

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 56

Ymateb gan: Rhondda Cynon Taf – Gwasanaeth Mynediad a

Chynhwysiant**Response from: Rhondda Cynon Taf – Access and Inclusion Service**

General Overview

Rhondda Cynon Taf Access and Inclusion Service welcome the opportunity to respond to the above consultation.

Overall the Local Authority (LA) supports the general principles and the overarching objectives of the Bill. It agrees with the aspirational aims to create a more equitable system for all learners with Additional Learning Needs (ALN) and to provide a consistent, collaborative and child-centred approach to ensuring that children and young people with ALN from 0 – 25 have access to appropriate Additional Learning Provision (ALP).

The LA recognises the need to introduce legislation to ensure effective and consistent delivery of the aims and objectives of the Bill and the Code. However, the LA does not feel that it is yet possible to understand the full implications of the Bill at this point in time until there is further consultation regarding the draft ALN Code which will provide greater operational detail on how legislation will be put into practice.

Introduction of term ALN

The definition ALN appears to focus predominantly upon learning difficulties and the need for additional learning provision. Greater clarity is necessary regarding whether this definition encompasses medical needs and mental health difficulties.

Introduction of Individual Development Plans (IDS) for all learners with ALN

The concept of a statutory person centred IDP for all learners with ALN creates a more equitable and enforceable system for ensuring that learners receive appropriate support and provision. However, providing statutory plans for an increased number of learners this has potential implications for the workload of educational settings and local authorities and their partner agencies (e.g. social services). The Regulatory Impact Assessment (RIA) estimates that the number of learners with statutory plans will increase from the current 13,318 statutory plans to 107,688. The LA anticipates that there will be a higher level of challenge to schools and local authorities from parents regarding the content and delivery of IDPs than there is with the current non-statutory Individual Education Plans and School Action and School Action Plus, and also from schools to local authorities to take over responsibility for IDPs.

Due to the enhanced age range (0–25) and the differing priorities and types of provision to be considered at various stages / phases of a learner's education there will be a need to provide comprehensive training for all agencies involved in preparing and maintaining IDPs. This has funding implications for all relevant agencies.

The replacement of the current three-tier system by a single non-graduated system results in a lack of clarity regarding the respective roles and responsibilities of local authorities and the governing bodies of schools and FEIs in relation to preparing and maintaining IDPs. The reference to the requirement for local authorities to be involved in the assessment or review of an IDP only in cases where the learner's needs could not 'reasonably be met' by an educational setting (e.g. maintained nursery, school, FEI) is purely subjective. Without clear thresholds / guidance for the transfer of responsibility from schools and FEIs to the local authority there is potential for local authorities to have to maintain a much greater number of IDPs than currently suggested in the RIA, particularly for those pupils who are currently at School Action Plus. (The RIA suggests that local authorities are likely to maintain around the same number of IDPs as statements).

In addition it is not currently possible to quantify the number of IDPs that could potentially be transferred from the governing bodies of FEIs to the

local authority. This has workload implications for local authorities, not only in relation to the increased number of statutory plans they will have to maintain but also in relation to the additional expertise needed by local authority services in order to plan and make provision for learners aged 19–25. There is lack of clarity or detail in the Bill regarding the funding implications for local authorities in maintaining IDPs and funding ALP for learners aged 19–25 which is of great concern to the LA as, currently, local authorities have no control over FEI budgets due to separate governance arrangements and would have no jurisdiction in order to recoup costs from FEIs.

There are also potential implications in relation to the funding arrangements local authorities currently make for SEN/ALN to schools (e.g. delegated budgets) if local authorities are challenged to maintain an increased number of statutory plans.

Proposed new arrangements for disagreement avoidance / dispute resolution and consistent rights of appeal

The local authority agrees in principle that an enhanced focus upon avoiding disagreements and resolving disputes has the potential to have a positive impact on reducing conflict, particularly with the implementation of effective person centred practice and increased collaboration with parents and learners.

The LA believes that the RIA's prediction that a single statutory IDP for all learners with ALN will 'remove' the adversarial nature that currently exists within the three tier system is overestimated. On the contrary, the LA has considerable concerns that the RIA does not sufficiently acknowledge the additional responsibilities given to local authorities in having to respond to requests from schools and parents to make decisions about reviewing, revising and taking over responsibility for a significantly higher number of statutory plans over an extended age range – decisions that can be challenged and appealed by parents and learners. This, in addition to the current lack of clarity in the Bill regarding the respective roles and responsibilities of schools, FEIs and local authorities in relation to taking over the responsibility for preparing and maintaining IDPs has the potential

to create a new tier of disagreements and disputes between both educational settings and local authorities and parents and local authorities.

The RIA refers to 5.4% of young people with a statement disagreeing with the contents of their statement in 2015–16. If this percentage were applied to the additional statutory IDPs there could be potentially significant funding issues for local authorities in providing disagreement and resolution services to families and through fighting tribunal appeals. Assuming that the enhanced focus upon disagreement avoidance and dispute resolution does indeed prove to be more effective than the current arrangements in reducing the **percentage** of young people appealing the content of their IDPs, the actual **number** of disagreements and appeals is still likely to be higher than is currently the case due to the increase of an additional 94,000 statutory plans. Neither the implications for funding or additional workload in respect of the above is acknowledged sufficiently within the RIA. The LA has concerns that the RIA's prediction that the introduction of a single statutory plan will incur estimated savings of £11,839,600 to local authority education services over the next four years, based on the premise that this new system will 'remove' any contention that currently exists within the current graduated system, is a gross overestimation.

