil at yr angen i'r gwasanaeth hwn fod ar gael yn Gymraeg pan fo angen hynny.

AMCAN CRAIDD 10

3.15 Hawliau clir a chyson i apelio

Mae Mudiad Meithrin yn cytuno mewn egwyddor. Nid oes sôn yn y Bil ynglŷn a defnydd iaith yn y Tribiwnlys Addysg Cymru. Mae'n holl bwysig fod plant a theuluoedd sydd yn ceisio apelio ynglŷn a gwasanaethau annigonol yn gallu gwneud hynny drwy gyfrwng iaith eu dewis os ydyw'n Gymraeg neu'n Saesneg. Hefyd, nid yw'n ddigonol bod y corff sydd a chyfrifoldeb dros lunio CDU (e.e. Corff llywodraethol, Coleg Addysg Bellach neu'r Awdurdod Lleol) ddangos y cymerwyd 'camau rhesymol' yn unig i ddarparu darpariaeth addysgiadol ychwanegol Gymraeg. Nid yw'n glir wedyn a fydd modd i deulu apelio pan na roddwyd gwasanaethau Cymraeg priodol iddynt. Nid oes yma feini prawf i egluro ystyr 'camau rhesymol' ac felly mae perygl y bydd teuluoedd a phlant ag ADY sydd angen gwasanaethau Cymraeg ond yn methu eu cael, hefyd yn methu apelio ynglŷn a diffygion mewn darpariaeth o'r fath.

AMCAN CRAIDD 11

3.16 Cod gorfodol:

Croesawn fod bwriad i gryfhau statws cyfreithiol y Cod arfaethedig newydd. Gwelwn ei fod yn fwriad i gynnwys canllawiau sy'n ymwneud a swyddogaethau amryw o gryf gan gynnwys

(d) person sy'n darparu addysg feithrin a gyllidir o dan drefniadau a wneir gan awdurdod lleol yn unol â'r ddyletswydd....

Byddai modd cryfhau cydweithrediad rhwng darparwyr gofal plant a'r awdurdodau lleol trwy ymestyn y ddyletswydd hon i gynnwys lleoliadau sydd wedi eu cofrestru o dan system arolygu AGGCC i ddarparu gwasanaethau gofal plant. Byddai hyn yn sicrhau cysondeb rhwng darparwyr wrth i'r sector dyfu i fodloni'r galw am ofal 30 awr i blant, a byddai'n sicrhau fod modd i'r awdurdod lleol gydweithio gyda meithrinfeydd a chylchoedd meithrin a grwpiau cyffelyb wrth sicrhau hawliau plant bach i wasanaethau cynhwysiant priodol. Mae hyn eisoes wedi bod yn digwydd ers blynnyddoedd ar lawr gwlad a gresyn fyddai colli'r arferion da hyn.

Yn y Safonau Gofynnol Cenedlaethol ar gyfer Gofal Plant a Reoleiddir ar gyfer plant hyd at 12 oed. Mae Safon 4: Diwallu anghenion unigol yn datgan yn benodol

4.5 bod y Cod Ymarfer cyfredol ar gyfer Anghenion Addysgol Arbennig (neu Anghenion Dysgu Ychwanegol) ar gyfer Cymru yn cael ei ddilyn. Lle bo'n briodol, bod anghenion penodol plentyn yn cael eu diwallu drwy ddarparu cyfarpar arbennig;

Canlyniad Anfwriadol

Mae'r ddyletswydd gyfreithiol ar leoliadau gofal plant cofrestredig i ystyried Cod Ymarfer AAA 2004 eisoes yn bodoli ac yn ffurfio rhan o'i harolygiadau gan yr AGGCC. Mae'n bwysig gan eu bod yn gorfod dilyn y Cod cyfredol eu bod yn cael y cyfle i fod yn rhan o unrhyw ymgynghoriadau a thrafodaethau gyda phartneriaid lleol ynglŷn â'i weithrediad.

PACEY Cymru response to the Children, Young People and Education Committee consultation on the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill – March 2017

1. Background

This is PACEY Cymru's response to the Children, Young People and Education Committee consultation. PACEY Cymru are grateful for the opportunity to put forward information for consideration under this consultation. This response is provided in relation to our area of expertise, which is from the perspective of the childcare and early years sector. PACEY Cymru have not commented on areas where it is felt that other organisations may be better placed to provide a response.

We have also given some key points for consideration where there are links between the Bill and the Draft Additional Learning Needs Code though we are aware this will be consulted on separately.

PACEY Cymru would like to suggest consideration of the following in order to support the capacity of the workforce within the childcare and early years' sector to prepare for and deliver the new arrangements from the ALN Bill.

2. Comments and key points for consideration on the Bill

2a. Identification of ALN in pre-school settings

PACEY Cymru welcome the step this Bill provides to ensure there is consistency in support for all learners from 0 – 25 years with ALN. This includes recognition of the importance of early identification of ALN, timely support and flexibility to adapt plans promptly in order to meet individual needs. PACEY Cymru also welcomes the recognition that the Bill gives to the role that childcare providers, along with other professionals, have in identifying needs and concerns in the early years. The role of the Additional Learning Needs Coordinator (ALNCo.) within each childcare and early years settings is, and will continue to be, key in relation to liaison. The draft Additional Learning Needs Code clearly defines the role that the ALNCo has in supporting and facilitating links and smooth transitions between these, other settings, schools and other services.

PACEY Cymru wish for this to be further strengthened within the Draft Additional Learning Needs Code under section 9.1.5 that professionals working in childcare and early years setting with children of pre-school age are listed as those who can bring individual's cases to the attention of a Local Authority in line with their role in identifying and reporting ALN.

2b. Parental choice and child centred-approach

PACEY Cymru feels strongly that the child should be central to the planning of any arrangements and this comes across strongly in the Bill and the supporting Draft Additional Needs Code, on the whole, where the emphasis is on increased

participation of children and young people, partnership working, and a child-centred, holistic approach.

PACEY Cymru understand from the Bill that the duties relating to ALN provision for children under statutory school age would be with the local authority. The relationship between the local authority and settings is unclear within this Bill, although how this would work in practice should be addressed within the Draft Additional Learning Needs Code and will be covered in a separate consultation.

Section 13.2 of The Draft Additional Learning Needs Code sets out the duty Local Authorities have in favouring educating children in mainstream schools, including maintained nurseries. PACEY Cymru believe that further clarification is required to define what this means in relation to pre-school children where the definitions and use of terminology between care and education are more blurred to avoid varying interpretations of this for children before the compulsory education age.

PACEY Cymru advocates for parental choice and a child-centred approach, which places the needs of the child on an individual basis first. In this respect, the ALN Bill should allow for consideration on an individual basis of the most suitable approach, format and setting to meet the needs of a child in the pre-school years. Whilst it is extremely important that all settings are inclusive and open to children with ALN, not all children thrive in a formal education or mainstream setting specifically in the early years. Assessment of the needs of a child should be focused on their needs and interests, where children and families identify alternative options would better meet their needs, these should be available.

3a. Childcare regulations and standards

PACEY Cymru would suggest consideration of whether any changes are needed to the Childminding and Daycare Regulations Wales, and the National Minimum Standards for Regulated Childcare (Wales). The National Minimum Standards sets the minimum requirements for childcare providers, Standard 4.5 makes reference to the current Code of Practice for Special Education Needs (or Additional Learning Needs). It is not clear from the Bill or Draft Additional Learning Needs Code what role childcare and early years providers will have in supporting the development of Individual Development Plans. The duty to maintain these will sit with the Local Authority but partnership working and a joined up approach is key. If this is strengthened then consideration needs to be given around review of the associated Childminding and Daycare Regulations Wales, and the National Minimum Standards for Regulated Childcare (Wales).

PACEY Cymru welcome the recent release by CSSIW of a guide to support implementation of the new inspection framework, which provides good practice guidance with a strong emphasis on meeting children's individual needs. There is good practice guidance under section 2.3 on ALN which could help to guide the childcare and early years on supporting the implementation of the new ALN Bill. The

introduction of ratings should also encourage childcare providers to raise standards of care in this respect. There again needs to be a consistent approach in relation to the Bill and Additional Needs Code within the inspection framework and this make need to be looked at more closely by CSSIW to ensure standardisation of regulation and inspection.

3b. Information, training, guidance and resources

PACEY Cymru understand that there are plans for local authorities to roll out information and training to support 'core skills development' within plans for workforce development, which is welcomed. As the reach of the ALN Bill includes children younger than those in settings funded to deliver education training, information and support needs to be promoted to, available and accessible to the wider childcare and early years sector. Having not traditionally fallen within the remit of educational needs, it will be especially important to ensure that settings are aware of and understand the ALN Bill, and are able to respond to this in the service they provide.

In anticipation of implementation PACEY Cymru would suggest that information and advice is widely publicised regarding the local authority role and support available to raise awareness with both parents and professionals working with children under statutory school age. PACEY Cymru would suggest that for childcare and early years professionals, this could be supported through the provision of local training and information packs specific to the sector on the Additional Learning Needs Code. This should include clear advice on who to contact within their local authority area for further information and how to signpost families to support.

The Early Support resources developed a number of years ago, were recognised as an important source of information, guidance and support to aid childcare providers, other professionals, and parents in meeting the needs of young children with specific needs. These resources aided those working with the youngest, and possibly most vulnerable children with access to information, and guidance to support them and to signpost parents to appropriate sources of support. PACEY Cymru would welcome the development and publication of similar resources for use across Wales and would look to support in this area.

PACEY Cymru welcomes plans for consistency across Wales with regards to the assessment of development of babies and young children, which would also support the implementation of the ALN Bill, aiding the identification of early support needs (if applicable). PACEY Cymru actively promotes the Foundation Phase Profile as the first assessment tool released under the Early Years Development and Assessment Framework (EYDAF), and is keen to support the development of further tools which would provide similar consistency in the assessment of babies and younger children across Wales.

Welsh Government's 'Building a Brighter Future' and 'Early Years and Childcare Workforce Plan' includes a welcomed focus on high quality education and childcare. As an association PACEY Cymru has long understood and promoted the importance and benefits of quality education and childcare provision, especially for those children with Additional Learning Needs. High-quality childcare and early education have been shown to play a crucial role in supporting children's development – and in narrowing the gap between the most and least disadvantaged children. At the heart of quality early years childcare is a qualified and supported workforce. PACEY Cymru therefore advocates access to quality affordable training, qualifications and continuous professional development opportunities, for all childcare and early years professionals in Wales to support this aim.

Given the timely review and development of revised childcare qualifications in Wales by Qualifications Wales and associated work with the Care Council for Wales (soon to be become Social Care Wales) PACEY Cymru believe that it is imperative that consideration be given to how the learning outcomes of these are strengthened in relation to meeting the needs of ALN children in line with the ALN Bill and Code.

3d. Childcare for vulnerable children, children with disabilities, and poverty initiatives

Whilst this may not be specifically relevant to this current consultation, it may be beneficial to consider how support for children with ALN fits with other policies and initiatives which are involved in funding childcare places. PACEY Cymru understands that there are a number of different funding programmes, initiatives and circumstances in Wales which currently include funded childcare, including for children with ALN. The administrative arrangements for these can vary in different local authority areas, and fall under a number of funding streams or programmes involving a variety of staff teams. In some programmes such as Flying Start there is an element of childcare expertise within the staff teams, however for others this can fall within the remit of a variety of professionals where childcare is not their area of expertise. It will be beneficial to ensure that those tasked with administering such schemes are also aware of and understand local authority arrangements according to the ALN Bill and Code of Practice.

PACEY Cymru would advocate a number of important considerations for any professionals seeking to arrange childcare. The quality of childcare setting is important, therefore registered childcare should be considered as a minimum requirement. PACEY Cymru would advocate that steps are taken to ensure that the childcare provider exceeds the minimum standards when caring for children with ALN. There are a number of quality improvement schemes, including PACEY Cymru's own award, which can demonstrate quality standards in a childcare setting. In time the further implementation of CSSIW Inspection ratings will support this. Those unaccustomed to the childcare sector could seek guidance from the local

authority family information services or childcare team, or from a relevant organisation such as PACEY Cymru.

PACEY Cymru advocates parental choice, there is a wide range of different childcare providers and services available and it is important to work with families to identify which service is best suited to meeting the needs of their child. PACEY Cymru are concerned to note that some procurement processes can exclude certain types of childcare setting as they are weighted in favour of the number of children a setting can care for and so smaller settings, including childminders, can miss out on opportunities. This can impact on continuity of care as children who are settled have to move to childcare that is funded. For more vulnerable children and children with additional learning needs this does not appear to support their well-being. PACEY Cymru would always advocate that quality of care, not quantity of children, should be the priority consideration in any process involving the arrangement of funded childcare and commissioning. PACEY Cymru would like to ensure that choice of childcare available for parents under such circumstances would include registered childminders. A quality childminder providing care with a small number of children within a home-based environment can offer a nurturing environment for vulnerable children and a flexible service to meet the needs of children and parents.

As noted transitions is an important consideration when planning childcare which is sensitive to the emotional needs of babies, young children, and children with additional learning needs. As there are a number of programmes and initiatives administered separately there is a risk that vulnerable children, including those with ALN, can pass through a number of transitions between different childcare providers in their early years. PACEY Cymru would again advocate parental choice here and the importance of enabling children to access funded childcare and early education where they are already settled, provided the setting is registered and able to meet the relevant quality requirements.

About PACEY Cymru

PACEY is the Professional Association for Childcare and Early Years. Formed in 1977, we are a charity dedicated to supporting childcare professionals to deliver high quality care and early learning for children. We provide expert support, training and resources to childcare professionals across England and Wales and offer advice and peer support through our nationwide network of PACEY local groups. We represent the views and experiences of practitioners to government, regulators and decision makers and champion their vital role in helping children get the best start in life.

PACEY Cymru supports members and people working in childcare in Wales to provide the best possible standards of care for children. We work with the Welsh Government, local authorities and agencies to ensure families across Wales have access to affordable, quality childcare.

PACEY Cymru is supported by funding by the Welsh Government's Children and Families Delivery Grant (CFDG). We're one of five leading childcare organisations



working together through the Welsh Government-funded consortium Cwlwm (Childcare Wales Learning and Working Mutually).

For further information please contact;

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Consultation on the Additional Learning Needs and Education Tribunal (Wales) Bill

Response from Wales Pre-school Providers Association

Wales Pre-school Providers Association (Wales PPA) is a national charity and membership organisation that promotes and supports bilingual pre-school care, education and learning through play across Wales. The Association was established over 30 years ago and during this time Wales PPA have addressed the points in the consultation letter that are appropriate to the sector.

The childcare sector in Wales is regulated by Care and Social Services Wales and practitioners are required to be skilled and qualified. Providers of the Welsh Government's Early Entitlement for 3 to 4 year olds to access pre school Foundation Phase provision is regulated by ESTYN

- whether Bill will establish a genuinely age 0-25 system

Although the bill encompasses the 0-3 age range and identifies Local Authorities as the responsible body for providing support to children and their families who have identified needs in this age group, it is not clear how far reaching the responsibilities are and how they would be met or financed. This age group are below school age and only able to access preschool or childcare within the third sector or private provision, some children can access Flying Start but this is not a universal service and is dependant on postcodes. There needs to be clarity on what kind of service a child with an IDP could access and how this would be funded.

It is common that a child's needs will be first identified when they attend a Day Nursery or playgroup. In the Bill, it is unclear what the route to referral would be for these children and what the responsibilities of the childcare provision are outside of their own internal ALN policies it is also unclear as to what financial structure would be in place to support this from the Local Authority. At present this varies from authority to authority.

It is a positive step that an IDP is not reliant on diagnosis but on need. However if needs are identified early in a child's life then a clearer definition of a child's right to access services and support within private and third sector childcare and early years education provision would be helpful. We find that when the issues are diagnosed early in the child's life, families are often facing a period of time where they are isolated from their peer groups and have to adjust/come to terms with the issues they are dealing with. For example conditions such as autistic spectrum disorders can take a long time to be diagnosed but the child presents very early on with learning and behavioural difficulties and can be identified as having a need for an IDP.

- the provisions for collaboration and multi-agency working, and to what extent these are adequate

We would welcome further detail about the provision for collaboration and multi-agency working within the early years. There are examples of good working practice for example, some Local Authorities have strong partnerships with private and third sector early years providers and have set up Additional Needs schemes with Umbrella organisations such as Wales PPA

which bring together and bridge the gap between birth to education. A good example of this is the model used in Newport, Newport City Council have continued to fund the Additional Needs Referral Scheme managed by Wales PPA. This supports children in the private and third sector as well as children wishing to access their statutory early education entitlement and play opportunities in the non-maintained sector. This type of scheme is not universal throughout Wales so there is a lack of consistency across authorities, Outlined below is the model that is currently used in Newport for pre-school children

The scheme funds an Additional Needs Co-ordinator who receives the initial referral (usually from a Health Professional or childcare setting) and investigates the individual child's circumstances and needs. This is then presented to the multi-agency panel made up of representatives from the local authority, health (Portage), specialist paediatric nurse leading the Social Services Children with Disabilities Team, Additional Needs Advisory Teacher, LEA's Inclusion Team manager, Wales PPA's regional manager, Newport Flying Start manager, Mudiad Meithrin, LEA's Early Years Business Manager etc. At the panel meeting, the case for the child is discussed and a care package agreed (dependant on funding available). Parental consent is paramount and this includes referral to other support services if required. The agreed funding pays for the extra support needed from a staff member within the childcare provision. Children will only be placed in provisions registered by Care and Social Services Inspectorate of Wales (Care and Social Services Inspectorate Wales) and each provision will have to satisfy a further list of criteria ensuring that the child is supported by a qualified and experienced member of staff, regular reviews are completed by the Additional Learning Needs Coordinator and transition forms are completed when the child leaves the scheme to ensure that the next provision or school that the child attends has all the relevant information to help the child settle into the next place. The benefits of the scheme are well recognised throughout the authority, with professionals referring into the scheme and especially among the parents whose children have had the additional support the scheme offers

- whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;

If childcare in the private and third sector are used to support IDP then who would be responsible for the training, resources and the associated financial impact on the sector? The bill could explore this and clarify this so that responsibilities are clear

- the capacity of the workforce to deliver the new arrangements;

The bill asks that the within **Additional Needs Coordinator** Education settings should be suitably qualified and that this qualification should be also applicable to the **Additional Needs Coordinator** appointed by the Local Authority for the Early Years. However, this does not take into account the different skill set that is required by an Early Years **Additional Needs Coordinator** for children who are not in early years education and whose family needs a more holistic approach. For example coordinators for a preschool child would tend to spend significant time with the parents to

guide them through the early stages of diagnosis, so this should not be a “one size fits all” qualification. It is also important to identify where funding for training for those **Additional Needs Coordinators who** would work outside of the education system would come from.

Andrea Wright andreaw@walesppa.org andreaw@walesppa.org

on behalf of

Wales Pre School Providers Association

March 2017



CYMRU

3/3/2017

Consultation Response: Additional Learning Needs & Education Tribunal (Wales) Bill

- **The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;**

General principles: We are disappointed that the Welsh Government's proposed ALN Bill and accompanying Framework does not include medical needs. We ask the Committee to address this as a matter of urgency and warn that a failure to do so will present an unprecedented safety risk to some of the most vulnerable children in Wales.

