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Jayne Bryant MS

Chair, Senedd Children Young People and Education Committee

Dear Jayne

### **IMPLEMENTATION OF EDUCATION REFORMS (2<sup>ND</sup> CHECK-IN)**

Thank you for your letter of 17 July seeking WLGA views on two aspects of the new Additional Learning Needs (ALN) system: the role of the Designated Clinical Liaison Officer (DECLO) and the roles of schools and local authorities in relation to Individual Development Plans (IDPs).

We consulted ADEW colleagues in order to develop our response. The attached paper reflects comments from local authorities across all of the seven LHBs in Wales.

You specifically asked to know how many local authorities had published their set of principles. Currently 13 have published; the remainder are in the process of completing and/or consulting on their draft principles and expect to publish their final versions in this Autumn term.

I hope this information is helpful to the Committee.

I am copying this letter, as yours, to the Minister for Education and the Welsh Language.

Your sincerely,

Sharon Davies

## Head of Education

### IMPLEMENTATION OF EDUCATION REFORMS (2<sup>ND</sup> CHECK-IN): WLGA AND ADEW EVIDENCE PAPER TO THE SENEDD CHILDREN, YOUNG PEOPLE AND EDUCATION COMMITTEE

#### The role of the Designated Clinical Liaison Officer

1. There are currently three DECLOs in post across the 7 LHBs in Wales. One DECLO works across three LHBs; in a further LHB the original DECLO has left the post and interim arrangements are in place pending recruitment of a new DECLO. The local authorities concerned have been invited to be part of that process.
2. The picture is mixed across local authorities. It is generally positive in terms of professional working relationships with the DECLOs at operational level: authorities welcome having the DECLO as a single point of contact within the LHB and improved communication, collaboration and joint working with health are all widely reported. However, there are questions about the extent to which the ALNET Act is successfully helping to improve health responsibilities in meeting ALN needs for all learners.
3. DECLO attendance at key meetings is widely reported, for example at ALNCo Forums, ALN Panels, Early Years Forums, Regional Health & Education ALNET Strategic Groups, ALN Implementation Steering Groups. In some cases the DECLO coordinates or chairs such meetings (sometimes jointly with the local authority) and/or marshals other relevant health personnel to attend or contribute (eg Health Visitor input at Early Years Panels). DECLOs attend LA-run training events for ALNCos (or contribute to them); some have worked to develop online training packages and other resources for ALNCos and schools.
4. As well as DECLO attendance at formal meetings and events, many authorities also report good day-to-day channels of communication - via email, telephone, online meetings etc - enabling education and health colleagues to discuss urgent and/or emerging concerns in a timely manner.
5. For the majority of local authorities, the DECLO role has brought about improvements in communication, collaboration and joint working between authorities and the LHBs across the early years, statutory education and post-16, helping to support statutory compliance in a range of ways:
  - making links and strengthening relationships between health and key education personnel such as headteachers and ALNCos;
  - improving understanding of respective roles and responsibilities;
  - improving communication among all partners;
  - raising awareness of the ALN system among health staff;

- improving shared understanding of process and operations;
  - identifying priorities for collaboration between the local authority, schools and health board;
  - helping to ensure cross-service alignment;
  - helping to identify and address potential problems at an early stage;
  - enabling quicker information-sharing and improved handling of requests for information from health, particularly in early years;
  - enabling collaborative problem solving and the development of consistent messaging;
  - helping with development of local authority or regional notification forms for referrals under Sections 20, 64 and 65 of the ALNET Act to try to ensure a consistent approach;
  - providing guidance and advice for schools on health-based processes and support available;
  - helping to share good practice / national developments with other regions/LHBs
  - supporting Tribunal cases. A number of local authorities are very positive about the impact of the DECLO's role on joint working in relation to dispute resolution and Tribunal appeals.
6. Notwithstanding the above - and recognising that local authorities and their DECLOs will continue to work together as implementation of the ALN reforms progresses - the impact of the role to date does vary across authorities. Some authorities are very satisfied with their DECLO's input at both operational and strategic levels. However, some others feel that the pace of implementation of the ALN reforms is slower in health than in education and the hoped for improvements have yet to fully materialise. Of those, some report there are still only limited links between education and health and/or no notable increase in joint working as a result of the legislation.
7. Other authorities welcome their DECLO's operational input but feel their strategic influence is more limited. This is not a reflection on any individual DECLO but more about the differences in the ways the ALNET Act statutory duties apply to local authorities and health. There is an ongoing feeling that the relationship between education and health under the Act is not an equal one. And some of the challenges local authorities faced under the old system - eg capacity or funding issues in health and different operating terms of reference or working culture - still exist and DECLOs do not necessarily have the 'teeth' to change those.
8. Some of the more common issues or challenges reported by local authorities relative to health service engagement on IDPs or health responsibilities generally under the ALNET Act include:

