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**Llywodraeth Cymru**  
**Welsh Government**

Jayne Bryant MS  
Chair  
Children, Young People and Education  
Committee Senedd Cymru  
Cardiff Bay  
Cardiff  
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25 January 2022

Dear Jayne

Thank you for your letter of 12 January highlighting some potential misinterpretations of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the 2018 Act). I am grateful for the opportunity to provide some clarity and reassurance to the Children, Young People and Education Committee on this matter.

The following clarifications on the issues raised by the National Deaf Children's Society (NDCS) Cymru will be included in a Frequently Asked Questions (FAQ) document which is currently in preparation.

### **Does having a reasonable adjustment under the Equality Act affect entitlement to an Individual Development Plan (IDP)?**

A child may need the school to make a reasonable adjustment under the Equality Act (EA 2010). The same child may also have Additional Learning Needs (ALN), and if this is the case they will also need an IDP (subject to the exceptions related to Education, Health and Care (EHC) plans and EHC assessments for children who are resident in England).

Whether a child has ALN, and if so, the specific Additional Learning Provision (ALP) they need, must be considered individually in each case. Maintained schools have duties under both the ALN Act and the EA 2010. The duties are separate and a learner may require reasonable adjustments, provision under an IDP, or in some cases, both. Therefore, meeting the duties under one Act does not negate the need to discharge the duties under the other.

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.

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## **Are there thresholds based upon level of need for IDP eligibility?**

IDPs are for learners with all levels of ALN – from milder through to complex needs. IDP eligibility always depends upon whether the individual child or young person has a learning difficulty or disability which calls for additional learning provision (ALP). Where a child appears to need extra support due to a learning difficulty or disability, the maintained school or local authority must usually decide whether the child has ALN. Where it is decided that they have ALN, they will generally be entitled to an IDP which records the ALP to be made for them to meet their additional learning needs. The position is very similar for young people, although it may be a further education institution that must make the decision.

There are a few exceptions to this, such as if the child or young person has an EHC plan, or in the case of a young person with ALN who is not at a maintained school or further education institution in Wales, the local authority must decide, in accordance with the Additional Learning Needs (Wales) Regulations 2021, whether an IDP is necessary to meet their reasonable needs for education or training. This is all dealt with in the Code in further detail.

Using a graduated response, ALP should start at the lowest level necessary to meet the child or young person's needs, making use of all available resources before bringing in specialist expertise. Some children or young people may require more ALP over time if their progress continues to cause concern, whereas some may gradually require less ALP if the interventions are a success. This is also dealt with in the Code.

## **What is Additional Learning Provision (ALP)? What support from specialist services is ALP?**

Where it is brought to the attention of, or otherwise appears to, a school, further education institution (FEI) or local authority (LA) that a child or young person may have additional learning needs (ALN), the maintained school, FEI or LA must usually decide whether the child or young person has ALN. Where it is decided that the child or young person has ALN, the school, FEI or LA will then usually be required to prepare and maintain an Individual Development Plan (IDP) for the child.

The test for having ALN is set out in the Act (s.2) and is to be applied to each child or young person individually – the test must always be applied in light of the particular circumstances. ALN depends upon the person having a learning difficulty or disability which calls for ALP, which is educational or training provision that is different from, or additional to, that generally provided for others of the same age in mainstream maintained schools, mainstream FEIs and places where nursery education is provided.

It is the ALP called for by an individual child or young person's learning difficulty or disability that must be set out in the IDP (see section 10(b) of the Act). What ALP a child or young person with ALN requires is specific to them and depends upon their individual needs and circumstances.

If a specialist service is available to every learner with a particular disability or condition, that service is likely to be ALP for individual learners. Whether or not it is ALP in any particular instance will depend upon whether it is called for by the child or young person's learning difficulty or disability and whether it is educational or training provision that is additional to or different from the general provision for all learners of the child or young person's age (including those that do not have the disability or condition concerned).

In some cases, indirect forms of support, such as training the person who is to deliver the ALP, may be necessary for any identified ALP to be provided. The Code envisages that these details can be set out in the ALP section of the IDP (paragraph 23.37):

*The information recorded in relation to ALP will be more useful the clearer it is. It should be detailed, specific and quantifiable. This clarity might result from describing the specific tasks or actions that will be undertaken; it could also detail the training or qualifications any staff will require. Simply stating that support will be provided will not meet the need for clarity; describing the tasks any staff will undertake or facilitate, what they will be responsible for, and, if necessary, what qualifications or training they will require is important.*

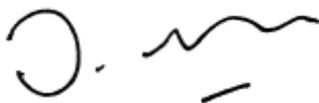
Therefore, specialist training for teaching staff could, depending upon the circumstances, form part of the description of ALP in an individual child or young person's IDP. However, not all input from specialist services is necessarily ALP. Some support from specialist services, including some forms of staff training, may be provided for other purposes, such as to help staff identify needs or generally to raise awareness about particular conditions.

### **Response to the National Deaf Children's Society (NDCS) Cymru Position Paper**

The matters raised by NDCS about the NHS provision that is potentially not being recorded as ALP within IDPs are new issues and we will need to explore these further and what has led to them. Officials will be meeting with Designated Education Clinical Lead Officers in early February and will discuss the issues with them.

As the 2018 Act is being implemented with the main provisions commencing at different times for different groups of learners, we will be listening carefully to the experiences of learners and practitioners. A national ALN implementation programme will review progress to ensure the Act is implemented as intended.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a series of loops and a horizontal line at the end.

**Jeremy Miles AS/MS**

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