Providing assistance to children whose needs are additional or different in schools is delivered by the same systems, processes, agencies, funding streams and staff roles in practice. Systematic changes to any part will affect all of that system's beneficiaries, not some of them. This is not reflected in the ALN reforms. The Bill will remove and replace long-standing funding arrangements, such as statements. Medical conditions are not included in the reforms but some children with medical needs have statements. There is a real risk that the 'old' funding will be removed and that schools/LEAs will not be able to reallocate this for medical conditions support.

The difficulties of the current system are faced by any children needing additional support. Children with medical needs face the same issues as laid out in Sections 3.1 and 3.2 of the Explanatory Memorandum. These are exactly the issues faced by children and their families in the current system, which the reforms hope to change and improve.

The ALN Bill will introduce a new system of rights and benefits to children under the new Framework, such as rights of appeal to the Tribunal. Children with medical conditions will not have the same rights and benefits outside of the ALN Bill and under the revised Welsh Government guidance, even though they may be living with a life-threatening condition and may have more complex needs than the groups of children who will come under the ALN Framework.

It is difficult to reconcile the support for the proposed groups of children under the ALN Framework with that provided to children with medical needs. Elsewhere in the UK, medical conditions at school are protected in legislation but they aren't in Wales. We are concerned that aside from the tangible reforms, the message to children, families, school staff and Local Authorities is that children with medical needs are less important. In practice, there is a real danger that this will result in the de-prioritisation of this group. As such, if steps are not taken to amend the ALN Bill, it poses a threat to existing arrangements for the families who we represent.

Should medical conditions be included in the proposed Framework, we would very much welcome the general principles of the Bill and believe that they would play a fundamental part in addressing and resolving key issues that have emerged in recent years.

Whether there is a need for legislation:

1. **Guidance alone has failed.** Evidence shows that having guidance alone has failed across multiple demonstrable areas and that it is ignored by a number of schools. The gaps in practical advice and specific allocation of roles, as well as optional duties contained in the

draft allows for inaction by all involved parties. The 2017 guidance will also fail, irrespective of how well it is written, if it not underpinned by legislation.

2. **The need for reform.** Diabetes UK and a number of other leading children and health organisations across the UK are calling for reform in Wales of the current support for medical needs. The updating of the 2010 guidance document does not constitute reform. It has produced and is still producing variable care for children across Wales. This results in some children being disproportionately negatively affected, for example, by exclusionary practices or by high levels of parental involvement in the school day.
3. **Providing assistance to families.** Organisations providing UK-wide support agree that it is much more difficult to provide assistance and guidance to supporters, schools and Local Authorities in Wales, where there is no explicit duty on schools. It is much easier to support all parties when a legislative duty exists.
4. **Current legislation.** Welsh Government has stated that a number of laws already apply in this area and so there is no need to duplicate this. Current pieces of legislation are not fit for purpose for the following reasons:
 - (a) They do not contain an explicit duty for medical conditions/needs.
 - (b) They do not differentiate between a child with a medical condition and one without a medical condition.
 - (c) They do not adequately apply to the management of medical conditions (i.e. 'promotion of wellbeing' is not the same as medical conditions management/support in a school setting).
 - (d) They have applied for a number of years in Wales (some upwards of 10+ years) but our contact with all involved parties' shows that they have had no clear impact on this area.
 - (e) They all applied in England prior to the Children & Families Act 2014. Lessons from England show that the stated laws were inadequate in providing for medical conditions and therefore steps were taken to legislate specifically for medical conditions.
 - (f) Several of them present challenges for the ALN Bill, for example the Equality Act 2010 (detailed below).
5. **The impact of legislation on schools.**
 - (i) Schools who positively engage:
 - Minimal impact, if they are already managing medical conditions appropriately.
 - Enable schools to provide assurance and protection to families, their staff and Local Authorities that they are doing as instructed, expected and required by law.
 - Enable them to check/reference the care that they have in place or are planning to put in place and to set expectations for all parties. This in turn assists in dispute avoidance, reducing the likelihood of parties accessing dispute resolution options. Anecdotal evidence from multiple organisations shows that this is the case in England since a statutory duty was introduced in 2014.
 - Provide assurance to schools who want to support their pupils but fear a litigious culture.
 - (ii) Schools who do not engage:
 - High impact in targeting schools who are not engaging.
 - Empower all parties to address non-compliance and set expectations.
 - Mandatory for all parties to engage with medical needs.
 - Address enforcement issues. Diabetes UK welcomes the language used across a number of areas in Welsh Government policy recently where it has been stated that when a voluntary system has not been effective, or where there have been enforcement issues, Welsh Government will look to include these within legislation.
 - Dispute resolution via rights of appeal to the Tribunal.

- Over the longer term, this will result in culture change.

(iii) Impact of legislation in England: Lessons for Wales:

Early indicators document a clear increase in schools' engagement with medical conditions. Comparative evidence gathered annually by Diabetes UK shows that the situation in England is improving year on year in the following areas:

Indicators	2013	2014	2015
1. Percentage of parents who are satisfied with the diabetes care provided to their child at school	67%	71%	72%
2. Percentage of parents who state that an individualised care plan is in place at school which meets their child's needs.	51%	66%	85%
3. Proportion of schools that have access to Type 1 diabetes training	66%	66%	73%
4. Proportion of schools with appropriate policies and procedures in place to provide children with Type 1 diabetes with consistent, individualised care (including IHP that cover extracurricular activity)	7%	58%	71%

*Figures from 2013, 2014 and 2015 annual surveys of over 400 parents and schools conducted by Diabetes UK.

Recommendations for Wales

We strongly recommend that:

- A statutory duty be included on the face of the Bill to support pupils with medical conditions.
- That accompanying statutory guidance be issued with the following minimum requirements to be put in place by schools:
 - (i) Medical Conditions Policy.
 - (ii) An Individual Health Plan for each pupil who has a medical need.

● **Whether there are any unintended consequences arising from the Bill;**

The Bill has several unintended consequences from a medical conditions perspective:

Consequence 1: The definition of ALN

Although not explicitly mentioned on the face of the Bill, there are a number of ways in which medical conditions would come under the Framework. They are:

- (1) Via the Equality Act 2010
- (2) Via an Additional Learning Provision (ALP) requirement
- (3) Via the Code of Practice

A flowchart of the Bill's definition sections is included at the end of this document.

(1) **Equality Act 2010:** In determining ALN, the Bill uses the Equality Act 2010 as part of its definition (Part 2, Chapter 1, Section 2 (b)). Some medical conditions are well established as disabilities under the Equality Act 2010. This would introduce tiers of medical conditions into the ALN Framework. In theory, some conditions would be included under the ALN Framework and some wouldn't be. All documentation relating to the proposed ALN Framework fails to acknowledge, clarify or address this. The table below shows well-known conditions that fall into these categories and their status under the Equality Act 2010. It follows that this would also determine their status for the ALN Framework:

Disability	Sometimes a disability	Not a disability
Type 1 diabetes, ME & CFS, Epilepsy, Motor Neurone Disease, Fibromyalgia, Depression, Schizophrenia, Mental Health Conditions (anxiety, phobias, eating disorders, bipolar disorders, obsessive compulsive disorders, self-harm), Rheumatoid arthritis, Dementia, Muscular Dystrophy, Systemic Lupus Erythematosus (SLE), Respiratory Conditions, Cardiovascular Disease (thrombosis, stroke & heart disease), Cancer, HIV infection/AIDS, Multiple Sclerosis, Allergies, Stammering, Relatives of any of the above via associative disability discrimination	Arthritis Allergies	Asthma Addictions (unless a result of prescription medication) Hay fever (unless aggravates another condition) Other conditions that are not long-term

Also of note is the fact that the Equality Act, in determining whether a condition is a disability, places emphasis on the effect of an impairment and not its cause.

(2) **Additional Learning Provision (ALP):** Section 6.13 of the Code of Practice states that: *If a person has a learning difficulty or disability which calls for ALP, the individual **must** be considered as having ALN for the purposes of the Act.*

It is not clear which additional groups of children this section applies to, as most who require this type of support are already explicitly listed in the Framework. ALP is defined as any support that is 'additional to or different from' (defined as 'that which goes beyond that generally made available') that which is provided to others of the same age in mainstream education. A child with a chronic condition will always need this type of support. In the case of Type 1 diabetes, failure to provide appropriate monitoring and treatment for the duration of a school day can be fatal. A young child with Type 1 diabetes will always need intervention of some kind by an adult. Funding in Wales has been used for medical conditions support for several years in schools which constitutes ALP.

(3)**Code of Practice:** The Code is a statutory document. Sections 6.38 - 6.42 describe medical conditions management under the title of 'Initial considerations - Healthcare needs'.

Section 6.38 signposts the reader to the non-statutory guidance document. What is the relationship between the two documents? The statutory document instructs the reader to follow a non-statutory document that fails to guarantee any support to children with medical needs. Clarification is needed with regards to this mixed-messaging in order to enable all parties to deliver appropriate support to children/young people with medical needs. In addition, the support described in the guidance document would constitute ALP, which would send the reader back under the statutory ALN framework.

Section 6.42 states that an IDP may be updated at the same time that another plan is updated, for example an Individual Healthcare Plan (IHP). The guidance document states that not all children with medical conditions will need an IHP. It goes even further in saying that the final decision on whether a child needs an IHP rests with the Head Teacher of the school. The Head Teacher is unlikely to have the clinical knowledge necessary to make this decision. They are also a

key decision maker in granting funding for support and are influential in a school's inclusion/engagement with medical conditions.

Potential consequences to the definition-based issues:

- Widen the existing gap between the 'have/have not's' in terms of support at school, which is already unacceptably wide.
- Intensify the battle to obtain the best available level of support. 'Statement versus No Statement' would be replaced by 'disability or no disability', with 'ALN rights or no ALN rights' inextricably linked.
- Result in confusion in practice and an assumption that non-clinical education roles have a level of specialist or clinical knowledge that they simply do not have.
- What message does this send to families in Wales?

Consequence 2: Medical condition in addition to ALN

What of children and young people who have a medical condition in addition to a learning difficulty/disability? There is no recognition of this group whatsoever, although it is not uncommon for a child to have both. This would introduce yet another additional tier into the Framework. It may also risk unnecessary diagnosis of a learning difficulty in order to secure ALN funding.

Consequence 3: The battle for statements & funding

The Bill widens the gap and intensifies the battle for support that goes against the very purpose of the reforms. In addition to the scenarios described above, the following measures in the Bill will endanger children with medical conditions:

- (i) The removal of statements: We hear regularly from parents who have removed their child from school because of a lack of available support/they are not confident that their child will be safe /fearful of the quality of available support. They in turn miss days in their own employment and in some cases have even lost or left their jobs because of this. We have heard from parents having to attend their child's school every 2 hours and have even had to move their child to another school.
- (ii) The removal of 1-2-1 support: Some parents tell us that they agreed for their child to receive 1-2-1 support as a compromise with the school to deter the parents from applying for a statement of SEN. It is well known that this is a less expensive option for schools/LEAs.

The above points will further entrench the issues that are currently in desperate need of resolving.

Consequence 4: Comparison of guaranteed support

The table below compares the guaranteed level of support for children with ALN with that guaranteed to children with life-threatening medical conditions:

Comparison of rights if ALN Bill passes in current format:

ALN Framework	Medical Needs Guidance
Individual Development Plan (IDP): Issued to all children with ALN regardless of complexity of need. Document is legal and enforceable.	Individual Health Plan (IHP): States that “not all learners with healthcare needs require an IHP”*. If IHP in place, it has no status/weight if non-compliance is an issue. *Final decision rests with Head Teacher.
Mandatory / Enforcement	Non-mandatory / no enforcement
Clarity	Insufficient detail
Tribunal access & rights of appeal	No Tribunal access or rights of appeal
DECLO role	No access to DECLO
Campaign to raise awareness of new rights	No plan to raise awareness

NB: The DECLO role is a health/clinical role that will be based in each health board in Wales. Their remit will not cover medical conditions unless they are included in the reforms.

- **the provisions for collaboration and multi-agency working, and to what extent these are adequate;**

Health services are mentioned throughout but not children with medical needs.

- **whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;**

IDP/IHP relationship is not clear and need consideration (as above). We support the use of an editable all-Wales template for an IDP/IHP.

- **whether Bill will establish a genuinely age 0-25 system;**

The NHS system is not set up to reflect this. Services are divided into paediatric and adult services.

- **the capacity of the workforce to deliver the new arrangements;**

- Currently, paediatric specialist staff provide training to schools for specific medical conditions, where possible. We know of instances where a small number of schools have declined this service and have even prevented NHS staff from entering the premises to carry this out. If included in the Bill, this non-compliance would be addressed and would be far less likely to happen. The majority of schools have welcomed the training. The Bill (if applicable to medical conditions) would not change this but would be an important step in formalising this arrangement.
- School staff (ideally 2-3) volunteer to receive training for Type 1 diabetes management. We hear from school staff who are deterred from doing this by their teaching unions because of the lack of legal clarity in this area. We also hear from parents, school staff and NHS staff that school staff who want to volunteer are prevented from doing so by senior staff at the school. Not including medical conditions will threaten the willingness of staff who currently provide care on a voluntary basis and will deter those who would like to, both now and in the future. What message will excluding medical conditions send to those who are already concerned about their own legal protection?

- Situations do arise whereby there are no volunteers amongst existing school staff. In this scenario, funding is usually applied for external staff to come in to the school to provide support or the child's parents are expected to attend the school (sometimes as frequently as every two hours) to carry out diabetes-related tasks.
- Current culture of employing 121 support workers is an expensive approach.
- There is no recognition that SENCOs currently have responsibilities for children with medical conditions and no proposals on how this will be managed should medical conditions be excluded from the reforms.
- Education Tribunal has no jurisdiction over health services/medical conditions cases.
- Despite a high level of support provided by NHS staff and Paediatric Diabetes Specialist Nurses (PDSNs), this issue remains.

How do we reconcile a voluntary system with the provision of effective support for a child with complex medical needs when away from home? The voluntary capacity means that some schools do not deliver support as they should. There is an over-reliance on parents to attend school premises to provide treatment and where this is not viable, a child's health and/or education are put at risk when schools refuse to engage, resulting in parents removing their child from school.

• the proposed new arrangements for dispute resolution and avoidance. It would be helpful to the Committee if respondents could identify how the Bill could be amended to improve any aspects which they identify as inadequate.

- Evidence shows that having a statutory duty in England has resulted in fewer parents resorting to dispute resolution (i.e. legal action) simply because all parties are able to clearly reference their legal responsibilities and are aware of their duties.
- The escalation process in the Bill is a clear and sensible approach to dispute avoidance and dispute resolution for ALN. We know that the process can be time consuming. We welcome the time limits placed at certain points in the process but these are longer than we would hope for when a family is having to wait (i.e. 10 weeks).
- The guidance does not outline dispute avoidance/resolution but states the following:

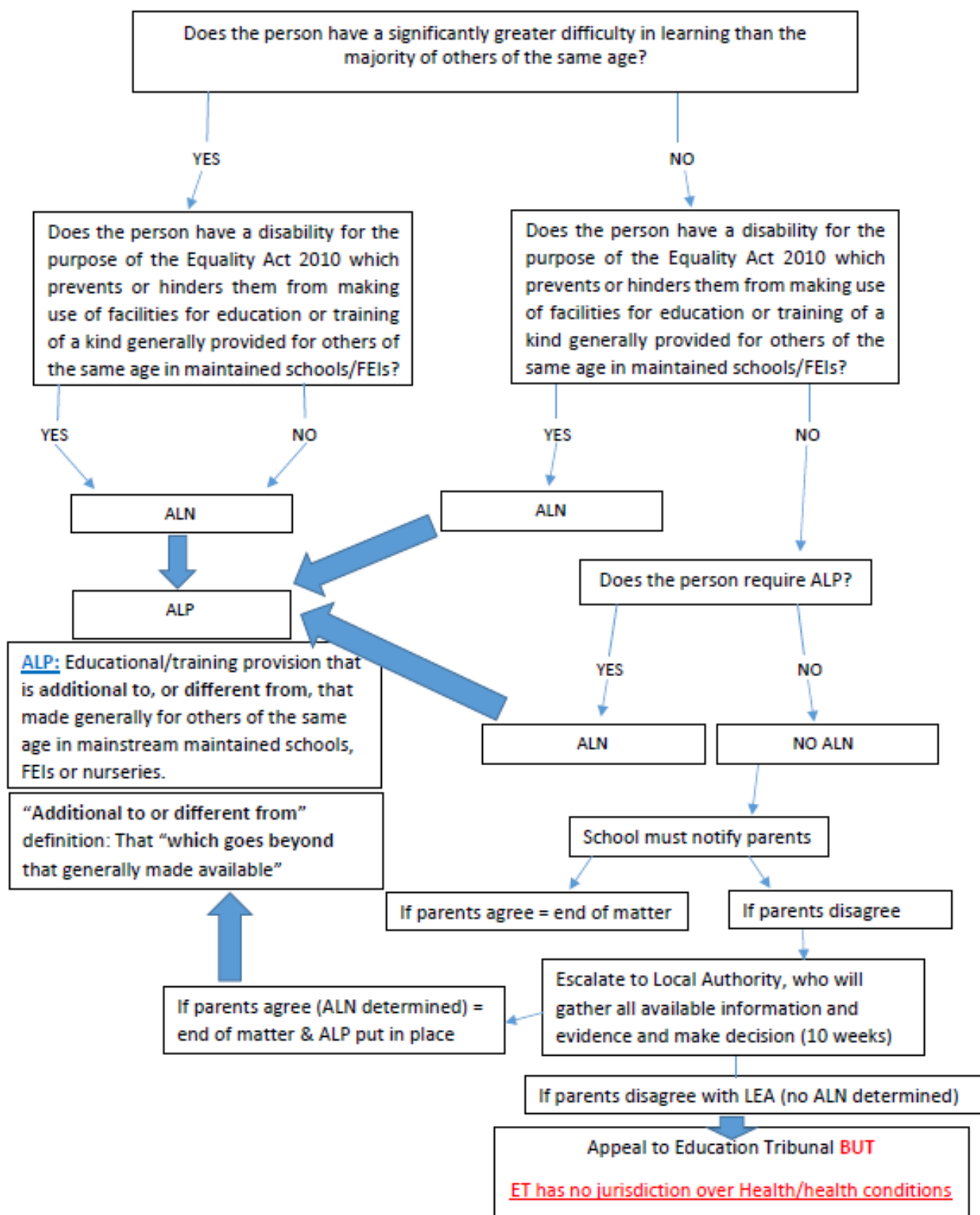
Schools should also consider how the learning experience can be maximised to support children and young people to develop the knowledge, skills and emotional resilience required to uphold their own rights, the rights of others and to appropriately resolve conflicts. It should give specific focus to combating: "depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide...violence, ill-treatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school." UNCRC General comment 4 (Creating a Safe and Supportive Environment).