- the different legal timeframes for managing ALN processes. For local authorities the ALNET Act and ALN Code stipulate a 12-week consideration timeline for IDPs. However, health services work to a different legislative framework and performance indicators (eg length of waiting lists). Health's obligations under the ALNET Act are, effectively, secondary to health's main legislative drivers and it is sometimes challenging for authorities to get the necessary input into PCP meetings and IDPs within the statutory timeframe;
- inconsistent attendance of health professionals at PCP meetings. Some authorities report that health services ask for 6 weeks' notice to attend PCP meetings, which does not align with the 35-day timescale for schools to complete the IDP process;
- differences in understanding and interpretation of the ALNET Act in relation to referrals under Section 20 ('Additional Learning Provision: Local Health Boards and NHS Trusts'). This section allows local authorities to make requests to the LHB for health ALP but not schools. Thus, while there may be effective collaboration on complex IDP cases, some authorities comment that further work is needed to develop the same approach for less complex cases so that all learners with ALN benefit from multi-disciplinary, multi-agency input. Otherwise, there is a risk of a two-tier IDP system, where only children and young people with a local authority IDP will be able to have health ALP listed in Section 2C. A related development is that in LHBs where some local authorities have 'delegated' Section 20 referrals to schools, those LHBs are reported as stating it is 'not in the spirit of the Act' and raises legal issues about the constitution of the local authority. This issue has already been raised with the Welsh Government and a paper will be going forward for further discussion at ADEW and the ALN Reform National Steering Group later this month.
- differences in understanding or lack of clarity as to what constitutes 'Health ALP' and when it should be included in Part 2C of the IDP. Some authorities express concern or even surprise that very few IDPs have health provision written into Part 2C, even for learners going into special schools who may have significant assessed medical and/or therapy needs;
- delays in obtaining health assessment /information/reports. Difficulties may be around criteria for services, capacity and health paperwork or other bureaucracy. Some of these may be linked to operation of Section 65 of the ALNET Act ("Duties to provide information and other help"). There is some difference of opinion across local authorities as to whether schools can make section 65 requests direct to the LHB for information they may feel is needed for a learner's IDP. There is no legal requirement on health to respond to such requests and some authorities comment that they are not popular with health.

Where such requests are made, health structures are complicated or confusing making it difficult for schools and sometimes local authority officers to know who is responsible for what. Sometimes there are health complaints that schools are inappropriately sending out generic letters to all medical professionals they think might have relevant input, creating unnecessary bureaucracy, especially as many cannot add to the conversation around education need or barriers to learning and ALP. Equally, schools complain about health forms being 'unnecessarily detailed and bureaucratic' and see them as barrier for accessing advice when needed;

- delays in learners receiving the episode of care outlined in their statement / IDP due to lack of available health staff;
- some reports of health professionals recommending specialist education placements – outside of their remit – without any knowledge of what ALP is available within schools. There are also reports of Health Visitors making inappropriate referrals to Early Years Forums even though SOGS (Schedule of Growing Skills) reports do not indicate significant developmental need;
- increasing use by parents of private health reports, due to NHS waiting lists or when a learner does not meet criteria for NHS services times. Schools and local authorities are not health professionals, making it difficult for them to challenge the validity of such reports or whether they are correct, relevant or suitable evidence for an IDP.