The Bill places emphasis upon the accountability of a range of agencies to work collaboratively to meet the needs of learners with ALN. However, the remit of the Tribunal within the Bill remains solely that of education. It is of great concern that health bodies are not accountable to the Tribunal despite the Tribunal having powers to order the revision of an IDP in relation to the additional learning provision a NHS body is supposed to secure. Greater clarity is needed regarding the potential implications for local authorities in relation to having to secure health treatments / services from their own resources.

ALNCo Role

The local authority welcomes the introduction of a statutory ALNCo role, together with a mandatory requirement for ALNCoS to have a higher level of relevant training in ALN. However, the proposal for all ALNCoS to acquire a Masters' Degree in ALN raises the following concerns:

- Cost implications for schools / PRUs of funding the Masters' qualification far exceed the ALN Implementation Grant allocated to the above
- Lack of interest / incentive for current SENCos to undertake Masters – workload, lack of financial reward
- Turn-over of staff – gaps in provision and financial implications for schools

The local authority welcomes the changes made to the Bill in respect of ensuring that educational settings, such as maintained early years settings and PRUs, are required by legislation to have a designated ALNCo. However, there is some concern that this does not include special schools, as practice and experience amongst special school staff can be inconsistent.

Further clarification and detail in relation to the specific requirements and duties of the ALNCo role is needed within the Code.

0 – 25 age range

The Local Authority welcomes the aspirational aim to establish a consistent and overarching system extending from 0–25.

Early Years

There is a lack of focus upon the early years within the Bill. Further clarification is needed in relation to the definition of early years. Further detail regarding local authorities' duties and functions for children under compulsory school age is needed in order to understand the full implications of the Bill and the Code in this context.

The Bill outlines the functions of NHS health bodies to notify local authorities of their concerns that a child under compulsory school age may have additional learning needs. The provision for referral by health bodies in the early years is welcomed as the local authority may have limited contact with pre-school children and may be unaware of individuals' specific needs. However, there is concern that local authorities will have responsibility for IDPs in the early years despite health having the most involvement with children under 3 years of age. Also, it is yet unclear how learning difficulties

be defined for children in the early years and the implications for assessment and the planning of additional 'learning' provision in the early years.

Post 16 age range

The LA agrees with the principle of extending the age range from 19 to 25 to ensure more effective transition for post 16 learners. However, the LA also has the following concerns:

- The number of IDPs the local authority may have to continue to prepare and maintain post 16 for learners entering FEIs (workload and training implications)
- The Bill does not appear to consider how the local authority would fund the above, as FEIs are funded independently from local authorities – there is no reference to additional funding for local authorities in this context
- There is lack of clarity regarding the relationship between the local authority and FEIs when reviewing IDPs of FEI students or when transferring the responsibility for IDPs from FEIs to the local authority – the Bill does not appear to give local authorities the power to direct FEIs to prepare and maintain IDPs. This in turn has the potential to create conflict between local authorities and FEIs.
- The Bill states that funding for Careers Wales officers to work with local authorities to share their expertise with local authorities will continue for two years following the implementation of the Bill. The Bill makes no reference to continued funding for local authorities in this context following the above two year transition period.
- Both the funding and responsibility for making decisions regarding specialist educational placements for learners with the most complex needs will transfer from Welsh Government to the local authority. Whilst the LA agrees with the rationale that local authorities will have the greatest knowledge and understanding of the learner's needs there are concerns that:

- Funding will not take account of fluctuating demand for specialist college placements as funding is allocated to local authorities based on population distribution
- Learners may be able to appeal against decisions made by the local authority to the Education Tribunal Wales as they will have statutory IDPs
- The Bill makes no reference to learners with ALN who move on to Higher Education
- Lack of clarity of the role of partner agencies in supporting learners with IDPs in FE

Multi-Agency Collaboration

The LA welcomes the enhanced focus upon collaboration between agencies in relation to the IDP planning process. In particular, the LA welcomes the recent amendment to the Bill that imposes a statutory duty upon NHS bodies to secure provision for learners with ALN where it has identified that there is a health treatment or service that would address the learner's ALN. However, there is potential opportunity for conflict where education services, local authorities and Education Tribunal will have no powers to appeal decisions undertaken by Health Bodies to amend or remove health treatments / services from a learner's ALP.

Further clarification in relation to the definition of a health need and the provisions that would fall within the remit of the Health Board is needed. The LA has concerns that there is potential for conflict where health priorities are not aligned to those of education when securing ALP.

The introduction of the role of the Designated Education Clinical Lead Officer (DECLO) role has the potential to facilitate more effective collaboration between education services, the local authority and the Health Board. However, there needs to be a recognition of the importance of the DECLO role and sufficient funding and resourcing to ensure that the role is undertaken effectively. The LA has concerns that the role and responsibilities of the DECLO role have been underestimated and not fully recognised as the RIA estimates that the expected time allocation for the role will equate to only three full time positions across the seven health boards.

References within the Bill to the role and responsibilities of social services are minimal and the LA would welcome further detail in relation to strengthening collaboration with education.

Detailed guidance regarding improved information sharing protocols is needed to facilitate effective collaboration between different agencies.

Unintended Consequences

The LA has the following concerns:

- Potential for additional conflict between schools, FEIs and local authorities that do not currently exist
- A higher number of appeals to Education Tribunal due to the significant increase in the number of statutory plans
- Much higher workload for local authorities but lack of clarity regarding implications for funding additional workload following the transition period of introducing the reforms
- Lack of expertise within LAs in relation to identifying the needs of adults with ALN
- Workforce implications and the capacity of LAs to provide specialist services for a wider age range and in unfamiliar settings e.g. FEIs