- Families currently approach NHS channels and the third sector with disputes regarding medical conditions. Both sectors currently provide a high level of mediation and advocacy for families.
- The Additional Support Needs Tribunal in Scotland, to which children with medical conditions have access issued a landmark ruling for medical conditions in 2014. The Tribunal ruled in favour of a child with Type 1 diabetes when a local authority and school failed to put the right support in place. More information: <http://govanlc.blogspot.co.uk/2013/07/glc-scottish-test-case-win-for-school.html>. Whilst this does not set a legal precedent for the England/Wales judicial system, the decision can be considered a persuasive one and is a welcome step.

Determining ALN

Need to determine whether the individual has a learning difficulty/disability?

START BELOW:



Dr Justin Warner
Children's Hospital for Wales
Heath Park
Cardiff
CF14 5UW

2nd March 2017

Dear CYPE Committee

Re: Consultation Response: Additional Learning Needs & Education Tribunal (Wales) Bill

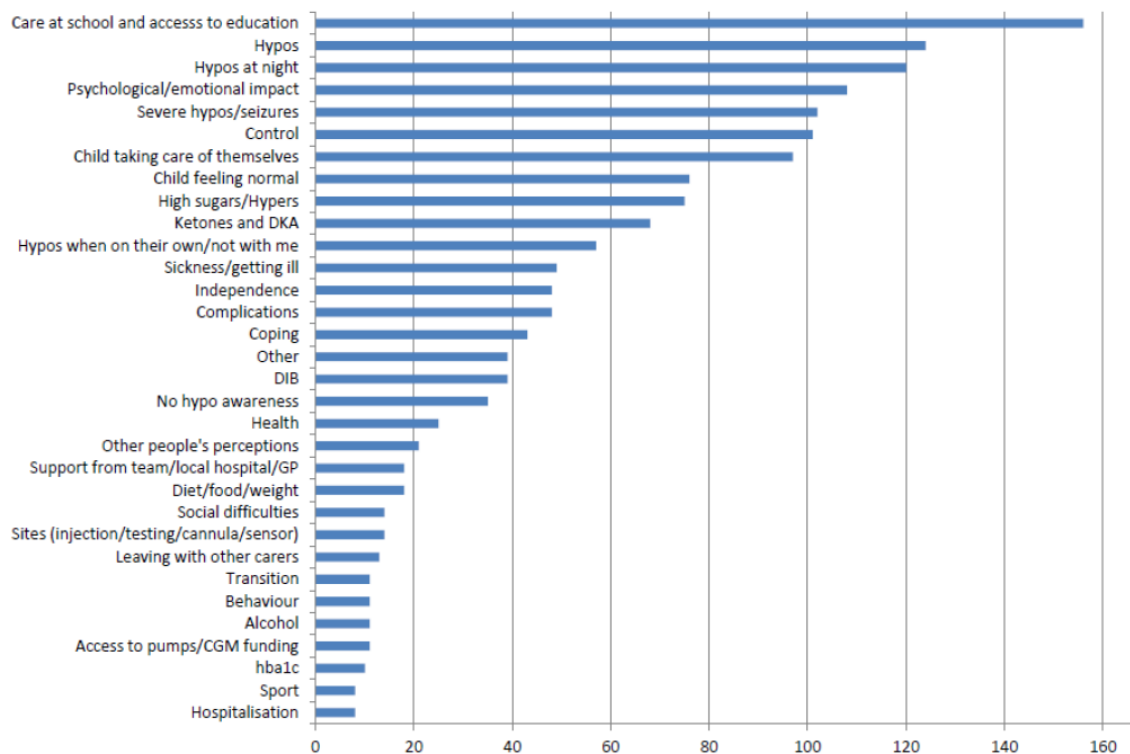
There are many children and young people who have healthcare needs that need addressing during the school day. I am a paediatrician working with children and young people with diabetes where healthcare needs require constant monitoring if a child is to achieve their full educational potential and reduce the risk of burdensome complications from the disease.

As clinical lead of the largest children's diabetes service in Wales and a Clinical Champion for Paediatric Diabetes, my team interact regularly, often several times a week, with schools and so I believe I am uniquely placed to comment on how the medical needs of children should be met during school hours. I have been a consultant in Paediatric Diabetes for 16 years and often have felt legally powerless when a school refuses or excludes a child with diabetes, or stigmatises a child as being different when they have a healthcare need in school.

With the massive surge in new technology and increased emphasis on good management of diabetes, we have seen considerable increase in the requirements for an interaction between health and education over the last 10 years. I value the partnerships that have built with school staff to ensure that children and young people with diabetes receive an excellent chance of living as normal a life as possible, which is one of the primary aims of the Welsh Government's Diabetes Delivery Plan (2013, updated 2016). However, although many schools are engaging in Wales, this is not ubiquitous and there is considerable variability in provision and lack of clarity around the legal positions that schools find themselves in when caring for diabetes and other healthcare needs within their school.

A recent survey by the Families with Diabetes National Network across England and Wales highlighted that the major concern that parents have about their child's care was during the school day. This concern cannot be ignored and parents need to have confidence in the people that will care for their child during the school day. The

results of the survey are shown below. The question asked was 'what concerns you most about your child's diabetes care?'



I am very disappointed that the Welsh Government's proposed ALN Bill and accompanying Framework does not include healthcare needs that require attention during the school day to allow a child to achieve his/her full academic potential. I would ask the Committee to address the issues presented as a matter of urgency and warn that a failure to do so will present an unprecedented safety risk to some of the most vulnerable children in Wales and disadvantage them compared to children with healthcare needs in England.

The latest National Paediatric Diabetes Audit report 2015-16 has demonstrated massive improvement in overall diabetes control for children and young people in Wales. This has been achieved by collaborative working across the all Wales Paediatric Diabetes network to improve outcomes and patient experience for children with diabetes across Wales. However, Wales still lags behind some other European countries where diabetes care is better including statutory requirements for care during the school day. Without continuous quality improvement initiatives there is a risk that Wales could undo the massive improvements already demonstrated.

Children spend 30% of their day in school and therefore it is of paramount importance that schools participate in the daily management of children with diabetes. This requires training and constant updates as children move through different classrooms and levels of education. In Wales there are approximately 1500 school age children with type 1 diabetes.

Keeping children and young people safe during the school day and reducing the long term risk of complications from diabetes requires intensive disease management. Modern technology and intensive diabetes management provides overall better blood glucose control. Since the level of blood glucose control is directly related to the risk of complications, such as blindness, kidney failure requiring dialysis or limb amputations, it becomes vitally important to manage it as effectively as possible throughout the day and night, seven days per week and 365 days per year. Poor diabetes control in childhood will lead to a high risk of complications and reduce life expectancy placing a large social burden and stress on families but also a massive financial burden on the NHS.

Poor management of diabetes during the school day not only puts the child at risk of acute life-threatening complications related to low or high blood sugar control (hypoglycaemia or ketoacidosis) but also affects the ability of a child to concentrate and learn whilst at school. It is very important that children and young people receive support to manage their condition during school hours to avoid such risks. In addition, unregulated glucose levels can cause cognitive difficulties, poor concentration, volatile moods and 'bad behaviour', and extreme tiredness affecting a child's ability to learn and participate in educational activities.

Unlike in England there is currently no statutory requirement in Wales for schools to participate in the healthcare needs of children with diabetes or any other chronic disease, who require help during the school day. Although many schools in Wales are extremely engaging with such healthcare needs, this is by no means universal.

I, along with Diabetes UK, performed a survey amongst families of children with diabetes and specialist nurses about school engagement and published 'An excellent chance' documentation on the results and recommendations from this survey. The committee will have already been sent this document in previous correspondence with DUK. It includes evidence from families and healthcare professionals showing that there is a need to support children and young people with diabetes in schools to maximise their ability to learn, and highlights variability in this provision across Wales. I ask the committee to read the report with a focus on the Executive Summary. The report is co-authored by the Children and Young People's Wales Diabetes Network, as well as senior paediatric clinicians in Wales.

'An excellent chance' clearly highlights there are inequalities across Wales in the provision of care for children with diabetes, in some circumstances children being excluded from school activities. This is unacceptable and requires action.

There is clearly a need for a change in legislation in Wales to introduce a statutory duty of care for children with medical needs in schools. The Welsh Government's proposed ALN Framework documentation states that children with medical needs will not be covered by the ALN Bill (see page 30 of the draft ALN Code of Practice). I would urge the Committee to consider the inclusion of medical needs in the Additional Learning Needs Framework.

The current guidance frameworks for the management of medical conditions, including Type 1 diabetes, in a school setting differ in Wales and England. In

England, the Children and Families Act 2014 came into force on 1 September 2014. Section 100 contains a statutory duty to support pupils with medical conditions, meaning that in practice schools **must** make additional arrangements for supporting pupils at schools with medical conditions.

Whilst the implementation of the legislation in England is in its infancy, nevertheless there are early indicators of an increase in school engagement with medical conditions. Diabetes UK have seen a marked increase in the number of healthcare professionals who are nominating a school for the Diabetes UK 'Good Care in Schools Award', and comparative evidence gathered annually by the charity shows improved parent experience of working together with schools. Anecdotally, speaking to my England counterparts, the new legislation has allowed this to happen by putting a mandate on schools to interact with health in a more positive manner.

Indicator	2013	2014	2015
Percentage of parents who are satisfied with the diabetes care provided to their child at school	67%	71%	72%
Percentage of parents who state that an individualised care plan is in place which meets their child's needs.	51%	66%	85%
Proportion of schools that have access to Type 1 diabetes training.	66%	66%	73%
Proportion of schools with appropriate policies and procedures in place to provide children with Type 1 diabetes with consistent, individualised care (including IHP that covers extracurricular activity)	7%	58%	71%

The legislation does not apply to schools in Wales. The rights of children and young people with medical needs in Wales during the school day are not protected in law to the same level as children in England. The current system in Wales puts children with medical conditions in Wales at an academic disadvantage in comparison to their peers in England and does not protect them whilst they are at school. It is vital that children are kept safe and healthy whilst they are learning to enable them to achieve their full potential.

In my role as a senior clinician in Wales and appointed as a Diabetes UK clinical champion to improve the quality of care for children with diabetes, I urge the Committee to consider the current situation and ask whether there is a need to bring the rights, support and protection provided to children and young people living with Type 1 diabetes and other chronic healthcare needs in Wales in line with those in England.

Consultation Response: Additional Learning Needs & Education Tribunal (Wales) Bill

• **The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;**

General principles: We are disappointed that the Welsh Government's proposed ALN Bill and accompanying Framework does not include medical needs. We ask the Committee to address the issues presented as a matter of urgency and warn that a failure to do so will present an unprecedented safety risk to some of the most vulnerable children in Wales.

Providing assistance to children whose needs are additional or different in schools is delivered by the same systems, processes, agencies, funding streams and staff roles in practice. Systematic changes to any part will affect all of that system's beneficiaries, not some of them. This is not reflected in the ALN reforms. Medical conditions are not included in the reforms but some children with medical needs have statements. There is a real risk that the 'old' funding will be removed and that schools/LEAs will not be able to reallocate this for medical conditions support.

The difficulties of the current system are faced by any children needing additional support. Children with medical needs face very similar issues in a school environment to children with additional learning needs. Sections 3.1 and 3.2 of the Explanatory Memorandum describe exactly the issues that are faced by all children/families in the current system, which the reforms hope to change and improve.

The ALN Bill will also introduce a new system of rights and benefits to children under the new Framework, such as rights of appeal to the Tribunal. Children with medical conditions will not have the same rights and benefits outside of the ALN Bill and under the revised Welsh Government guidance, even though they may be living with a life-threatening condition and may have more complex needs.

It is difficult to reconcile the support for the proposed groups of children under the ALN Framework with that provided to children with medical needs. Elsewhere in the UK, medical conditions at school are protected in legislation but they aren't in Wales. We are concerned that aside from the tangible reforms, the message to children, families, school staff and Local Authorities is that children with medical needs are less important. In practice, there is a real danger that this will result in the de-prioritisation of this group. As such, if steps are not taken to amend the ALN Bill, it poses a threat to existing arrangements for the families who we represent.

Should medical conditions be included in the proposed Framework, we would very much welcome the general principles of the Bill and believe that they would play a fundamental part in addressing and resolving key issues that have emerged in recent years.

Whether there is a need for legislation:

1. **Guidance alone has failed.** Evidence shows that having guidance alone has failed across multiple demonstrable areas and that it is ignored by a number of schools. The gaps in practical advice and specific allocation of roles, as well as optional duties contained in the draft allows for inaction by all involved parties. The 2017 guidance will also fail, irrespective of how well it is written, if it not underpinned by legislation.
2. **The need for reform.** The Anaphylaxis Campaign, as well as a number of leading children and health organisations across the UK, are calling for reform in Wales of the current support for medical needs. The updating of the 2010 guidance document does not constitute reform. It has produced and is still producing variable care for children across Wales, resulting in some children being disproportionately negatively affected.
3. **Providing assistance to families.** Organisations providing UK-wide support agree that it is much more difficult to provide assistance and guidance to supporters, schools and Local Authorities in Wales, where there is no explicit duty on schools. It is much easier to support all parties when a legislative duty exists.
4. **Current legislation.** Welsh Government has stated that a number of laws already apply in this area and so there is no need to duplicate this. Current pieces of legislation are not fit for purpose for the following reasons:
 - (a) They do not contain an explicit duty for medical conditions/needs.
 - (b) They do not differentiate between a child with a medical condition and one without a medical condition.
 - (c) They do not adequately apply to the management of medical conditions (i.e. 'promotion of wellbeing' is not the same as medical conditions management/support in a school setting).
 - (d) They have applied for a number of years in Wales (some upwards of 10+ years). Evidence shows that they have had no clear impact on this area.
 - (e) They all applied in England prior to the Children & Families Act 2014. Lessons from England show that the stated laws were inadequate in providing for medical conditions and therefore steps were taken to legislate specifically for medical conditions.
 - (f) Several of them present challenges for the ALN Bill, for example the Equality Act 2010 (detailed below).
5. **The impact of legislation on schools.**
 - (i) Schools who positively engage:
 - Minimal impact, if they are already managing medical conditions appropriately.
 - Enable schools to provide assurance and protection to families, their staff and Local Authorities that they are doing as instructed, expected and required by law.
 - Enable them to check/reference the care that they have in place or are planning to put in place and to set expectations for all parties. This in turn assists in dispute avoidance, reducing the likelihood of parties accessing dispute resolution options. Anecdotal evidence from multiple organisations shows that this is the case in England since a statutory duty was introduced in 2014.
 - Provide assurance to schools who want to support their pupils but fear a litigious culture.
 - (ii) Schools who do not engage:
 - High impact in targeting schools who are not engaging.
 - Empower all parties to address non-compliance and set expectations.
 - Mandatory for all parties to engage with medical needs.
 - Address enforcement issues. We welcome the language used across a number of areas in Welsh Government policy recently where it has been stated that when a voluntary system

has not been effective, or where there have been enforcement issues, Welsh Government will look to include these within legislation.

- Dispute resolution via rights of appeal to the Tribunal.
- Over the longer term, this will result in culture change.

(iii) Impact of legislation in England: Lessons for Wales:

Early indicators document a clear increase in schools' engagement with medical conditions. Comparative evidence gathered annually by Diabetes UK shows that the situation in England is improving year on year in the following areas:

Indicators	2013	2014	2015
1. Percentage of parents who are satisfied with the diabetes care provided to their child at school	67%	71%	72%
2. Percentage of parents who state that an individualised care plan is in place at school which meets their child's needs.	51%	66%	85%
3. Proportion of schools that have access to Type 1 diabetes training	66%	66%	73%
4. Proportion of schools with appropriate policies and procedures in place to provide children with Type 1 diabetes with consistent, individualised care (including IHP that cover extracurricular activity)	7%	58%	71%

*Figures from 2013, 2014 and 2015 annual surveys of over 400 parents and schools conducted online by Diabetes UK.

Recommendations for Wales

We strongly recommend that:

- A statutory duty be included on the face of the Bill to support pupils with medical conditions.
- That accompanying statutory guidance be issued with the following minimum requirements to be put in place by schools:
 - (i) Medical Conditions Policy.
 - (ii) An Individual Health Plan for each pupil who has a medical need.

● **Whether there are any unintended consequences arising from the Bill;**

The Bill has several unintended consequences from a medical conditions perspective:

Consequence 1: The definition of ALN

Although not explicitly mentioned on the face of the Bill, there are a number of ways in which medical conditions would come under the Framework. They are:

- (1) Via the Equality Act 2010
- (2) Via an Additional Learning Provision (ALP) requirement
- (3) Via the Code of Practice

A flowchart of the Bill's definition sections is included at the end of this document to assist the Committee in their understanding of the following.

(1) **Equality Act 2010:** In determining ALN, the Bill uses the Equality Act 2010 as part of its definition (Part 2, Chapter 1, Section 2 (b)). Some medical conditions are well established as disabilities under the Equality Act 2010. This would introduce tiers of medical conditions into the ALN Framework. In practice, some conditions would be included under the ALN Framework and some wouldn't be. All documentation relating to the proposed ALN Framework fails to acknowledge, clarify or address this.

The table below shows well-known conditions that fall into these categories and their status under the Equality Act 2010. It follows that this would also determine their status for the ALN Framework:

Disability	Sometimes a disability	Not a disability
Type 1 diabetes, ME & CFS, Epilepsy, Motor Neurone Disease, Fibromyalgia, Depression, Schizophrenia, Mental Health Conditions (anxiety, phobias, eating disorders, bipolar disorders, obsessive compulsive disorders, self-harm), Rheumatoid arthritis, Dementia, Muscular Dystrophy, Systemic Lupus Erythematosus (SLE), Respiratory Conditions, Cardiovascular Disease (thrombosis, stroke & heart disease), Cancer, HIV infection/AIDS, Multiple Sclerosis, Allergies, Stammering, Relatives of any of the above via associative disability discrimination	Arthritis Allergies	Asthma Addictions (unless a result of prescription medication) Hay fever (unless aggravates another condition) Other conditions that are not long-term

Also of note is the fact that the Equality Act, in determining whether a condition is a disability, places emphasis on the effect of an impairment and not its cause.

(2) **Additional Learning Provision (ALP):** Section 6.13 of the Code of Practice states that: *If a person has a learning difficulty or disability which calls for ALP, the individual **must** be considered as having ALN for the purposes of the Act.*

ALP is defined as any support that is ‘additional to or different from’ (defined as ‘that which goes beyond that generally made available’) that which is provided to others of the same age in mainstream education. A child with a chronic condition will always need ALP. In the case of severe allergic disease, failure to provide an individualised care planned agreed by all relevant parties and appropriate training and education for key staff can result in a child having an allergic reaction in school which could be fatal.

(3) **Code of Practice:** The Code is a statutory document. Sections 6.38 - 6.42 describe medical conditions management under the title of ‘Initial considerations - Healthcare needs’.