### **The roles of schools and local authorities in relation to IDPs**

9. Thirteen local authorities have published their principles. The rest expect to do so in this Autumn term, some after completing their final consultations.
10. All local authorities have had significant discussions/consultation around IDP responsibilities with stakeholders (schools, headteachers, ALNCos, Inclusion Officers, Educational Psychologists etc) as a prelude to publishing their principles or to issuing guidance or other support tools (eg Inclusion Toolkit) pending publication of their principles. In some cases, guidance or tools have been issued on a regional basis to provide clarity on what provision should generally be made available in schools for learners with ALN. Authorities have also ensured professional development and training for their ALNCos to support them in navigating their respective IDP decision-making processes. In many cases, schools, settings and other partner agencies have also received training. Training is widely backed up by extensive supporting documentation.
11. As a result of the above, local authorities generally feel there is clarity (among ALNCos, schools, parents and learners) about whether IDPs are held (maintained) by the school or the local authority. Differences of view are not

extensively reported, irrespective of whether or not the authority has published its principles, but some ongoing operational challenges identified as areas for improvement include:

- further support/training for schools who may be struggling to make appropriate referrals for local authority IDPs, to avoid late referrals which can result in complex cases escalating and a risk of increased Tribunal work;
- continuing to address communication issues - despite huge amounts of information going out to schools and parents about the ALN reforms and new processes, misunderstandings can and do proliferate and expectations are sometimes at odds with the legislation;
- a need to reinforce the public sector equality duty as it applies to schools, to ensure learners are not determined to have ALN before consideration is given to whether reasonable adjustments would have been appropriate to mitigate any identified barriers to access or participation.

12. Some local authorities which published principles in 2022 have since reviewed and revised them in the light of experience, usually with the aim to provide further clarity for where the responsibility lies for schools and the authority respectively to fund and implement ALP.

13. The widespread view is that that schools are best-placed to review and amend IDPs for their learners with ALN. The most common approach, therefore, is that schools hold (maintain) IDPs unless it is otherwise specified in the ALN Code (or if there are exceptional circumstances such as learner in a mainstream school with complex needs requiring specialist ALP over and above what the school can provide), in which case the IDP will be held (maintained) by the local authority. . At least one local authority has created a number of 'designated officer' posts to lead on IDPs for specified groups (Children Looked After, EOTAS, EHE and Post-16), to ensure the PCP process is led by someone with expertise and strategic oversight, who can respond to the specific needs and circumstances of each group. Most authorities also hold IDPs for learners in specialist settings (special schools and resource bases), though there are variations: at least one authority has delegated responsibility after consulting its specialist setting leads; others report ongoing discussion about the possibility of delegation going forward

14. All local authorities have agreed funding arrangements in place for supporting learners with ALN in schools, and what ALP it is appropriate to expect a school to provide with the available funding. Budgets are more often than not fully delegated to schools, either with an indicative ALN support budget or some form of enhanced funding on top of the school's core budget. Different funding mechanisms may exist for specialist settings where the LA holds the IDP. Many

authorities have also put arrangements in place for mainstream schools to access additional resources directly to help inform or supplement their ALP or to help develop their universal offer or early intervention, including specialist advice (eg educational psychology) or specialist teaching, training or equipment.

15. In terms of resolving differences of opinion where they do occur, a range of arrangements exist across local authorities. Most commonly ALN Panels have been set up to decide on requests from schools for the LA to maintain an IDP, with responses offering constructive advice and feedback to schools where relevant. Such panels may also have the role of providing further support, advice or be able to devolve additional funding to the school so it can continue to maintain an IDP. Other arrangements include independent disagreement resolution panels to help communicate and explain IDP decisions to schools and parents, or resource panels where schools can request further support or resources. One local authority has set up an ALN Helpline to give young people, parents and carers direct access to the authority for advice or support or if they want to request a reconsideration of a school IDP decision. This has helped avoid cases escalating and allowed the authority to intervene early if it appears a school may need support for their practice.
16. Additionally, most local authorities have processes in place to ensure quality assurance and consistency of IDPs at both local authority and school or specialist setting level.
17. In terms of identified issues or challenges related to responsibilities for IDPs, cross-border placements have been raised by a number of local authorities. Authorities are only required to consult the schools they maintain about their IDP principles and expectations, meaning the thresholds and criteria for local authority and school IDPs may differ between neighbouring authorities. This can cause problems where a learner from one authority attends school at another authority and has an IDP requiring ALP. One authority has flagged with the Welsh Government the fact that the ALN Code (Paragraph 12.86) does not appear to be strong enough or clear enough about how local authorities should work together to fund ALP if it is not available at the school. There is a risk that local authorities will have no alternative than to demand local authority-maintained IDPs for cross-border children solely to secure funding through Inter-Authority Recoupment (IAR). However, the current IAR regulations only relate to Statements and there is no guidance to ensure consistency throughout Wales.