

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)| Additional Learning Needs and Education Tribunal (Wales) Bill

ALN 07

Ymateb gan: Undeb Cenedlaethol yr Athrawon, Cymru

Response from: National Union of Teachers, Wales

Areas for consideration:

*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;*

We support the general principles and aspirations for the Bill.

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

We are somewhat unclear as to the boundaries between the responsibility of the governing body to create an Individual Development Plan (IDP) and that of the local authority. It may be envisaged that the local authority would only use their power if there was an obvious need for ALN provision to which the governors have not responded? However it is somewhat hard to fully appreciate how this shared/dual responsibility is to work in practice. There is potentially a serious lack of clarity which could result in a lack of standardisation across Wales leading to ALN provisions differing vastly depending on the differing approaches undertaken by councils.

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

See above

*The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum.*

At present, the provision arising from a statement is the financial responsibility of the local authority. If a school creates an IDP, presumably they will be responsible for funding the provision. However, if the local

authority can create an IDP and require the school to maintain it who pays in this case? Some local authorities already have delegated funding up to, but not including, statements. If the school creates an Individual Education Plan for a pupil on, say, school action +, the school pays for the provision out of its delegated funding. However, if the IDPs are going to replace statements, the level of need will often be more profound, the provision more extensive and the costs higher.

If the responsibility for the IDPs falls on schools and Governing Bodies it would be an expectation that local authorities will also delegate funding. Experience with other funding streams, such as the pupil deprivation grant, suggests that the money does not always follow the specific pupils for which it was intended. It may prove therefore that this delegated responsibility and funding could lead to a poorer level of provision for ALN pupils.

There will be costs to the implementation of the Bill that the Welsh Government must commit to covering. Further to this the ambitious nature of the proposals will undoubtedly mean there will need to be significant professional development for teachers if they are to be achievable. This will have cost implications not only in terms of providing training but also in relation to securing release for teachers to attend training events and to work across clusters effectively. We are unconvinced at present that, at least long-term, this financial provision will be made available. CPD amongst the teaching profession is already patchy at best and so identifying an ability to enhance that provision, within a specific sector and against the backdrop of budget cuts, is difficult to ensure.

*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).*

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;

We agree that these are sound objectives for a Bill of this nature. The question of whether the Bill is sufficient to meet these is, in part open to how the proposals will work in practice. Certainly, as it stands, there is enough of a concern around workload, access to provision and the effectiveness of tribunals to question if it is achievable.

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;

As above, the aims of the Bill are not misguided. Many are laudable and are positive steps forward. Extending the age range for support for example is a welcomed move. However, again as above, the test of the Bill will come in its practical delivery and as yet there remain enough outstanding concerns to suggest that revisions are needed.

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

In principle collaboration across different stakeholders and agencies is a good thing. Ensuring a coordinated approach whereby different expertise are utilised for the benefit of a pupil should be encouraged. However in practice the fear is there will be a lack of leadership. Ultimately, a decision will need to be made in each case about the provision to be made and who is going to pay for it. The question therefore is who has the final say? Can anyone direct an NHS trust, for example, to make the provision?

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

See comments in sections above.

In addition to this whilst the local authority or a governing body must make a decision about the child's ALN, the assessment process remains unclear. It is described as 'seamless' and 'unified' within the EM, but lacks clarity. We would seek clarity when it is the duty of the school and when the local authority to assess a child for ALN. We would also seek clarity on what an assessment will look like and who will be involved, who will pay for the assessment of children with ALN and how will the governing body decide if the child or young person has ALN and what ALP to provide?

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

This is an ambition that is very much welcomed. NUT Cymru have supported widening the age span for support. However, there are certainly outstanding questions as to if the expertise, training and funding exist within the Further Education sector to support this objectives.

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

This is sadly doubtful. If any local authority is not proactive in assessing pupils' needs and starting the ball rolling to create an IDP, the burden will fall on the school. There may be an increase in the number of meetings and co-ordination work which come with workload and cost implications.

The Welsh Government also needs to clarify its position on the status of the ALNCO. It is believed that the new Code of Practice (ALNCOP) will require (or at least recommend) that the ALNCO has no other management roles and significantly more non-contact time than at present. There will again be cost implications. How these work in smaller primary schools is particularly concerning.

If the proposal is that small primary schools are all going to have to form clusters with one designated person the problem with this will be that this person will have no financial authority outside their own institution, unless in a formal federation. Indeed if there are ALNCOs employed to work across clusters of schools, small or otherwise, there is a fear there will be a turf war

for their attention and support. While flexible deployment of staff according to need can be a good thing it undoubtedly has potential pitfalls in this case.

It is also rumoured that the ALNCO will have to be part of the senior leadership team. There are implications here too.

There will be significant workload implications on both schools and Governing Bodies if the responsibility falls on them to draft the IDPs.

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

It appears the new system will make it easier to take individual schools to tribunal. We do not oppose the principle of allowing parents and guardians better access and knowledge of their rights and avenues of support. Indeed we also support the promotion of conflict resolution prior to tribunal which may potentially resolve some more minor issues. However, should these changes increase dramatically the number of tribunal cases schools and governing bodies are dealing with there is the prospect of increased stress, conflict and additional work for schools and governing bodies which will harm the provision they can offer.

In addition there are concerns about the prolonged nature of these tribunals delaying the support a pupil should receive. With the lack of clarity around some of the responsibilities, in particular between school governing bodies and local authorities, it is reasonable to anticipate that the number of tribunals will increase creating a further backlog in delivery.

Any delay in the process may also be exacerbated by the widening of the right to appeal to a tribunal, which may well result in increased requests for tribunals. The potential for increasing the number of tribunals may also arise as a result of the lack of clarity around responsibilities – particularly between school governing bodies and local authorities.

It would be better for resources to be focused on support for ALN pupils rather than spent facilitating costly and prolonged tribunal proceedings.