Section 6.38 signposts the reader to the non-statutory guidance document. What is the relationship between the two documents? The statutory document instructs the reader to follow a non-statutory document that fails to guarantee any support to children with medical needs. Clarification is needed with regards to this mixed-messaging in order to enable all parties to deliver appropriate support to children/young people with medical needs. In addition, the support described in the guidance document would constitute ALP, which would send the reader back to the statutory ALN framework.

Section 6.42 states that an IDP may be updated at the same time that another plan is updated, for example an Individual Healthcare Plan (IHP). The guidance document states that not all children with medical conditions will need an IHP. It goes even further in saying that the final decision on whether a child needs an IHP rests with the Head Teacher of the school. The Head Teacher is

unlikely to have the clinical knowledge necessary to make this decision. They are also a key decision maker in granting funding for support and are influential in a school's inclusion/engagement with medical conditions.

Potential consequences to the definition-based issues:

- Widen the existing gap between the 'have/have nots' in terms of support at school, which is already unacceptably wide.
- Intensify the battle to obtain the best available level of support. 'Statement versus No Statement' would be replaced by 'disability or no disability', with 'ALN rights or no ALN rights' inextricably linked.
- Result in confusion in practice and an assumption that non-clinical education roles have a level of specialist or clinical knowledge that they simply do not have.
- What message does this send to families in Wales?

Consequence 2: Medical condition in addition to ALN

What of children and young people who have a medical condition in addition to a learning difficulty/disability? There is no recognition of this group whatsoever, although it is not uncommon for a child to have both. This would introduce yet another additional tier into the Framework to those described above. It may also risk unnecessary diagnosis of a learning difficulty in order to secure ALN funding.

Consequence 3: The battle for statements & funding

The Bill widens the gap and intensifies the battle for support that goes against the very purpose of the reforms. In addition to the scenarios described above, the following measures in the Bill will endanger children with medical conditions:

- (i) The removal of statements: We hear regularly from parents who have removed their child from school because of a lack of available support or because they are not confident/fearful of the quality of available support. They in turn miss days in their own employment and in some cases have even lost or left their jobs because of this.
- (ii) The removal of 1-2-1 support: Some parents tell us that they agreed for their child to receive 1-2-1 support as a compromise with the school to deter the parents from applying for a statement of SEN. It is well known that this is a less expensive option for schools/LEAs.

The above points will further entrench the issues that currently in desperate need of resolving.

Consequence 6: Comparison of guaranteed support

The table below compares the guaranteed level of support for children with ALN with that guaranteed to children with life-threatening medical conditions:

Comparison of rights if ALN Bill passes in current format:

ALN Framework	Medical Needs Guidance
Individual Development Plan (IDP): Issued to all children with ALN regardless of complexity of need. Document is legal and enforceable.	Individual Health Plan (IHP): States that “not all learners with healthcare needs require an IHP”*. If IHP in place, it has no status/weight if non-compliance is an issue. *Final decision rests with Head Teacher.
Mandatory / Enforcement	Non-mandatory / no enforcement
Clarity	Insufficient detail
Tribunal access & rights of appeal	No Tribunal access or rights of appeal
DECLO role	No access to DECLO
Campaign to raise awareness of new rights	No plan to raise awareness

NB: The DECLO role is a health/clinical role that will be based in each health board in Wales. Their remit will not cover medical conditions unless they are included in the reforms.

• **the provisions for collaboration and multi-agency working, and to what extent these are adequate;**

Health services are mentioned throughout but not children with medical needs.

• **whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;**

IDP/IHP relationship is not clear and need consideration (as above). We support the use of an editable all-Wales template for an IDP/IHP.

• **whether Bill will establish a genuinely age 0-25 system;**

The NHS system is not set up to reflect this. Services are divided into paediatric and adult services.

• **the capacity of the workforce to deliver the new arrangements;**

- Currently, school nurse teams provide training to schools for children with allergies. We know of instances where a small number of schools have declined this service and have even prevented NHS staff from entering the premises to carry this out. If included in the Bill, this non-compliance would be addressed and would be far less likely to happen. The majority of schools have welcomed the training. The Bill (if applicable to medical conditions) would not change this but would be an important step in formalising this arrangement.
- School staff (ideally 2-3) volunteer to receive training for allergy management. We hear from school staff who are deterred from doing this by their teaching unions because of the lack of legal clarity in this area. We also hear from parents, school staff and NHS staff that school staff who want to volunteer are prevented from doing so by senior staff at the school. Not including medical conditions will threaten the willingness of staff who currently provide care on a voluntary basis and will deter those who would like to, both now and in the future. What message will excluding medical conditions send to those who are already concerned about their own legal protection?
- Current culture of employing 121 support workers is an expensive approach.
- There is no recognition that SENCOs currently have responsibilities for children with medical conditions and no proposals on how this will be managed should medical conditions be excluded from the reforms.
- Education Tribunal has no jurisdiction over health services/medical conditions cases.

How do we reconcile a voluntary system with the provision of effective support for a child with complex medical needs when away from home? The voluntary capacity means that some schools do not deliver support as they should, rely on parents to attend school premises and where this is not viable, put a child's health and/or education at risk. . In the case of a severe allergic reaction adrenaline needs to be administered immediately so the child's life could be at stake.

● **the proposed new arrangements for dispute resolution and avoidance. It would be helpful to the Committee if respondents could identify how the Bill could be amended to improve any aspects which they identify as inadequate.**

- Evidence shows that having a statutory duty in England has resulted in fewer parents needing to resort to dispute resolution (i.e. legal action) simply because the duty is in place.
- The escalation process in the Bill is a clear and sensible approach to dispute avoidance and dispute resolution for ALN. We know that the process can be time consuming. We welcome the time limits placed at certain points in the process but these are longer than we would hope for when a family is having to wait (i.e. 10 weeks).
- The guidance does not outline dispute avoidance/resolution but states the following:

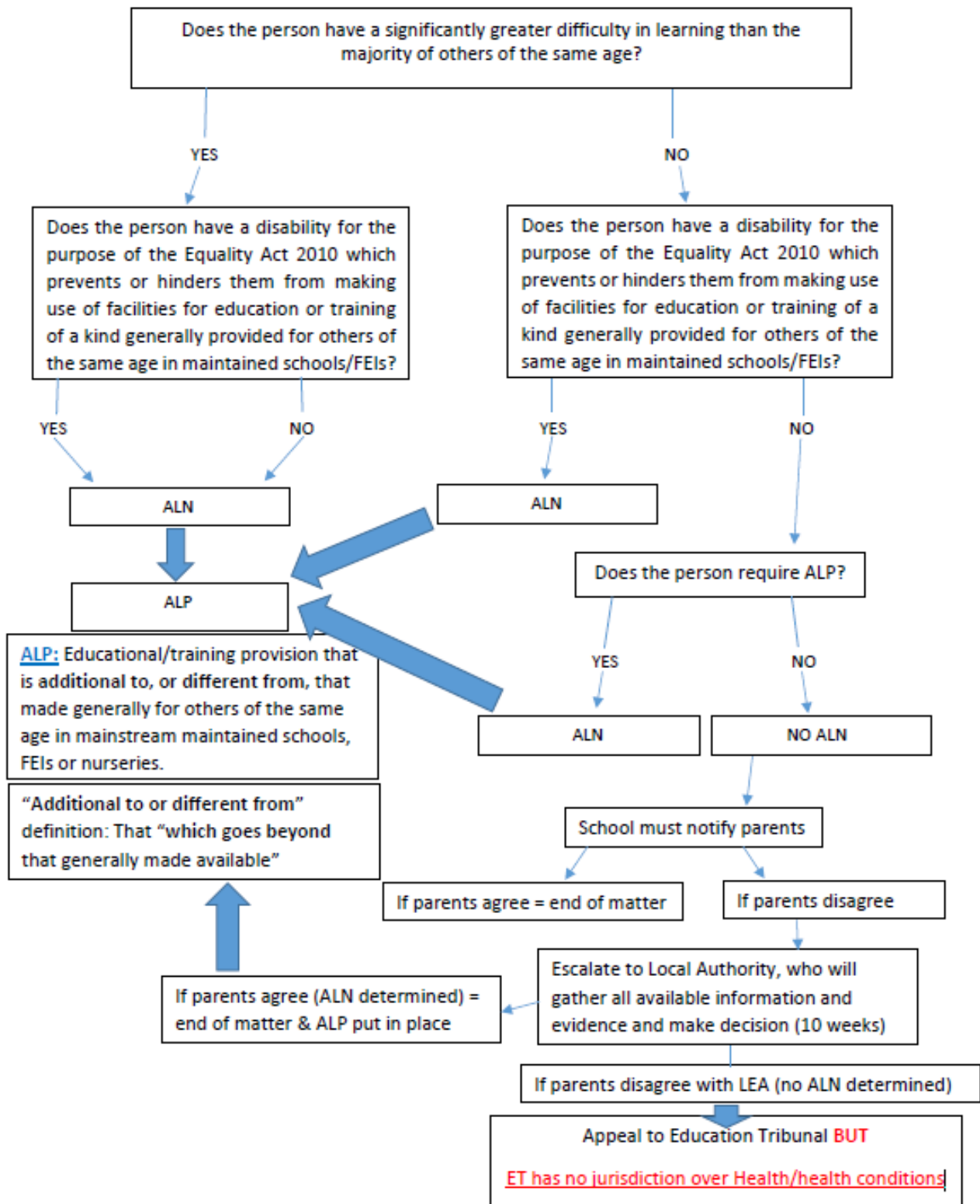
Schools should also consider how the learning experience can be maximised to support children and young people to develop the knowledge, skills and emotional resilience required to uphold their own rights, the rights of others and to appropriately resolve conflicts. It should give specific focus to combating: "depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide...violence, ill-treatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school." UNCRC General comment 4 (Creating a Safe and Supportive Environment).

- Families currently approach NHS channels and the third sector with disputes regarding medical conditions. Both sectors currently provide a high level of mediation and advocacy for families.

Determining ALN

Need to determine whether the individual have a learning difficulty/disability?

START BELOW:



Epilepsy Action’s Response in respect of: Children, Young People & Education Committee Consultation on the Additional Learning Needs and Education Tribunal (Wales) Bill

Epilepsy Action is the UK’s leading epilepsy organisation. We exist to improve the lives of everyone affected by the condition. An estimated 32,000 people in Wales have epilepsy. Of those people, approximately 2,762 are of school age (*Source: Epilepsy prevalence, incidence and other statistics, Joint Epilepsy Council of the United Kingdom and Ireland, 2011 / office of National Statistics, United Kingdom; estimated resident population by region; Mid2010 Population Estimates*). For some children, epilepsy can have an effect on how easy or difficult it is for them to learn. This could be for a number of reasons, including the condition itself, the cause of the epilepsy, the effects of seizures, side effects from epilepsy medicines and absences from school.

Epilepsy Action believes that it is imperative that the ALN Bill and accompanying Framework includes medical needs.

One: Consider the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill’s stated policy objectives.

General principles

Epilepsy Action is disappointed that the Welsh Government’s proposed ALN Bill and accompanying Framework does not include medical needs.

If steps are not taken to rectify the proposed Framework, the ALN Bill will damage the existing fragile system of support for children with medical needs. We ask the Committee to address the issues presented as a matter of urgency and warn that a failure to do so will present an unprecedented safety risk to the most vulnerable children in Wales.

We welcome the aspirational language used by Welsh Government in presenting the reforms, such as having legislation that is fit for purpose, guarantees equity of rights, is fair and that underpins the rights of children. We note with dismay that the children and families who we represent will not be entitled to any of the benefits of these ambitious reforms.

The matters described throughout are astonishingly similar to those of children with medical needs. Sections 3.1 and 3.2 of the Explanatory Memorandum describe exactly the issues faced by children with medical needs. The reality of the culture of management of medical needs and SEN is not reflected in the reforms. The allocation of funding, the provision of support, the role of SENCOs in medical needs management etc. are not acknowledged in the Framework and, as such, the ALN Bill poses a threat to existing arrangements for the families who we represent.

It is difficult to reconcile the provision for additional learning needs with those for life-threatening medical conditions. We are concerned that aside from the tangible reforms, the message to children, families, school staff and Local Authorities is that children with medical

needs are less important. In practice, there is a danger that this will result in the de-prioritisation of this group.

Should medical conditions be included in the proposed Framework, we would welcome the general principles of the Bill.

Whether there is a need for legislation

The current guidance 'Access to Education and Support for Children and Young People with Medical Needs' has failed because of ambiguity across multiple demonstrable areas. Evidence shows that it's voluntary, non-directive approach means that it is ignored by a number of disengaged schools because it is insufficiently directive, lacked clarity of roles and failed to set out basic requirements in delivering effective support. The gaps in practical advice and specific allocation of roles, as well as optional duties contained in the draft allows for inaction by all involved parties.

As a UK-wide organisation, it is much more difficult to provide assistance and guidance to supporters, schools and Local Authorities in Wales, where there is no explicit duty to cover medical needs.

The purpose of any guidance document is to ensure that it is fit for purpose and that there is oversight of its implementation. This is key to the context of updating the 2010 guidance, which has failed children with chronic conditions in Wales. The 2017 guidance will also fail, irrespective of how well it is written.

Two: Any potential barriers to the implementation of the key provisions and whether the Bill takes account of them.

The potential barrier is that children with medical conditions will be left behind. The Bill does not take account of this, as there is no duty on the face of the Bill for medical conditions. We welcome the lessons for Wales listed in the ALN Research paper, where it states that schools and colleges should provide support for basic health needs, such as medication. (page 49: <http://www.assembly.wales/Research%20Documents/16-059%20SEN/16-059-Web-%20English.pdf>)

Three: Whether there are any unintended consequences arising from the Bill;

There are several unintended consequences from a medical conditions perspective:

- a) Some medical conditions are well established as disabilities under the Equality Act 2010. In practice, some conditions would be included under the ALN Framework and some wouldn't be. The proposed ALN Framework and the Supporting Learners with Healthcare Needs draft guidance fails to acknowledge, clarify or address this. This may result in:
- b) A child with a chronic, life-threatening illness will always need additional provision as described in the Bill, but this is not recognised. Some SENCOs have responsibilities for children with medical conditions and no proposals on how this will be managed. There is a risk that not including medical conditions will threaten the willingness of staff who currently provide care on a voluntary basis and will deter those who would like to.

c) What about children/young people with a medical condition in addition to a learning difficulty/disability? There is no recognition of this group whatsoever, although it is not uncommon for a child to have both. This would introduce yet another additional tier into the Framework to those described above. It may also risk unnecessary diagnosis of a learning difficulty in order to secure ALN funding.

d) The Code is a statutory document. Sections 6.38 - 6.42 describe medical conditions management under the title of 'Initial considerations - medical needs'. Section 6.38 signposts the reader to the non-statutory guidance document. What is the relationship between the documents? The statutory document instructs the reader to follow a non-statutory document that fails to guarantee any support to children with medical needs. Clarification is needed with regards to this mixed-messaging in order to support schools and educational staff to deliver appropriate support to children/young people with medical needs.

e) The battle for support. The Bill widens the have/have not gap and intensifies the battle for support. In addition to the scenarios described above, the following measures in the Bill will endanger children with medical conditions:

- The removal of statements: Some children with medical conditions currently have statements. If these are removed by the ALN Bill and medical conditions are not included in the reforms, there is a very real safety risk. We hear regularly from parents who have removed their child from school because of a lack of available support or because they are fearful of the quality of available support. They in turn miss days in their own employment and in some cases have even lost their jobs because of this. The number of these cases will increase sharply if the Bill fails to address and resolve this. Please see enclosed case study.
- The removal of 1-2-1 support: Some parents tell us that they agreed for their child to receive 1-2-1 support following pressure from the school and as a compromise. It is well known that this is a less expensive option for schools/LEAs. In practice, this support is issued under the same LEA funding and so will also be removed if medical conditions are not included in the reforms.

The above points will further entrench the issues that brought about the very purpose of the reforms – i.e. the variation of care, the inequity of access to care and the culture of those parents who shout the loudest receiving the best level of support.

f) Comparison of rights/support: The table below compares the guaranteed level of support for children with ALN with that guaranteed to children with chronic and life-threatening medical conditions:

ALN Framework	Medical Needs Guidance	Comments
Individual Development Plan (IDP) issued to all children with ALN Regardless of complexity of need. Document is legal and enforceable.	Individual Health Plan (IHP) states that "Not all learners with healthcare needs require an IHP". If IHP in place, it has no status / weight if non-compliance is an issue.	Decision to create IHP rests with Head Teacher and not health staff. Needs of some children with medical conditions may be greater

		than those on the less complex ALN spectrum.
Mandatory / Enforcement	Non-mandatory / no enforcement	Guidance does not address non-compliance by parties
Clarity	Insufficient detail	
Tribunal access & rights of appeal	No Tribunal access or rights of appeal	Education Tribunal has no jurisdiction over health services or health cases.
DECLO role	No access to DECLO	The DECLO role is a health / clinical role but its remit will not cover medical conditions if they are not included.
Campaign to raise awareness	No plan to raise awareness	

Four: The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

We would expect Welsh Government to cost correctly if included, with appropriate stakeholder input.

Five: The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum.

No comment.

Specific Issues:

Points Six, Seven and Eight:

Health services are mentioned throughout but not children with healthcare needs.

Nine: Whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be.

The IDP/IHP relationship is not clear and needs consideration.

Ten: Whether Bill will establish a genuinely age 0-25 system;

NHS system is not set up to reflect this.

Eleven: The capacity of the workforce to deliver the new arrangements;

Currently, paediatric specialist staff provide training to schools for specific medical conditions. The Bill, if applicable, would not change this but would be an important step in formalising this arrangement. Schools should ensure that sufficient provision is made to ensure CYP can participate in the whole school day and its activities. The current culture of employing 121 support workers is an expensive approach.

Whilst we recommend that a statutory duty be introduced, we fully acknowledge that this cannot work in isolation and needs to be supported by an adequate workforce.

The proposed draft document does not offer a solution if no school staff members are willing to volunteer as the person responsible for medical needs. How do we reconcile voluntary roles with the provision of effective support for a child with complex medical needs when away from home? The voluntary capacity means that some schools do not deliver support as they should, rely on parents to attend school premises and where this is not viable, put a child's health and education at risk.

Many parents and health care professionals raise concerns around the challenges they face when senior staff members at schools, such as Head Teachers or Deputy Head Teachers, are very reluctant for any staff to be responsible for medical needs. Some explain that they experience delays in schools signing off staff members who have received training, whilst others describe capacity issues where no staff are available to provide the required level of care. The training of supply teachers also presents difficulties.

Twelve: The proposed new arrangements for dispute resolution and avoidance. It would be helpful to the Committee if respondents could identify how the Bill could be amended to improve any aspects which they identify as inadequate.

- Parents approaching NHS with issues and not education, as there is no 'Putting Things Right' equivalent in Education.
- Mediation/advocacy role of third sector at the moment. We currently provide a high level of support in this area to families, schools and Local Authorities. This is increasing.
- Rights of appeal/access to the Tribunal access are not available to families with medical conditions. There is currently no formalised mechanism to resolve disputes in an independent environment for medical conditions.
- If medical conditions were part of the Framework, we believe that it would considerably reduce the number of families being forced to take extreme measures, such as legal advice, to resolve disputes. The clarity of the documentation in England following the introduction of the statutory duty has shown that it can in itself act as a tool for dispute avoidance in the first instance, without the need for dispute resolution options. This is crucial to the lessons for Wales in taking the reforms forward.

