

**Y Pwyllgor Plant, Pobl Ifanc  
ac Addysg**

**Children, Young People  
and Education Committee**

Lynne Neagle MS  
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## **Concerns about the implementation of the Additional Learning Needs system**

Dear Lynne,

Congratulations on your appointment to the position of Cabinet Secretary for Education. I look forward to working constructively with you and your officials throughout the Senedd in the interests of children and young people across Wales.

On 20 March 2024, colleagues on this Committee took evidence from the President of the Education Tribunal for Wales, Judge Jane McConnell. The evidence session was part of our Senedd-long inquiry into the implementation of the new curriculum and Additional Learning Needs ("ALN") reforms.

Judge Jane McConnell raised a number of crucial points about the rollout of the ALN reforms. Following the evidence session, the Committee agreed to write to the Welsh Government to raise some of the judge's key concerns that resonated particularly strongly with what Committee members had heard from school leaders and parents.

**The definition of ALN as set out in the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the ALN Act") is not being interpreted consistently correctly across local authorities, schools and Further Education ("FE") colleges. Consequently, some local authorities and schools have ALN policies that are unlawful.**

Judge Jane McConnell told us that there is no difference between the definition of ALN under the new system and the definition of Special Educational Needs ("SEN") under the old system. Even though this fundamental definition has not changed, the Act is being misinterpreted by some schools and local authorities:

*"We are three to four years into this transition. I think I am concerned, based on the cases that are coming to us, that there are still some very basic concepts that are not being understood uniformly across Wales. And when I say across Wales, I'm talking about not just local authorities, but schools, FE colleges."*

She explained to us that "the law will always top-trump the policy". For example, she told us that some establishments are stating that a child does not need an Individual Development Plan ("IDP") because their needs can be met via universal provision. However:

*"...there's no such thing as universal provision in the law. It's not in the ALN Act, it's not in the regulations, it's not mentioned in the code.... The legal tests are a child compared with the ordinary developing child, or provision that's provided in mainstream schools across Wales, so it's not specific to a particular local authority area, or a particular school even..."<sup>1</sup>*

Through its engagement work, the Committee has also heard from both school leaders and parents about children being denied IDPs because the school believes that their needs can be met via universal provision.

**Local authorities are not always providing local authority-based IDPs to children who meet the threshold for one.**

Judge Jane McConnell outlined to us a trend in cases where:

- "there is a fundamental dispute whether the child has ALN or not, when the child has previously had a statement of SEN. Now, legally—and, remember, I can only apply, or we can only apply, the law to the evidence we've got—there'd be absolutely no reason why that child shouldn't have not only an IDP, but an IDP that's actually a local authority-based IDP."<sup>2</sup>
- "children are placed in special schools, but they don't have an IDP that's maintained by the local authority. That just doesn't stack up as far as the law is concerned..."<sup>3</sup>

She added that she was "surprised" about this confusion given that the "threshold about when it's necessary is not wildly different, if at all different, from the definition under the SEN legislation."<sup>4</sup>

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<sup>1</sup> Children, Young People and Education Committee ("CYPE"), [Record of Proceedings \("RoP"\): 20/03/24](#), paragraph 150

<sup>2</sup> CYPE, [RoP: 20/03/24](#), paragraph 147

<sup>3</sup> CYPE, [RoP: 20/03/24](#), paragraph 149

<sup>4</sup> CYPE, [RoP: 20/03/24](#), paragraph 155

The Committee has also heard similar anecdotal evidence from parents and from school leaders about local authorities being reluctant to grant local authority-maintained IDPs to children with high levels of ALN.

**The ALN Act and the Additional Learning Needs Code for Wales 2021 (“the Code”) are “intellectually challenging”.**

Judge Jane McConnell stressed to us that “I don't think there's anybody sitting in a local authority or a school who's purposefully sitting there and doing this wrong, but there is misinterpretation out there.”<sup>5</sup> She told us that she finds the ALN Act and the Code “intellectually challenging”, and that parents, local authority officers and even ALNCoS may also find it intellectually challenging.<sup>6</sup>

This evidence, alongside the engagement work we have carried out, indicates that one key reason that the Act and the Code are being interpreted inconsistently and inaccurately is because they were drafted unclearly.

**There is no mechanism by which the tribunal can formally identify ‘repeat offender’ local authorities: i.e., local authorities that consistently apply the ALN Act and Code incorrectly.**

Judge Jane McConnell told us that:

*“There's one local authority that has really been clear to their schools. The message to schools has been that any child who had a statement previously will now have an IDP maintained by the school. Anybody on school action or school action plus will have nothing, and the only children that will have an IDP that is to be maintained by the local authority are those who are in the categories under the code for looked-after children, children who require EOTAS, their education otherwise than at school, et cetera, et cetera.”<sup>7</sup>*

She told us that most local authorities in Wales are receptive to the tribunal's judgements, and are changing how they apply the Act accordingly. However, some are “doggedly determined that their policy is the way to go, and we have seen them, on a number of times, coming to us with the same issue.” However, she told us that “there's no mechanism for reporting back the fact that a particular local authority, or a part of a local authority even, is consistently applying the law incorrectly, which would indicate, potentially, a policy is not understood or it's not legally compliant.”<sup>8</sup>

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<sup>5</sup> CYPE, [RoP: 20/03/24](#), paragraph 147

<sup>6</sup> CYPE, [RoP: 20/03/24](#), paragraph 153

<sup>7</sup> CYPE, [RoP: 20/03/24](#), paragraph 165

<sup>8</sup> CYPE, [RoP: 20/03/24](#), paragraph 186

Judge Jane McConnell raised a series of other important concerns, which we will continue to explore throughout our scrutiny work. However, the Committee was so concerned about how fundamentally some local authorities and schools are misapplying the Act that Committee members wanted to bring these key points to your attention as soon as possible.

We look forward to discussing these issues and others with you in more detail when you appear before Committee on Wednesday 8 May. In the meantime, I hope that you find this information useful.

Yours sincerely,



Buffy Williams MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.