Case study:

S is a seven year old girl from Mid-Wales. Her seizures started within two weeks of her being born. S's concentration is not very good. Her memory has been affected by surgery, seizures and her medication which suppresses her brain activity. She needs a quiet time every day, usually around 11am where she will get drowsy and may sleep. She has poor balance and left sided weakness, with no strength in her left hand and fingers.

Her mother has never been able to return to her full time employment as a result of S's epilepsy. She stays at home on call waiting for the school to ring to ask her to come and pick S up from. The school is not providing adequate support for S. Her mum reports the following:

"The school at one point said that they refused to keep her emergency meds there as they had not received up to date training, even though they had done it 10 months previously. I was forced to take S out of school as her life is at risk without access to emergency medication."

*"Inclusion is a very big issue in school, they leave her out of many situations"
"They [the school] took ages to get a 1:1 worker, didn't advertise in correct places only where they needed to and for the minimum time. They do not think it's important to get the right person in place to support"*

“There is no sickness cover for S’s 1:1 worker. Her 1:1 was told “you’d better not take time off””

“The school wanted S to move to the Unit. She was slightly behind having had major brain surgery in June 2016. She made an amazing recovery and was back in school in September. No contact was made by the school following her operation, no discussion about the transition period even though I’d contacted the school! I had been told by her health professionals that it was important for S to have calm and familiarity to aid recovery. On her first day back after surgery I was called into the office and told that S needed to be moved to the unit – I said “no way, she needs familiarity before even thinking about moving her, and she needs assessing first anyway!” The school said a week later that they had assessed her, and she needed to move. I refused. Again at October half term they told me I had to go in and sign to say that S could move to the unit. It took getting the head of Paediatrics in Powys and the epilepsy specialist nurse in London to telephone the school; her neurologist in Cardiff to write a letter and the Education Inclusion Officer for Powys to stop the move. I should have to fight the school”

“Up until last term it was agreed that S could have 1:1 support in the swimming pool when the class goes for lessons. The 1:1 was an assistant from another class who is also qualified as swimming instructor and lifeguard. Her usual 1:1 was there to provide dry side support, and I was there as emergency meds administrator. Since the autumn, the school have refused to release the other classroom assistant. This means that her usual 1:1 now goes in the pool, but she’s not qualified to properly help her. Because S is very off-balance, most of the time this 1:1 is holding on to her because she could go under at any time. This is affecting her confidence and isolating her from normal school activity”

“S is unable to run because of her poor left leg. No special measures have been put in place to allow her to be included in different activities”

“I would like a passport-type document to accompany S’s care plan, so that all teachers in the school are aware of her condition, what her difficulties are, her weaknesses, what she likes doing and what she enjoys”

If S was having this experience in England, she would be covered by the law protecting children in schools with medical conditions. It is disappointed that she is not currently afforded the same consideration in Wales.

Introduction

1. We welcome the opportunity to contribute to the Children, Young People and Education Committee consultation on the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill (hereafter, the 'ALN Bill').
2. The ALN Bill provides an opportunity to create and provide a unified legal framework for Wales which will put learners, their parents and carers at the heart of the process to identify and plan how to meet their individual needs, including their health and well-being needs. With the introduction of the ALN Bill we hope that there will be improvement in the multi-agency partnership response surrounding the identification of additional learning needs (ALN) and the planning and delivery of effective additional learning provision.
3. While we support the Bill there are a number of barriers to implementation which should be considered as the Bill progresses, including; workforce pressures; uncertainty around the DECLO role and the skills required to fulfil this role; that the Bill clearly defines what a 'health' need is and that referrals for relevant health treatment are only made when there is a clinical need; that prudent healthcare principles are considered; and that the complaints avenues and processes are clarified.
4. The Welsh NHS Confederation represents the seven Health Boards and three NHS Trusts in Wales. The Welsh NHS Confederation supports our members to improve health and well-being by working with them to deliver high standards of care for patients and best value for taxpayers' money. We act as a driving force for positive change through strong representation and our policy, influencing and engagement work.

Questions

- **The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;**
5. We supports in principle the overarching policy objectives and core aims of the ALN Bill. The ALN Bill has the potential to help improve health and well-being outcomes, and ultimately life opportunities, for children and young people with ALN in Wales. While legislation is necessary, it must be recognised that the ALN Bill is but one part of Welsh Government's wider ALN Transformation Programme.
 6. The ALN Bill is welcomed because it will meet the holistic needs of children and young people. We are aware that the role of the NHS received criticism from a range of stakeholders during the consultation in 2015 on the draft ALN Bill. The criticism around a perceived lack of engagement and commination by health practitioners within the special educational needs (SEN) process; poor information sharing and multi-agency working; the lack of statutory duties placed on health and the disparity between the responsibility on local authorities compared with health bodies has been taken on board by the NHS. This Bill will encourage improved collaboration and information sharing between agencies, which are essential to ensuring that ALN are identified early and the right support is put in place to enable children and young people to achieve the best possible outcomes. We also support the strengthened statutory requirements which will have the effect of ensuring that practice is applied consistently for all learners across Wales.
 7. A jointly developed integrated, multi-agency single plan is to be welcomed, particularly one that reinforces the child and family voice in the production. While there is nothing in existing legislation

that prevents that, it is clear that the interpretation and practice of the Bill is to ensure the delivery of a co-ordinated plan across agencies.

8. While we welcome the ambition of the Bill to improve outcomes for children and young people and the general principles of the Bill, we do however have a number reservations. These include;
 - a) The engagement and provision, or availability, of adult health services;
 - b) Appropriate Information Technology structures for communication and sharing of information;
 - c) Identifying what is a ‘health need’ within the ALN Bill and the capacity for the NHS to support everyone identified as having a ‘health need’; and
 - d) A stronger reference to the UN convention on the Rights of the Child within the Bill would be welcomed.

9. Finally, we need to ensure that the ALN Bill focuses on outcomes rather than entitlements to duties and inputs. In the ALN Bill we note the strengthened section on duties placed on Health Boards to consider whether there is a relevant treatment or service that is likely to be of benefit. In line with prudent healthcare principles, health must always be a matter for clinical judgement, based on person centred, individualised plans with realistic prognosis for outcomes from any input. This principle must be reflected within this legislation because it will then be more consistent with the existing duties on health. We recommend that section 18 (4) of the ALN Bill includes the words **“based on clinical need”** to provide further clarification for the NHS when referrals are made e.g. section 18 (4) of the ALN Bill be amended to state *“If the matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child or young person’s additional learning needs, based on clinical need”*.

- **Any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;**
10. There are some potential barriers to the implementation of key provisions that need to be considered as the Bill progresses through the Assembly.

11. The barriers to the implementation for Health Boards for key provisions include:
 - a) Consistency of interpretation, definitions and expectations across different Local Education Authorities (magnified possibly by school governing bodies’ variance). The Code of Practice needs to be robust in developing agreed definitions for “health” needs as per Part 2 of the ALN Bill. Health Boards’ experiences is that there is a difference of understanding of what may be considered “health” issues in other agencies, such as education, which results in over-referral, an over-estimation of what therapy is able to do and, more importantly, develop an unrealistically high expectation from teachers, families and children on the importance of a “diagnosis” or the availability of a “treatment” to the whole process, the provision of care and the eventual outcome. This counters the policy of prudent healthcare, which is being implemented across the NHS, and the key principle of *“Do only what is needed, no more, no less; and do no harm”*.
 - b) The ALN Bill separates educational needs from health and social care needs which is likely to promote disagreements between funding organisations. For example, if a child is challenged with toileting and this means they cannot access their classes, would this be considered a health or education issue? There are many other examples of where the distinction between a health need and an education need is unclear and this is particularly unhelpful for children, young people and their families accessing services. The ALN Bill does not always appear to support other public service policy to increase and improve integration for a seamless service for citizens in Wales.

- c) Availability of resource in terms of finance and individuals with the necessary competencies to fulfil the role of the Designated Education Clinical Lead Officer (DECLO). There is a national shortage within most child health professions and the burden of work relating to safeguarding and child care legal work is expanding. Working through the role in the pilot areas and preferably working in Local Education Authorities clusters that match Health Boards' footprints would go some way towards alleviating this situation. The principles behind the DECLO role are excellent and we would support its development and the move to a role focussing on co-ordination, liaison and troubleshooting as this would enable clinicians already involved with the child or young person to contribute specific clinical advice. However, the training requirements that the ALN Bill will place on NHS staff to enable them to provide informed advice into the new system will require resources, both in relation to time and finance, and could decrease the clinical availability of frontline services in the short term.
- d) We feel the Individual Development Plans (IDP) will be labour intensive, particularly in terms of the logistics of sharing the Plans without an IT system across the various agencies. We are currently unable to predict how many IDP's will require health contribution and feel that there will be a significant increase in demand on services which are already stretched in their capacity. While having the health referral considered at a planning meeting, with health professionals present, consulted with and support the referral, can potentially reduce the likelihood of problems and disagreement, the capacity of the present workforce must be considered.
- **Whether there are any unintended consequences arising from the Bill;**
12. There are a number of unintended consequences arising from the ALN Bill that need to be considered, including:
- a) Confusions as to which single unified plan is applicable, given the requirements under the Social Services and Well-being Act 2014 and the Mental Health (Wales) Measure 2010 to provide one. Some clarity around unification of templates may be helpful for families and young people;
 - b) Inadequate support and early intervention could result in increased costs to accommodating children and young people away from home and addressing chronic health conditions in the long term;
 - c) As highlighted previously, identifying what is a 'health need' versus an education need is often ambiguous within the IDP;
 - d) How is "benefit" defined within the ALN Bill? The Minister stated to the Children, Young People and Education Committee on the 12th of January; *"if an NHS body identifies a treatment or service that is likely to be of **benefit** in addressing the child's or young person's additional learning needs then the NHS body must, not may, secure treatment"*. The precise meaning of the term 'benefit' is ambiguous and not presently clearly defined. When considering the principles of prudent healthcare this causes a conflict, as many treatments may be considered of likely benefit but not robustly evidence based or considered to be clinically effective in achieving the best outcome for the patient. The broader impact of this is around the longer term implications for funding for therapy services/allied health professionals if treatment must be provided, especially with the age range increasing to 25 years, and the present capacity within the service;
 - e) Despite the ALN Bill, public bodies, including the NHS, are still working to different targets, including waiting times, across agencies which could cause conflict and disagreement;

f) There will be administrative consequence for the NHS, and other public bodies, with the increase in contribution to IDP's.

- **The financial implications of the Bill**

13. Overall we believe that the financial implications of the ALN Bill have been underestimated, especially for the additional duties around supporting 16-25 year old and the recruitment costs to recruit for the Designated Education Clinical Lead Officer (DECLO) role.

14. The DECLO role sits within health and is considered to be cost neutral. However, Health Boards do not have anyone fulfilling the components of this role currently and therefore no capacity to release a member of staff for this role. The limited components undertaken by Health Boards are currently provided by Paediatricians. These are not defined sessions which could be released to provide anything else, and therefore investment in this role would not be cost neutral. Furthermore, where a treatment is defined as being of 'likely benefit' and Health Boards must therefore seek to provide it, but does not have trained professionals, or the resources, to provide the necessary treatment. Thus the outsourcing of this service will have financial implications on Health Boards.

15. We are supportive of the development of single statutory plans and a focus on collaborative working to improve outcomes for children and young people. However we have a number of concerns about the resource implications of such a development, with particular regard to attendance at meetings. For example, learning from the implementation of the SEND reforms in England has suggested that capacity is a major issue and there are commissioning gaps in Speech and Language Therapists (SLT) support for 0-2 age group and 16-25. Under the current system, SLTs who treat children with non-complex needs attend schools to assess the needs of the child and prepare written care plans which are often shared by post and by e-mail. Under the new legislation we understand that SLTs could be invited to attend a far higher number of meetings in person given that all children with ALN will now have multi-disciplinary Individual Development Plan (IDP) meetings. Approximate calculations within one Health Boards in Wales suggest that we may move from a system where SLTs attend multidisciplinary team meetings for 25% of current case load (statements of educational need and a minority of School Action Plus) to a situation where SLTs would be invited to attend meetings for 90% of the caseload. This is one example of the increased caseload for one professional group but it is likely to be relevant to other Allied Health Professionals caseloads. Thus the ALN Bill will have an impact on workforce capacity and resources so the legislation is unlikely to be cost neutral.

- **Whether the Welsh Government's three overarching objectives are the right objectives and if the Bill is sufficient to meet these;**

16. The Welsh Government's three overarching objectives are the right objectives and the ALN Bill in its entirety is sufficient to meet these. However, as highlighted above, consideration is needed around the potential barriers and also the role of the DECLO. We feel this role is pivotal to making this work and potentially the time per population for the role is underestimated.

- **Whether the Welsh Government's ten core aims for the Bill are the right aims to have and if the Bill is sufficient to achieve these;**

17. The 10 core aims are the correct aims but there needs to be consideration as to the overlap with other legislation that similarly seeks to develop integrated, person centred and multiagency plans. Consideration in the Code of Practice needs to be given to potential dispute resolution with NHS

providers given concerns identified previously in our response as this can be given as an issue in the current system when families and education departments are at an impasse.

- **The provisions for collaboration and multi-agency working, and to what extent these are adequate;**
18. The current provisions are proportionate for legislation at this time. The underlying Code of Practice and the development of an effective DECLO role should ensure that the inter-department and interagency relationships will hopefully lead to a move away from a heavy reliance on statutory requirements to the delivery of services. Ensuring that all organisations have performance measures that ensure the aspired outcomes for the child and young person described in the ALN Bill, are achieved would facilitate this but it is important that structures are put in place, such as appropriate information technology, to create a shared interface for collaboration and communication, to improve multi-agency working. As well as technology, there needs to be further strengthening of all pathways between Local Education Authorities and Health Boards to improve multi-agency working.
 19. With fiscal pressures on all agencies there is potential for competing priorities to impact on the ability to provide what is outlined as true health provision through the ALN Bill e.g. referral to treatment waiting list targets for health versus ALN statutory requirements. In a time of austerity and stretched resource, stronger and increased legislation and duties on health runs the risk of health resource being allocated on the basis of legal requirements rather than clinical needs and outcomes, which is the underlying principle at present within the NHS in Wales.
 20. To ensure effective future collaboration between agencies, workforce planning and sustainability of all services will need to be considered, including potential investment to ensure all agencies are held to account. The responsibility for most IDP's will sit with schools but this will have an impact on health because Health Boards will be required to collaborate with individual schools on more cases.
- **Whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IDPs) and whose responsibility this will be;**
21. The ALN Bill is clear in relation to education taking responsibility for developing and maintaining IDP's whilst co-opting agencies to meet children and young people's individual needs. However we suggest that there is a need for a standardised template for the IDP to ensure consistency across Health Board areas and across Wales.
 22. It is positive that the ALN Bill promotes the increased participation of the child in the IDP process. However, how this will be facilitated and whose responsibility it will be to ensure it takes place, particularly for children with communication difficulties, is unclear. Furthermore, Health Boards will have the responsibility to ensure that the information held within child and young person's IDPs is up to date, appropriate and reflective of their current need. Without defined time and workforce capacity, this is likely to be unachievable.
- **Whether Bill will establish a genuinely age 0-25 system;**
23. On its own the ALN Bill will not establish a genuine 0 – 25 year old system because many services in health and social care will continue to operate with a predominately 16 – 18 transition. It is important that strong consideration is given to transition at 25 as simply moving the age does not resolve historical problems. Furthermore, the current legislative rights and responsibilities for

children in the UK at present require transition ages of anything between 14 and 25, and whilst 25 is likely to be easier, it will not suit 100% of people 100% of the time. Flexibility is key around the strengths, needs and wishes of the young person.

24. In addition, there are a number of practical obstacles to address. The current adult health system has few generalists to provide the necessary overview of the needs required in the process. The development of professionals to work across this age range is particularly challenging. From a professional developmental and workforce level, the skills necessary to work with this age group are different to younger children, not least the understanding of some of the legal requirements of consent etc. It is unlikely to be a genuine 0-25 system without substantial investment to ensure equity or provision for all children and young people's needs across this age range.
25. As part of considering the system as it stands there are three key issues that the ALN Bill needs to consider and address when looking at establishing a genuine age 0 – 25 system. The three areas are:
- Children of non-statutory school age with defined needs who should have access to services via ALN but may not be in school. What is the plan to address this and robustness around it;
 - Children in mainstream school with defined needs who require access to support from health services and how they are provided across mainstream sector; and
 - Post 16; young people who continue within education and how their therapy needs will be provided/addressed through adult services.
- **the capacity of the workforce to deliver the new arrangements;**
26. As highlighted previously there are concerns in relation to the capacity of the present NHS workforce to deliver the new arrangements. As previously discussed, there is concern around the numbers of available staff to fulfil the role of DECLO and capacity across the whole workforce, including within allied health.
27. Overall the DECLO role is supported, if capacity and investment is provided, because the role will provide a strategic co-ordinator role in Health Boards and will support the development of IDPs. The outcome of the trials of the role currently underway across two Health Board areas will help to inform the final job description and best practice in terms of collaboration with Local Authority education and social services under the ALN Bill. Under the present Bill, Health Boards must designate an officer, who is a registered medical practitioner or a registered nurse or another health professional, to have responsibility for co-ordinating the Board's functions in relation to children and young people with ALN. As the Bill has been written, Health Boards may only designate an officer it considers to be suitably qualified and experienced in the provision of health care for children and young people with ALN. At this stage it is unclear how senior this role needs to be and the key qualifications that will be required.
28. As well as considering who will carry out the DECLO role within Health Boards, the fact that there is only one DECLO within each Health Board will lead to a significant workload for this person, especially for Health Boards with a number of Local Education Authorities to liaise with or Health Boards with a rural population covering a large geographical area such as Powys teaching Health Board.
29. The current demand and capacity plans within health only look at new referrals into services and whether there are sufficient assessment appointments to meet that flow rate across health. When looking at the capacity to deliver against the ALN Bill, we can envisage changes in demand along the following lines:

- An increase in the number of children with an IDP, which will be statutory;
 - It will be difficult to move children through health services who have an IDP as parents and other partners will be resistant to health amending the IDP to say that needs have changed, as they may be aware it will result in a withdrawal of service. Following the principles of collaborative working and agency working this will be a contentious issue. Children will therefore stay in the system for longer requiring service provision (that is statutory) for substantially longer periods of time;
 - Change in age range 0-2 and post 16 will increase demand on the present workforce;
 - Conflict around health provision will be the responsibility of health to establish redress mechanisms. Dealing with this will be a new demand; and
 - Significant training requirement for all public sector staff to increase awareness of, and participation in, the ALN procedures effectively.
- **The proposed new arrangements for dispute resolution and avoidance.**
30. While the proposals within the ALN Bill for resolution are clear in relation to lead and the roles, as indicated above, consideration of resolution over NHS provision needs to be considered as it is already a point of difference between public bodies and the new system has the potential to exacerbate this.
31. Clear, mutually understood expectations of the system and what needs to be established between all participants and agencies needs further consideration. Agreement as to which individual professionals need to be present to agree plans impinging on agencies need to be agreed across sectors. Currently health uses the 'putting things right' dispute resolution and education uses Special Educational Needs Tribunal for Wales (SENTW). Within the new arrangements the ALN Bill suggests health issues will be dealt with through 'putting things right'. However, if the IDP is being disputed, potentially it could go through both routes where representatives from authorities will be required to attend both. Having two separate avenues of complaint is potentially a very confusing situation, not least for children and young people or their parents, and tends to undermine the rationale of the ALN Bill to have a streamlined and more equitable ALN system. This needs to be clarified as to how the dispute will be resolved in a joined up way.

Conclusion

32. As stated at the outset, the NHS supports the principles of the proposed legislation which has the needs of individual learners and their families and carers at its centre. The evidence that we have provided reflects the complexity associated with this legislation and the significant costs and workforce challenges associated with the implementation of the Bill.

1. The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;

A jointly developed integrated, multi-agency single plan is to be welcomed, particularly one that reinforces the child and family voice in its production. Whilst there was nothing in the existing legislation that prevented that, it is clear that interpretation and practice has did not facilitated this on many occasions. Strengthening the voice of the child and requiring a graduated, needs based response to additional learning needs is welcome. Changing the labels used may help reduce stigma and any discrimination in the short term, but history tells us to new labels can become new terms of abuse unless underlying culture changes are also supported and enabled. Stronger reference to the UN Convention on the Rights of the Child would therefore be welcomed.

2. Any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

The biggest challenge to implementation will be the need to change the prevailing culture and levels of trust parents, in particular, have in the system. Feedback from parents within the system indicate that, without the "Golden ticket" of a statement and or diagnosis, support will not be secured. A parallel development of trust is also required between LEA inclusion services, schools and classroom teachers. The associated changes required by the Donaldson Report in terms of curriculum and training of staff are vital to deliver the changes required and enable children, parents, carers and staff to have faith in the new system.

Two further obstacles remain, particularly for Health Boards:

- a) Consistency of interpretation, definitions and expectations across different LEAs. The Code of Practice needs to be robust in developing agreed definitions for "health" needs as is the case in Part 2 of the Act for additional learning needs. Our experience is that there is a difference of understanding of what may be considered "health" issues

in other agencies such as education, which can result in an over estimation of what therapy is able to do and, more importantly, develops an over expectation from teachers, families and children on the importance of a "diagnosis" or the availability of a "treatment" to the whole process, provision of care and eventual outcome.

- b) It is suggested that, when a health referral is being considered at a planning meeting, health professionals should be present, consulted with and support the referral. This will potentially reduce the likelihood of problems and disagreement.

- c) Further consideration needs to be given to the availability of resources in terms of finance and individuals with the necessary competencies to fulfil the role of the Designated Education Clinical Lead officer. There is a national shortage of most child health professions and the burden of work through safeguarding and child care legal work is growing. Working through the role in the pilot areas and preferably working in LEA clusters that match Health Board footprints would help with this position. The principles behind the role are excellent and we would support its development and the move to a role focusing on coordination, liaison and troubleshooting. Clinicians already involved with children or young people can then contribute specific clinical advice. There is however a training requirement across health staff now providing treatment to enable them to provide informed advice into the new system, which will require resource and the decrease of some clinical availability of frontline services in the short term to support the training.

3. Whether there are any unintended consequences arising from the Bill;

The main unintended consequence is that there may be confusion as to which single unified plan is applicable, given the requirements of Social Care legislation and Mental Health Measure legislation to provide a plan. Some clarity as well as unification of templates may be helpful for families and young people.

- 4. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, and the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum.**

It is suggested that the financial impact of the additional 16–25 year old work is underestimated and the back fill and recruitment costs of the backfill for the DECLO role is underestimated. Given trends that indicate needs are escalating it is doubtful whether true savings to the public purse will be made in the short term, but rather a minimisation of escalation or a control and stabilisation of costs will be achieved in the first instance.

- 5. Whether the Welsh Government's three overarching objectives (listed at para 3.3 of the Explanatory Memorandum) are the right objectives and if the Bill is sufficient to meet these;**

The aims are correct but, as indicated in answer 2, a need for the work in curriculum change and training of staff must occur in parallel.

- 6. Whether the Welsh Government's ten core aims for the Bill (listed at paras 3.5–3.16 of the Explanatory Memorandum) are the right aims to have and if the Bill is sufficient to achieve these;**

The 10 core aims are the correct aims but there needs to be consideration as to the overlap with other legislation that similarly seeks to develop integrated, person centred, multiagency plans. Consideration in the code of practice needs to be given for potential dispute resolution with NHS providers given concerns identified in reply 2(a) as this can arise as an issue in the current system when families and education departments are at an impasse.

- 7. The provisions for collaboration and multi-agency working, and to what extent these are adequate;**

The current provisions are proportionate for legislation at this time. The code of practice and the development of an effective DECLO role should

ensure that inter department and interagency relationships move away from relying on statutory requirements to deliver. Ensuring that all organisations have performance measures that ensure the aspired outcomes for the child and young person, described in the Bill, are achieved would facilitate this. In a time of austerity and stretched resource, stronger legislation on health runs the risk of health resource being allocated on the basis of legal requirement rather than clinical need as is the underlying principle at present.

8. Whether there is enough clarity about the process for developing and maintaining Individual Development Plans (IOPs) and whose responsibility this will be;

The Health Board considers that it provides enough clarity with regard to process and responsibilities.

9. Whether the Bill will establish a genuinely age 0–25 system;

The Bill alone cannot deliver a genuinely 0–25 system, as many services in health and social care will continue to operate with a predominantly 16–18 transition. It is important that strong consideration is given to transition at 25 as simply moving the age does not resolve the problem. The current legislative rights and responsibilities for children in the UK at present require transition ages of anything between 14 and 25 and, whilst 25 is likely to be easier, it will not suit 100% of people 100% of the time. Flexibility is key around the strengths, needs and wishes of the young person.

In addition there are a number of practical obstacles to address. The current adult health system has few generalists to provide the necessary overview of need required in the process. The development of professionals to work across this age range is particularly challenging. From a developmental level, the skills necessary to work with this age group are different to younger children, not least the understanding of some of the legal requirements of consent etc.

10. The capacity of the workforce to deliver the new arrangements;

Also, please see responses to Questions 2 and 9.

There is concern around the numbers of available staff to fulfil the role of DECLO. There is also a significant training requirement for all public sector staff to increase awareness of and participation in the ALN procedures effectively. In the short term this will have an impact on service delivery, however mitigated.

11. The proposed new arrangements for dispute resolution and avoidance.

As indicated above, consideration of resolution over NHS provision needs to be considered as it already is a point of difference and the new system has the potential to exacerbate this. Clear, mutually understood expectations of the system need to be established between all participants and agencies. Agreement as to who needs to be present to agree plans impacting on other agencies needs to be agreed.

I hope the above information is helpful to you. If you require any additional information, please do not hesitate to contact me.

3 March 2017

Response from the Royal College of Nursing Wales to the Children, Young People and Education Committee’s inquiry into the Additional Learning Needs and Education Tribunal (Wales) Bill

General Principles

- I. The Royal College of Nursing Wales welcomes this Bill and is strongly supportive of its aim to enhance the standard of care and education received by children and young people with Additional Learning Needs.
- II. Every child and young person has the right to access education and it is appropriate for the Assembly to consider how a new legislative framework can ensure that statutory agencies and professionals can best support children with additional learning needs. It is vital that any new legislation in Wales is up to the task of resolving many of the issues currently experienced by children and young people with ALN, and their families, and overcoming the variation in standards across the country. We therefore support the three overarching objectives (para 3.3 of the explanatory memorandum) and the subsequent ten core aims for the Bill.
- III. The Royal College of Nursing is also aware of the very many difficulties that children and young people with diverse healthcare needs face in order to continue access to education. We believe that more specialist nurses, including learning disability nurses and children’s nurses, are needed in the community, to provide the right type and level of care to children and young people at home, and in school. We have argued for a refreshed school nursing framework that allows senior school nurses with a leadership role, to coordinate the network of health services for school-aged children in a single locality.
- IV. We believe that the Welsh Government’s guidance “supporting learners with healthcare needs” is not broad enough in its scope or strong enough in its direction to achieve improvements. We are aware this guidance is due to be reissued by the Welsh Government shortly and we would certainly welcome a commitment from the Government to radically strengthen it first. The RCN is currently drafting guidance for members about supporting children and young people with healthcare needs in schools and we would be happy to share this with the Committee once it is published later this year.
- V. The Royal College of Nursing feels there should be parity between the requirement to meet a child’s health needs and meeting their learning and educational needs. This piece of legislation should be mindful of the fact that if a child’s health needs are not met, then they will not be able to learn or access education as they should. It is important, therefore, that the Bill approaches this in such a way as to allow the right healthcare professional with the right skillset to be deployed to best support the individual needs of the child.

- VI. It is important to note that the Bill itself was not drafted with the aim of addressing individual health or medical needs (please note that these terms are not interchangeable). Indeed, the three overarching objectives listed at paragraph 3.3 of the Explanatory Memorandum do not mention health, nor does the definition of ALN given at 3.5.
- VII. The endeavour to add this additional healthcare element to the Bill, creates an additional layer of complexity and a potential risk of unintended consequences in specifying too narrowly a new layer of duties on a discipline within healthcare that would not necessarily be best placed to deliver them. We are also concerned that if this new element is added to the Bill, many of our professional colleagues in medicine and therapies practicing within acute, community and primary sectors, should also be given the opportunity to contribute to the discussion. It would also be helpful to have the view of the Health Boards on the strategic development of these services. This is because the needs of children and young people with additional learning needs (as identified in this Bill), traverse a number of professionals and sectors, hence the need to understand how a change in one part of the system affects the services provided by another and protect against causing unintended consequences.
- VIII. We must ensure that we get the Bill absolutely right, and it is for that reason that the Royal College of Nursing believe that the Committee may wish to consider recommending to the Welsh Government (or introducing as a Committee Bill), a second, separate Bill, more specifically focussed on health care provision for children and young people. We make alternative suggestions about the approach that the Committee may wish to take throughout this response.
- IX. Additional learning needs are not the same as healthcare needs and understanding precisely the needs we are endeavouring to meet via this legislation is fundamental to ensuring the right measures are established. In our answers to the further questions of the Committee below we elaborate on the different types of nursing support that might assist a child with additional learning needs and/or healthcare needs.
- X. We also at the end of this paper make a suggestion for an additional statutory duty on Health Boards to appropriately workforce plan to meet the needs of children and young people and to publish these plans.

Provisions for collaboration and multi-agency working

- XI. The Bill provides an excellent opportunity for strengthening collaboration between multiple agencies and enhancing information sharing. However, there is a need to ensure these duties do not create unnecessary bureaucracy and are not prescriptive in a way that either reduces the capacity of healthcare professionals to respond to the needs of the child or reduces the flexibility of the

healthcare care service in selecting the right healthcare professional to meet the needs of the child.

- XII. The Royal College of Nursing has some concerns about the DECLO. Whilst we can see some possible positives in the creation of the role, there is also a risk that the role will divert healthcare professionals into providing an administrative service. Section 55 (2) of the Bill states that:

A Local Health Board may only designate an officer who is—
(a) a registered medical practitioner, or
(b) a registered nurse or another health professional.

It is not entirely clear why a registered healthcare professional would be needed to undertake this role. Would one aspect of the DECLO role be carrying out the actual assessment of whether a child's learning needs could be supported by a healthcare intervention? (In which case then that role would need to be undertaken a registered healthcare professional). There must be a clearer role description with clear lines of accountability and authority to influence, so as to ensure right provision for children and young people's needs. Furthermore, it should be noted that if a registered healthcare professional is required then this term encompasses doctors, nurses and therapists.

- XIII. Most importantly the role of the healthcare professional needs to be clarified in the Bill. In places, the Explanatory Memorandum use the term healthcare and medical interchangeably (e.g. pages 169 and 186) and this illustrates the potential confusion over what precisely is needed. Different healthcare professionals, such as doctors, nurses and physiotherapists, provide different types of care.
- XIV. For the purposes of clarity, we are outlining below the different roles that nurses can play in the delivery of care for children and young people in an educational setting:

Health visitors

- XV. Health visitors are specialist registered nurses who make a significant contribution to public health and the health and well-being of families and local communities. They monitor and assess the health and well-being of infants and young children, detect early any issues which require further action, assist parents in developing parenting skills and confidence, and help to connect them with further sources of support. They also often act as the first point of contact for all health and well-being and child protection issues for children under the age of five, and work with community groups and social services colleagues to promote health in the early years.

School nurses

- XVI. School nurses are specialist public health practitioners working across education and health, providing a link between school, home and the community to benefit the health and well-being of children and young people. They play an important

role in regards to liaising with school staff to improve safeguarding within the school setting through multiagency working and highlighting concerns regarding children's safety. The RCN has argued for a refreshed school nursing framework that allows senior school nurses with a leadership role to coordinate the network of health services for school-aged children in a single locality.

Learning disability nurses

XVII. The Registered Nurse for People with Learning Disabilities is the only healthcare profession specifically trained to work with and support people who have learning disabilities. Learning Disability Nurses play a central role in the lives of many people who have learning disabilities and their families, particularly those with more complex care needs. Learning Disability Nurses work across a range of settings, with individual clients, in secondary healthcare and community based residential services. Learning Disability Nurses can also provide invaluable continuity for people during the period of transition from children to adult services, a time when those with learning difficulties can be particularly vulnerable. Learning Disability Nurses work as part of specialist teams in children's services, challenging behaviour and inpatient services. The RCN has called for an increase in the number of Learning Disability Nurses in Wales particularly in those skilled to work with very young children and young people.

XVIII. Registered Children's Nurses in the Community

As part of a community nursing team a registered children's nurse might support individual children with specific conditions in maintaining their independence, and enjoyment of family and educational life. They can provide specific nursing interventions or nursing care, and may also provide much needed education and support for other workers and health care professionals in this arena. The Royal College of Nursing has been calling for some time for an increase in the number of children's nurses in the community.

XIX. Specialist Nurses

Some children and young people may have conditions that require support from a specialist nurses e.g. cancer or diabetes. Again these highly specialised nurses will also have a leadership responsibility in providing education to other nurses, healthcare support workers, and professionals in how best to support a children with this condition.

XX. We hope it can be seen therefore that depending on the individual needs of the child and young person, which must be paramount, that flexibility will be needed to deploy the right nursing professional to provide the care and support that will benefit her or his additional learning needs.

XXI. Therefore in placing a strengthened duty on the Health Board to meet the needs of the child maintaining this flexibility of deployment is critical. This would be even more critical if the Bill was to move from discussing a child with additional learning needs to a child with healthcare needs.

Individual Development Plans

- XXII. The Royal College of Nursing Wales is broadly supportive of the concept of an IDP as a way of ensuring consistency and continuity and ensuring that plans are tailored to the individual needs of a child. It is important however that the legislation allows sufficient flexibility for the needs of the child to be met by the right professional providing the right level of care; who delivers the care must be determined by the specific needs of the child, not by a pre-determined pathway.

Capacity of the workforce

- XXIII. The shortfall in workforce capacity has been noted in evidence gathering sessions so far. The Bill provides an opportunity to strengthen the strategic workforce planning model in order to ensure that we have sufficient numbers of professionals (such as LDNs, community children's nurses and other healthcare professionals) in the right fields to deliver the care required. Recruitment and retention of the workforce will be crucial to the success of this legislation, and this should be reflected on the face of the Bill.
- XXIV. The Royal College of Nursing Wales would ask the Committee to consider a new section to the Bill. This would place a new duty on Health Boards to reflect on the needs identified by the Individual Development Plans (perhaps as collated on an annual basis) and then ensure that this workforce need was reflected in the workforce plans submitted to Welsh Government.

About the Royal College of Nursing

The RCN is the world's largest professional union of nurses, representing over 430,000 nurses, midwives, health visitors and nursing students, including over 25,000 members in Wales. The majority of RCN members work in the NHS with around a quarter working in the independent sector. The RCN works locally, nationally and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a UK-wide organisation, with its own National Boards for Wales, Scotland and Northern Ireland. The RCN is a major contributor to nursing practice, standards of care, and public policy as it affects health and nursing. The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies.

Consultation response from The College of Occupational Therapists

Introduction

1. The **College of Occupational Therapists** welcomes the opportunity to contribute to the committee inquiry into the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill. The College of Occupational Therapists believes the Bill is an important step in planning and delivering a unified approach to supporting children and young people's education, health and wellbeing.
2. The College of Occupational Therapists is the professional body which represents over 31,000 occupational therapists, support workers and students from across the United Kingdom, and over 1,600 in Wales. Occupational therapists are regulated by the Health and Care Professions Council and work with people of all ages with a wide range of occupational problems resulting from physical, mental, social, environmental or developmental difficulties.
3. **Occupational therapists are concerned with how people 'occupy' their time.** We work with the 'occupations' people want to, need to, or are expected to do (i.e. getting dressed, eating meals, going to school / work, playing / socialising etc.). Our core belief is **how you occupy your time will influence your health and wellbeing.** Occupational therapists are unique in that they work across service boundaries such as in the NHS, Local Authority, housing and social services departments, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services.
4. **Key messages from The College of Occupational Therapists**
 - Multi-agency working requires **joint funding** arrangements.
 - **Person-centred planning requires a shift in culture** of many services. With adequate funding, occupational therapists can support (and train others to support) children and



Additional Learning Needs and Education Tribunal (Wales) Bill response

families identify their goals and realise outcomes which have meaning and value for them.

- A ***child and family's priorities and the outcomes*** they want to achieve should be the primary feature within the Bill, and not overshadowed by the desire to separate a child's needs neatly into an education or health 'box'.
- ***Individual Development Plans need to be simple***, based on what the child or young person wants to, needs to or is expected to do and success measured through achievement of outcomes, not input of provision.
- The ***Code of Practice*** is fundamental to the delivery of the legislation and must not confuse messages about service-led and person-centred practices. The College of Occupational Therapists would be happy to elaborate further with examples upon request.

5. The College is also in agreement with concerns regarding:

- The current provision of services to deliver to children and young people to 25 years.
- The need for appropriate information systems to enable sharing of IDPs.
- Duties within the Bill on health and the interface with prudent healthcare principles.
- The administrative consequences of the increase in IDP provision.
- Different dispute resolution systems in health and education.



Detailed responses

6. The College of Occupational Therapists welcomes the Bill's focus on improving outcomes for children and young people through person-centred planning, outcomes and partnership working. A key facilitator to the achievement of these aims is through **multi-agency working**. Challenges exist, however, when outcomes focus on what services can deliver and who is paying for those services, rather than outcomes based on the child and family's priorities. This is also seen with the provision and maintenance of equipment in schools. With a requirement for **joint funding arrangements** between services, less resources may be wasted in disputes about whose responsibility it is.

7. **Person-centred planning** is a welcomed principle within the Bill. The complexity of this, however, should not be underestimated. In times of austerity services can become resource driven and it requires a **shift in culture and attitudes** to embrace person-centred principles. Time is also required to share positive dialogue with children and families, so they can have a meaningful contribution to the process. When children and families are listened to and seen as experts in their own situation, priority areas which will make the most difference to their lives can be highlighted and resources appropriately targeted. Occupational therapists have the skills and expertise to support during the crucial planning phases of support, but resources are often not prioritised here. This can be costlier in the longer term. The College of Occupational Therapists recommends that **occupational therapists are adequately funded and used to support (and train others to support) children and families identify their goals and realise outcomes which have meaning and value for them.**

8. Differentiating a child's needs into service-led descriptors (e.g. education need, health need, social care need) is particularly unhelpful and works against person-centred principles. A **child and family's priorities and the outcomes they want to achieve should be the primary feature** within the Bill, and not overshadowed by the desire to separate a child's needs neatly into an education or health 'box'. For example, if a child with



Additional Learning Needs and Education Tribunal (Wales) Bill response

coordination problems requires a specialist chair to help him/her eat lunch and write a story, it is impossible to say if the 'need' is health or education. Prioritisation must happen at the outset of the process to avoid over-complex plans, wasted resources and a potential to miss what will make the most difference to the child's life. ***Dedicated time for professionals, such as occupational therapists, who have the skills and expertise to work with families and services on establishing priorities is essential.*** Resources will need to be ringfenced to make this a reality to help realise the person-centred intentions of the Bill.

9. The development of the ***Individual Development Plans (IDP)*** is welcomed as a way of recognising and working together for the benefit of the child. It will also encourage collaboration between services and professionals when more than one person can contribute to the priority areas. The College of Occupational Therapists does, however, hold a few reservations about IDPs:
 - a. There is the potential for the IDPs to become complex and resource intensive to construct, which can detract services from the delivery of support. The College of Occupational Therapists recommends the IDPs focus on the priority areas for the child and family and ***not be separated into health, education and social care sections.***
 - b. A template IDP may assist in the creation of these IDPs. To ensure the child and family can make a meaningful contribution, the IDP must be understandable and written in plain language. This should be ***focused on what the child needs to, wants to or is expected to do*** (rather than impairment terms such as language, memory, perception, clumsiness, concentration, sensory, behaviour etc.). Headings should reflect what is important and a priority for the child and family, rather than attempting to cover everything in detail (as this can conceal the most salient areas).
Headings could include:
 - i. making themselves understood
 - ii. dressing, eating and drinking



Additional Learning Needs and Education Tribunal (Wales) Bill response

- iii. playing by themselves, with peers or adults
 - iv. learning rules and routines at home, school or in the community,
 - v. academic learning
- c. The focus of IDPs should be on what the child/young person will be able to **achieve with provision**, not what will be provided. This means that outcomes are the focus for the measurement of success, rather than the inputs and entitlements.
- d. Resourcing will need to be considered, particularly for services such as occupational therapy, where there are many children with 'mild' needs who will require an IDP (i.e. related to coordination, attention and concentration, socialising and working with others etc.). Young people (16-25) may also require occupational therapy contributions to IDPs in relation to daily living skills, accessing and succeeding in further study or work.
10. The **Code of Practice** is fundamental to the delivery of the legislation. The College of Occupational Therapists would like to see the Code **focus on what the child wants to, needs to or is expected to do and the support which will help these outcomes**. Specificity in terms of regularity of provision is not consistent with a child's changing needs. For example, if a child needs support to follow class instructions, they may require some direct instruction, changes made within the classroom and training for classroom staff. In addition, the suggestion that IDPs may remain unchanged on review could lead to plans which are not specific enough to support change. This needs to be addressed within the code. The College of Occupational Therapists would be happy to elaborate further with examples upon request.
11. The College of Occupational Therapists welcomes the intention of The Bill relating to meeting the needs of all children and young people through **whole school, targeted or individual strategies**. With the IDP explicitly detailed and little mentioned about whole school or targeted provision, it reinforces individualised approaches. As the plans are likely to take considerable resources to develop, there is strong potential for the



Additional Learning Needs and Education Tribunal (Wales) Bill response

universal provision and prevention approaches to be lost. Occupational therapists have the skills and expertise to work at individual, group or universal levels. With the appropriate resources, occupational therapists could enhance universal provision and prevention approaches for the benefit of more children and young people and potential future cost-savings.

12. The **role of the DECLO** in supporting the interface between health and education services is welcomed. There are concerns about funding these posts as currently there is little capacity to take on new roles. There is a similar danger with the role being consumed by the support of individuals and not have the time or opportunities to promote public health interventions. At this strategic level, the DECLO role should have the resources and expertise to **promote universal approaches to supporting children and young people develop life skills, work together, have friends, participate in learning activities, cope with change and uncertainty and enhance wellbeing**. The focus should move away from impairments such as language development, behaviour and attention span as these suggest the 'problem' lies within the child and the focus is on 'fixing', rather than on the outcomes for the child and family. Occupational therapists are well placed to coordinate in these roles as they are experienced in working across sectors and focus on outcomes which relate to what the child will be able to do in future.

Conclusion

As stated in the beginning of this response, The College of Occupational Therapists believes the Bill is an important step in planning and delivering a unified approach to supporting children and young people's education, health and wellbeing. We appreciate the opportunity to contribute to the Bill and would be happy to offer our going support with its implementation in the Code of Practice, which is fundamental to the success of this legislation.

WRITTEN EVIDENCE FROM THE ASSOCIATION OF EDUCATIONAL PSYCHOLOGISTS

TO

CHILDREN, YOUNG PEOPLE AND EDUCATION COMMITTEE
Y PWYLLGOR PLANT, POBL IFANC AC ADDYSG

ON

THE ADDITIONAL LEARNING NEEDS AND EDUCATIONAL TRIBUNAL BILL
AND DRAFT CODE OF PRACTICE

Introduction

In principle the aims and objectives of the Bill, and the potential it has to improve the life opportunities for all children and young people with Additional Learning Needs, is very much to be welcomed.

The AEP, the trade union and professional body for all Educational Psychologists (EPs), have consistently maintained during previous consultations that for the Bill to be a success:

- The critical role of EPs in all complex cases (including working with multi-agencies) must be recognised on the face of the Bill and in the Code of Practice
- There will only be the required transformation in support for all those with additional learning needs if there is sufficient resourcing – the system is currently underfunded and under strain and the Bill will inevitably, and quite rightly, raise aspirations and expectations. EP services will need to be properly resourced in order to meet:
 - (i) increased training needs as well as ongoing CPD, support and advice to ALNCoS, teachers, head teachers, classroom assistants and others in schools and FEIs (NB the latter is a new responsibility)
 - (ii) increased demands in helping and advising parents and carers as the new system will initially create increased anxiety and confusion.

This submission discusses these two key issues alongside a range of other critical concerns that AEP's members in Wales have raised and believe that the Committee should consider further:

- The increase in the age range from 0-25, including pre-school and post 16 support
- Collaboration with health services
- Delegation of funding to schools
- Education Tribunals Wales
- Providing services in Welsh
- Parental engagement
- Looked after children
- ALNCo qualification

1. Statutory recognition of role of EPs

The AEP have advocated that the essential role of Educational Psychologists in all complex cases referred to the local authority should be recognised on the face of the Bill and/or in any associated Regulations, as well as in the Code of Practice.

Although the Bill in general goes further than England provision, it would be erroneous to create a new statutory system where children with complex cases in Wales had less access to EPs than they would in England. Moreover, without statutory protection there is a danger that children would be further disadvantaged because local authority EP services may be subject to further cuts.

It is therefore welcomed that the draft Code of Practice clearly states in para 9.2.12

Upon referral the local authority must engage with an educational psychologist.

However, this prescription is not on the face of the Bill itself and the final version of the Code – which will be subject to a further round of consultation – it is understood will not be published until the Bill has become law. Therefore, the AEP would like to receive reassurances that this feature of the Code is sacrosanct and will not be subject to further amendment or ‘watering down.’

The AEP also believe the Committee should seriously examine paragraph 9.2.10 which states

Before referring a case to the local authority the school should consider consulting an educational psychologist to see whether this is appropriate.

In the AEP’s opinion the use of the phrase ‘should consider consulting’ invites schools to treat this part of the process as discretionary and ultimately, given financial constraints, liable to not happening in practice. In line with the AEP’s longstanding position on this matter it would suggest that the phrase should be ‘must consult.’ This would have the added benefit of maintaining links between every school and their local authority based Educational Psychology Service. Without it the danger is that EP Services become divorced from the schools that they serve and children and young people with the complex needs lose access to specialist assessment and intervention.

2. The need for properly resourced EP services across Wales

As stated above, to successfully implement the Additional Learning Needs and Education Tribunal Bill inevitably means issues are raised in terms of training and capacity. Meeting these will be challenging given the context of existing diminished capacity. This is due to the demographics and changing gender balance of the workforce as well increasing demands for input and support and lost, and unfilled, posts due to local authority reduced budgets. A note on these issues is appended.

The proposal to have a transition period of 4 years with a phasing in of the new system, is therefore welcomed. With such radical changes there is a need for a comprehensive programme of training and on-going support for all staff involved in the process.

However, training and supporting staff will require significant resources in terms of finance and time. One of the first steps will be to convert existing statements of special education need into IDPs and to then convert existing IEPs into IDPs. EPs have the expertise to provide much of this training in conjunction with others professionals.

The AEP is engaged in discussions with the Welsh Government regards these matters however a strong and clear message from the Committee that these issues are *mission critical* for the success of the Bill would be both helpful and appropriate. Would the Committee consider asking the Welsh Government to direct local authorities to employ more EPs and expand services, rather than making any further cuts?

In addition, and notwithstanding that this would not produce results for three years, serious considerations should be given by the Committee to recommending now a substantial increase in the number of postgraduate training places in Cardiff University from the current level of just 11 per year. It should be noted that between 2012 and 2018 there has been a 25% increase in commissioned university places for initial training of EPs in England from 120 to 160 – in Wales there has been no increase at all.

3. Other key concerns

Increase in the Age Range to 0-25

Overall this extension in the age range covered will increase pressure on capacity and there will therefore be a need for additional EPs as a result of increased workload. There will be an increase in IDPs and an increase in disagreement resolution and appeal to Education Tribunals. The need for far greater staff training, provided by EPs, will intensify.

Pre-School Children

There is currently not enough detail or clarity in the Bill on the process of ensuring support from birth to entry into school. For example, many Pre-school children will only come to the notice of the local authority through contact from the Health Service. As currently drafted the Bill says that if the Health Authority believe that a child has ALN it has *the discretion* to discuss with child's parent re referral. Shouldn't this be mandatory otherwise there is the risk that some children may slip through the net? If the Health Authority does not notify the LA how will the latter know if there is a child for whom it is responsible?

In some parts of Wales – such as Neath Port Talbot - there is already a dedicated EP team for children in the Early Years including all settings from the age of 0-5. The AEP would like to see this type of service offered to all non-maintained settings with pre-school children with ALN. We feel that this would ensure a consistent approach into formal education. In Neath Port Talbot the 'Flying Start' service which has dedicated EP input has massively reduced the waiting time for developmental assessment from 9 months that is typical elsewhere in the country.

The Committee may wish to consider recommending that the provision of such an Early Years EP service is compulsory? Certainly an EP is an essential to advising on and ultimately improving outcomes because they can provide advice on target setting for children's learning plans and strategies which could include teaching approaches, improvements to learning environments, advice on curriculum materials and behaviour support. Most importantly they ensure a joined up approach with Educational Psychologists attending meetings with Community Paediatricians, Dietetics, Social Services, Occupational Therapy, Physiotherapy and Specialist Health Visiting.

There will also be an additional increase in duties that local authorities will be responsible for in relation specifically to further education institutions. However, there is currently a lack of clarity about how a local authority which takes on responsibility for an IDP for a young person in a Further Education setting will be funded. It is worth noting the legislation as drafted means a local authority cannot direct a FEI to prepare or maintain an IDP.

There can be no doubt that if this duty passes to local authorities there will be accompanying and significant costs associated with supporting these pupils. How will local authorities be given sufficient finance or is this a way of passing cuts on to the LA. Again there are staffing implications with regard to the number of EPs available to undertake these specialist assessments and to provide support and training to FEIs and to specialist providers.

Collaboration with Health Services

The Designated Education Clinical Lead Officer (DECLO) role in the Bill is welcomed and also the requirement that the Health Authority now has a statutory duty to consider relevant treatments or services. If the health authority agree that this is the case and it is written into the IDP it must be provided. However, there is no disagreement service to resolve any areas of contention and no right of appeal to education tribunals over health provision or lack of it. This anomaly warrants further consideration by the Committee which may like to consider recommending that in paragraph 18.34 of the Code it should read 'The DECLO **must** (rather than should) consider whether the involvement of health bodies in the arrangements can help to resolve disagreements and partake in the arrangements where they believe this to be the case'.

Delegation of Funding to Schools

AEP wish to draw the Committee's attention to the fact that there is increased delegation of funding to schools and that this varies from authority to authority. However, it is important that local authorities retain sufficient funds to meet their statutory obligations. There is also a need for a sufficiently robust mechanism, and procedures to be in place, to ensure that funding delegated to schools to meet the needs of CYP with ALN is used appropriately.

Education Tribunal Wales

As all IDP's become statutory this expands the number of CYP who are eligible to appeal to the Educational Tribunal Wales (ETW). The new system also increases the stages in the process where the CYP can appeal against a decision made by the school and/or LA including:

1. School considers CYP does not have ALN but parents disagree and want the LA to decide.
2. CYP has an IDP but parents are unhappy with the content, parents can ask the LA to revise the IDP.
3. A CYP has ALN and LA is notified of this. The LA has to decide if in fact the CYP has ALN and if so what action to take.
4. IDP in place and school want to cease to maintain this. Parents can appeal to LA.
5. IDP is in place. Parents and school think that school do not have resources to meet the CYP's needs and ask LA 'to maintain' the IDP.

This will inevitably increase the workload for LAs and has the potential to markedly increase the number of Tribunals with an increased workload for EPs who are frequently called to provide evidence and opinion to the panel at the Tribunal hearing.

Under the current system the parents and CYP can appeal to the Tribunal without prior notification to the local authority. A great deal amount of work goes into preparing a case and there are occasions when the LA would have resolved the issue for example by giving the provision requested if given prior notice that this was the issue in contention. The Committee should reassure itself that under the new system the LA is notified prior to the appeal being lodged.

Providing Services in Welsh

This is written in to the Bill and the Code. Some of the EP Services in Wales do not have any EPs who are sufficiently fluent in Welsh to provide such a service if requested. However, services could have reciprocal arrangements with other services that do have Welsh speakers. Some areas such as Gwynedd Ynys Mon that conduct all business through the medium of Welsh have difficulty in recruiting a sufficient number of EPs.

EPs will not be the only professionals where there is a lack of sufficient numbers of Welsh speakers and therefore it is encouraged that the Committee consider this aspect of the Bill.

Parental Engagement

Transparency, advice and advocacy for parents are vitally important. The Welsh Government should consider instructing LA and HA to produce clear information for parents and others about the local provision on offer. In addition, information, advice and provision needs to be revised and mapped out, and the information shared on a regional basis.

Looked After Children

The fact that the Bill requires the IDP to be incorporated into the personal education plan (PEP) of the child who is looked after and that the 'looking after local authority' becomes responsible for maintaining the IDP is a positive move. However, the Bill does not describe how the IDP is incorporated into the review processes and the level of importance that it holds within the PEP when it comes to decision-making. The Code should address this point. Moreover, the mechanism for resolving disagreement or disputes relating to provision, is not clear.

ALNCo Qualification

At the present time not all ALNCoS are qualified teachers. The Bill requires all ALNCo to be qualified teachers and acquire a Masters qualification. The AEP supports QTS for ALNCoS and the need for ongoing further specialised training. It is recognised that if this is provided by way of a Masters qualification there would be major workforce and cost implications. The Committee may wish to consider a range of options to provide this ongoing specialist training which could be supported by EPs at a local/regional level.

APPENDIX

FURTHER INFORMATION ON FACTORS TO CONSIDER REGARDS WORKFORCE ISSUES FOR EPS

Gender imbalance – increasingly there are now very few men entering the profession. Undergraduate psychology courses have very few male students who anyway seem to favour careers in clinical and forensic psychology. This gender imbalance carries on to EP postgraduate courses and through to the profession.

Part time working - a large number of EPs are currently working part time, frequently because of family and care commitments. There are also EPs on the verge of retiring who want to work part time as a prelude to retirement.

The age profile of the profession – A large number of EPs are aged over fifty and are likely to be retiring within the next decade or so.

Increasing demands on EPs –

- School improvement - EPs have a large part to contribute to school improvement although this has not been fully recognized in Wales and EP skills remain underutilized in some areas.
- Changes in Legislation – There will be changes to the Code of Practice and assessment and ‘statementing’ process of children with ALN. There will be a need for additional EP staffing to deal with this demand and for the training and support that will be need to be given to teachers and others.
- 0-25 age range – There is a need for extra EPs in order to cope with this increased workload.

Lost Posts

A number of EP posts have been lost from establishment because of financial cuts. Also when EPs decide to work part time there is often no replacement cover for the hours lost. There is a shortage of EPs in Wales and there have been difficulties in recruiting locum staff to cover absences such as maternity leave and sickness absence. However, there are instances where temporary cover is available but funding has not been released.

Excessive Workloads

All these factors have led to excessive workloads. Many EPs work far longer than their contracted hours and often have to deal with their own admin. Most EPs now have to type their own reports and deal with many other aspects of admin such as arranging appointments, filing etc. In order to fulfil service level agreement with schools, etc., much of the admin has to be done at evenings and weekends.

Welsh Speaking EPs

As outlined in the main response there is an insufficient supply of Welsh speaking EPs in some areas particularly in North Wales. This could have implications particularly when the new legislation is enacted.

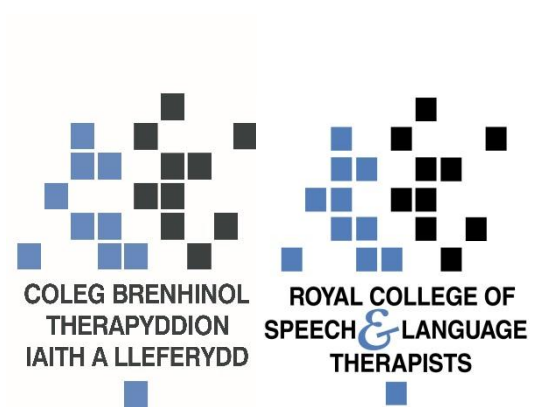
DEdPsy Doctoral Training Course

There is one course in Wales based in Cardiff. The course was under threat of closure a few years ago and only saved because of vigorous lobbying by the AEP. If an EP trains on a DEdPsy Training Course in England and is funded by the DfE and/or an English LA they must work in England for a minimum of 2 years or re pay the funding. This means that those who go to England to train must spend a minimum of five years in England and they then tend to stay in England.

EP career prospects in England

Currently there is a shortage of EPs in England and some English local authorities are offering attractive packages to recruit EPs. There has been a drift over the border for some EPs working in the East Wales authorities. To attract EPs to work and remain in Wales there is a need to have more favourable working conditions.

For more information and to contact AEP General Secretary, Kate Fallon, please call Steve Barwick on 07826 872375



National Assembly for Wales Children, Education and Young People Consultation on the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill

Introduction

1. The Royal College of Speech and Language Therapists (RCSLT) Wales welcomes the opportunity to respond to the committee inquiry into the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill. Our response focuses on two key elements within the terms of reference;
 - the general principles of the Additional Learning Needs (ALN) and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
 - any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

RCSLT also comment on three specific issues raised in the Bill

- the provisions for collaboration and multi-agency working and to what extent these are adequate
- whether Bill will establish a genuinely age 0-25 system;
- the capacity of the workforce to deliver the new arrangements

About the Royal College of Speech and Language Therapists

2. The Royal College of Speech and Language Therapists (RCSLT) is the professional body for speech and language therapists (SLTs), SLT students and support workers working in the UK. The RCSLT has 15,000 members (450 in Wales) representing approximately 95% of SLTs working in the UK (who are registered with the Health & Care Professions Council). We promote excellence in practice and influence health, education, care and justice policies.

About Speech and Language Therapists and involvement in the ALN process

3. 7% of children aged 5 have specific speech and language impairment and a further 1.8% have speech, language and communication needs linked to other conditions such as learning disability, cerebral palsy or autism spectrum disorders. SLCN are the most common type of special educational need in 4-11 year olds. SLTs have much to contribute to discussion around the new legislation.

The general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives

4. RCSLT broadly supports the Additional Learning Needs and Education Tribunal Bill and its ambition of improving outcomes for children and young people with additional learning needs in Wales. We welcome the focus in the Bill on person centered planning, outcomes, partnership working between local agencies and the greater participation of children and families in decision-making regarding the support that they receive. RCSLT welcomes the emphasis of **Part 2 clause 6 (c)** within the Bill; the duty to involve and support children, their parents and young people, and

(c) the importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions

To support these principles and ensure the participation of children and young people with speech, language and communication needs – the most common special educational need in children aged 4-11, there is a need to provide training and tools to mainstream and special schools to improve the skills and knowledge of teachers regarding how to sensitively and appropriately involve children in the discussions. Packages and tools which could be used to support children to participate in the planning process include the use of sign, symbols and appropriately adapted language.

5. RCSLT believes, given the centrality of this principle to the successful implementation of the Bill, clause 6c the code should ensure information and support is accessible to children, their parents and young people to enable participation and inclusion.
6. RCSLT welcomes the ambition of the bill to improve outcomes for children and young people with ALN. We applaud the new focus on intended outcomes for children rather than entitlement to input throughout the legislation. RCSLT agree this is an education related rather than Health related Bill. In the Bill, we note the strengthened section on duties on health boards to consider whether there is a relevant treatment or service that is likely to be of benefit. RCSLT question if this legislation is necessary in an education related Bill as these duties exist in health legislation. In line with prudent healthcare principles, health must always be a matter for evidence based clinical judgement, using person centred, individualised plans with realistic prognosis for outcomes from any input. This is consistent with the existing duties on health. RCSLT believes the section in Part 2 Clause 18. Additional Learning Need Provision: Local Health Boards and NHS Trusts

Subsection (4) 'If the matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child or young person's additional learning needs.'

could be further clarified by the addition highlighted below;

If the matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child or young person's additional learning needs, based on clinical need.

Potential barriers to the implementation of the key provisions and whether the Bill takes account of them.

7. The cultural barriers that pre-existed this Bill are reducing as agencies work to consider outcomes and the cost to achieve those outcomes together. A key barrier will be maintaining trust, particularly of parents, in the Bill.
8. If this legislation aims to put a duty on clarity and certainty of a health therapy **input** without due regard to the **outcome for the child and health economic principles** it will potentially **waste health resource**.

The provisions for collaboration and multi-agency working and to what extent these are adequate

9. The Code of Practice will need to be robust in developing agreed definitions of health needs, that take into account the health economics of interventions and their cost benefits.

RCSLT welcomes the ambition of the Bill to improve outcomes for children and young people with ALN and in particular its focus on outcomes rather than entitlements to inputs. In our view, this approach must be underpinned by integrated pathways between health and education using graduated response with clear multiagency roles and responsibilities. Much has been achieved over recent years in terms of improving joint working arrangements. The pilot projects funded by Welsh Government between 2005 and 2008 were very successful in implementing joint planning for children and young people with speech, language and communication difficulties and promoting collaborative working.

- 10 Initial teacher training will also be key in terms of supporting greater collaboration between agencies. Currently, evidenced based training programs are funded by local authorities. We would not wish to see these positive local solutions destabilized by new legislation and disputes arising about funding for key initiatives. RCSLT is keen to ensure that the proposed new legislation builds on these improved relations (as discussed above) and does not add a bureaucratic layer which could potentially undermine these positive developments and the trust developed between agencies. Given the proposed scope of 0-25 years, we also want to see the above expanded to include 'early years practitioners' in non-maintained settings and FEI staff.
- 11 RCSLT are confident that the role of the Designated Education Clinical Lead Officer within the legislation will focus on strategic planning but not operational delivery. RCSLT believes that the strengthening of joint strategic planning would be beneficial.

Will the bill establish a genuinely age 0-25 system?

- 12 RCSLT is aware that the issue of transition planning, supporting young people to move from children's to adult services and commissioning gaps regarding speech and language therapy services for young people aged 19-25 may be an issue of concern. This will need a phased approach. A recent RCSLT survey of members in England has revealed wide-scale commissioning gaps for this age-group. We remain concerned whether appropriate provision is in place to support this age-group as the numbers of children in each local health board/local authority area who could need access to adult services and what impact this would have on staffing levels is currently unclear.
- 13 We welcome the fact that further consideration has been to the early years' stage of the spectrum within the legislation given its crucial importance to the preventative approach. This is likely to increase demand on education rather than health as health bodies respond with early involvement with children due to their health needs. The legislation to require education engagement in joint IDPs will ensure earlier planning for education provision.

The Capacity of the workforce to deliver the new arrangements

- 14 RCSLT members have a number of concerns with regards the implications of the IDP process for speech and language therapist (SLT) capacity, particularly with regard to potential meeting attendance. In our view, this is a key barrier to successful implementation of the legislation and learning from the implementation of the SEND reforms in England has suggested that capacity is a major issue and is affecting delivery of the reforms. It has adversely affected prioritisation of care by SLTs fulfilling their statutory obligations in relation to the development to new and translated EHC plans which led to delays or a reduction in the provision of support to children and young people without EHC.
- 15 There is evidence from England that the new process will at least initially increase paperwork and reduce time available to patients.
- 16 Under the current system, SLTs who treat children with non-complex needs may attend schools to assess the needs of the child and prepare written care plans which are often shared by post and by e-mail. Under the new legislation, we understand that SLTs will be invited to attend a far higher number of meetings in person given that all children with ALN will now have multi-disciplinary Individual Development Plan (IDP) meetings. Approximate calculations within one local health board in Wales suggest that we may move from a system where SLTs attend multidisciplinary team meetings for 25% of current case load (statements of educational need and a minority of School Action Plus) to a situation where SLTs would be invited to attend meetings for 90% of the caseload.

Kirsty Williams AM
Cabinet Secretary for Education

Vaughan Gething AM
Cabinet Secretary for Health, Wellbeing & Sport

7 March 2017

Dear Both,

Changes to the curriculum in Wales

The Committee very much welcomed meeting the new Chief Medical Officer, Dr Frank Atherton at our meeting on 2 March 2017. This meeting formed part of the general scrutiny of the CMO's Annual Report 2015/16 and allowed the Committee to explore the direction of travel Welsh Government are taking to improve the health of our young people in Wales. Establishing healthy lifestyles early in life is a foundation to good health and wellbeing later in life.

As you are aware, the Committee has recently undertaken some scrutiny of the Welsh Government's implementation of the Donaldson Review and will continue to keep a close eye on the development of the new curriculum as it progresses. Following its session with Dr Atherton, the Committee is keen to hear what cross-sector working between education and health is taking place in the development of the Health and Wellbeing area of learning and experience.

The Committee is aware that curriculum design is being led by schools and practitioners through the Pioneer School Network, supported by the Curriculum and Assessment Group. We are interested in how expert and specialist knowledge and advice is feeding into the development of curricula content, particularly where there is an obvious need for input from sectors other than education. The Committee would therefore like to hear how public health experts and organisations like Public Health Wales are involved in the design and development of the Health and Wellbeing area of learning and experience.



I very much look forward receiving your response.

Yours sincerely,



Lynne Neagle AC / AM
Cadeirydd / Chair



Vaughan Gething AM
Cabinet Secretary for Health, Wellbeing & Sport

7 March 2017

Dear Vaughan,

Follow-up to evidence on 18 January 2017

Thank you for your two letters providing a comprehensive and helpful response to the specific questions the Committee raised with you after your evidence on 18 January 2017. Following a discussion with Members, there are two areas which require some further clarification to aid the Committee with its programme of work.

Child and Adolescent Mental Health Services (CAMHS)

The Committee would particularly welcome information on the Together for Children and Young People (T4CYP) assessment targets. There are two targets within this dataset:

- All urgent specialist CAMHS assessments are undertaken within 48 hours.
- All routine specialist CAMHS assessments are seen within 28 days.

In November 2016, Carol Shillabeer informed the Committee that all Local Health Boards were now meeting the 48 hour target for urgent assessments and that all had confirmed they would be meeting the 28 day target for routine assessment by April 2017. We note at present the Welsh Government does not routinely publish data on these targets on its StatsWales website. The Committee would like to receive the following information:

- when will the data become available;
- where will the data be published; and



– how will the data be published.


The Committee would also welcome the most recent data on the assessment targets.

A Framework for a School Nursing Service in Wales

The Committee very much welcomes your plan to publish the framework in a school setting. I would however ask that you provide us with a firm date for publication, or if possible, allow the Committee to have access to the framework under embargo. It is essential the Committee has a clear view of the Welsh Government's plan for school nursing services. This will play a significant role in the scrutiny we are undertaking of the Additional Learning Needs and Education Tribunal Bill.

I very much look forward to receiving this additional information from you.

Yours sincerely,



Lynne Neagle AC / AM
Cadeirydd / Chair



Alun Davies AC/AM
Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/ARD/0166/17

Lynne Neagle AM
Chair
Children, Young People and Education Committee
National Assembly for Wales
Ty Hywel
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8 March 2017

Dear Lynne,

Thank you for your letter of 16 February about the Additional Learning Needs and Education Tribunal (Wales) Bill and the *Supporting Learners with Healthcare Needs* guidance, which will be published shortly by the Welsh Government.

I am aware of the interest the committee has in the healthcare needs of children and young people – it is a very important matter. As I said during my evidence to the committee, I am happy to reflect about whether further provision within the Bill, beyond that already on the statute book, may help in ensuring the interests of learners with healthcare needs are protected. The committee's views would be very welcome.

In my letter to you of 6 February, I outlined that the revised guidance will be published this month. I have made further inquiries after receiving your letter and unfortunately it will not be possible to make the guidance available any sooner. I will ensure, however, the committee is made aware as soon as the guidance has been published.

I made a working draft of the Additional Learning Needs Code available to the committee last month to aid scrutiny of the Bill. If the committee needs additional information about the *Supporting Learners with Healthcare Needs* guidance to support its scrutiny of the Bill, the Welsh Government consulted on a draft of the guidance last year.

Bae Caerdydd • Cardiff Bay
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

A copy of the draft guidance is available at:

<http://gov.wales/docs/dcells/consultation/160224-draft-guidance-en.pdf>

Thank you for writing to me about this important matter. I look forward to my next evidence session with the committee on 22 March.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alun', with a horizontal line underneath.

Alun Davies AC/AM

Gweinidog y Gymraeg a Dysgu Gydol Oes

Minister for Lifelong Learning and Welsh Language

Alun Davies AC/AM
Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/ARD/0166/17

Simon Thomas AM
Chair, Finance Committee
National Assembly for Wales
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8 March 2017

Dear Simon,

At my evidence session with your Committee on the Additional Learning Needs and Education Tribunal (Wales) Bill on 8 February, I agreed to provide further information about how the £20 million package of support for Additional Learning Needs will facilitate and support the implementation of the Bill.

It is important to recognise that the funding I announced in February is for the ALN transformation programme as a whole. As such, it is difficult to separate out those activities that focus solely on implementation of the legislative framework. The transformation programme is about ensuring that there is a complete package of support to assist partners to transition to and deliver the new system, and also to improve working practice and relationships in the interim.

To implement the reforms successfully, we need to ensure that agencies are working together effectively, that the workforce is skilled and capable to support learners with additional learning needs, and that all those involved are aware of the changes, their new legal duties, rights and responsibilities, and what they mean for their individual practice, organisational management arrangements and for children, young people and their families.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

To this end, we have developed a programme that includes five key strands:

1. the process of developing the legislative framework, including the Bill, regulations and the new ALN Code;
2. activities to support partners to prepare, plan and manage implementation and transition to the new system;
3. workforce development aimed at three levels: core skills development for all practitioners supporting learners with ALN; advanced skills development through the development of the role of Additional Learning Needs Coordinators (ALNCo); and specialist skills development for local authority-provided specialist support services;
4. awareness-raising activities to engage stakeholders about their new legislative duties, and to explain and promote the system and the rights it confers to children, young people and parents; and
5. supporting policy, including developing resources to help all those in the system understand the evidence for best practice, what can be expected from interventions, the interventions that are likely to be most effective, and the role of professionals to help ensure realistic expectations and effective deployment of resources.

As you will appreciate, this package of activities is closely inter-linked.

The Regulatory Impact Assessment, included in the Explanatory Memorandum published alongside introduction of the Bill in December, focused on an estimate of those costs related to proposed legislative changes to be brought about by the new statutory framework. That is, the activities required to move from one statutory system to another. However, the £20m package of activities that I announced on 7 February will necessarily focus on all the work strands in the transformation programme, which have been developed to support implementation of the new system, including the wholesale change in culture and practice required to ensure its success.

£10.1m of the £20m programme will be drawn from the Cabinet Secretary for Education's additional £100m to raise school standards. This will allow us to provide a greater investment in the workforce development strand of the programme, enabling us to invest in up-skilling ALNCos more quickly and provide high quality continuing professional development to help ensure a highly skilled workforce to support the delivery of the reforms.

The rest of the programme has been designed based on the planning assumption that the Government's ALN budget line is maintained at its current level until 2020-21, recognising that budgets beyond 2017-18 are subject to consideration and

agreement. Final Budget 2017-18, published on 20 December, included a budget of £2.786m in 2017-18 for Additional Learning Needs.

I must stress, therefore, that whilst the £10.1m is confirmed, the remainder of the £20m is subject to future decisions on future year budget allocations. Protecting it will, however, be a priority for me.

Below is an outline of how we anticipate allocating the £20m over the period 2017-18 to 2020-21 to support transformation. This reflects the priorities which have been discussed with a range of key partners through the ALN Strategic Implementation Group (ALN-SIG). Further work to refine the proposals is being taken forward through a number of expert working groups and where appropriate will be subject to wider or more formal consultation and engagement. Therefore, whilst the following information provides a clear indication of our spending intentions, it is subject to change as our work with delivery partners advances.

Implementation/ transition support (£7.62m between 2017-18 and 2020-21)

The implementation and transition support budget includes:

- **ALN Innovation Fund**, supporting projects to develop collaborative, multi-agency approaches to better support learners with ALN.
- **ALN implementation grants** to local authorities, FEIs, health boards, the Tribunal and Estyn to prepare for transition to the new system. The requirements of the grant will include undertaking 'readiness' self-assessments, producing implementation plans and training on the new system.
- **ALN Strategic Implementation Group and Expert Groups**. The ALN-SIG, established in 2016, is helping to develop the detailed transformation programme and support implementation of the Bill. A series of expert groups have been put in place to support the work of the ALN-SIG. These groups are considering specific issues relating to implementation and the operational detail of the new system, including, for example, early years, post-16, transition, continuing professional development, individual development plans, ALNCos and the role of the health service.
- **ALN Strategic Supporters**, who will provide advice, support and challenge to local authorities and other delivery partners in preparing for and managing transition to the new system.

- **Readiness, compliance and impact monitoring.** A programme of research, monitoring and evaluation to assess implementation, the impact of the legislative changes and application of the new Code, ensure that issues are effectively addressed for the benefit of children and young people, and that best practice is being identified and shared across Wales.

Workforce development (£12.047m between 2017-18 and 2020-21)

Workforce development activities are aimed at 3 levels:

- **Core skills development:** to facilitate access to high quality CPD and training for teachers, support staff and other education sector based staff.
- **Advanced skills development:** the Bill will require that each school and FEI has access to an ALNCo with a prescribed level of skills and qualifications. Our aspiration is a Masters-level qualified ALNCo workforce within the next decade. We are currently working with practitioners and universities to develop an outline specification for a suitable qualification. Investment here will enable us to fast track a significant number of professionals through to Post Graduate Certificate or Diploma level, enhancing the knowledge base within schools and FEIs.
- **Specialist skills development:** we are working with the WLGA to create a national workforce planning system for local authority provided specialist services, which takes into account the specific needs of local areas, including language needs and requirements. This will inform the commissioning of training placements on specialist training courses on a sustainable and evidence based basis.

Awareness-raising (£0.265m between 2017-18 and 2020-21)

The awareness-raising and communication work stream includes activities to inform and engage partners about their new legislative duties. It is about explaining and promoting the system and the rights it confers to children, young people and parents. It is also about ensuring the new system operates on the basis of evidence for best practice.

Supporting policy (£0.312m between 2017-18 and 2020-21)

Policy development will underpin the transformations. We will develop and disseminate policy and guidance on a range of issues for practitioners and children, their parents and young people in the current SEN system. This activity will, for

example, facilitate improved understanding of the role of different professionals and improve cross-border and multi-agency working, as well as ensuring there is sufficient resource in place to deliver the programme.

By way of summary, the following table sets out how I expect these work strands to be profiled over the next four financial years:

Workstream	2017-18	2018-19	2019-20	2020-21	Total activity costs
Implementation/ transition support	1,875,000	1,650,000	1,940,000	2,155,000	7,620,000
Workforce development	1,295,000	3,602,000	3,650,000	3,500,000	12,047,000
Awareness-raising	45,000	65,000	100,000	55,000	265,000
Supporting policy	171,000	69,000	46,000	26,000	312,000
TOTAL	3,386,000	5,386,000	5,736,000	5,736,000	20,244,000

I am copying this letter to Lynne Neagle AM, Chair of the Children, Young People and Education Committee.

Yours sincerely



Alun Davies AC/AM

Gweinidog y Gymraeg a Dysgu Gydol Oes
Minister for Lifelong Learning and Welsh Language