
Cynulliad Cenedlaethol Cymru
Y Pwyllgor Plant, Pobl Ifanc ac Addysg

National Assembly for Wales
Children, Young People and Education Committee

Kirsty Williams AM
Minister for Education
Welsh Government

26 February 2019

Dear Kirsty

Draft Additional Learning Needs Code

As you are aware, the Children, Young People and Education Committee is currently considering the draft Additional Learning Needs Code (the Code), in accordance with its responsibilities as a statutory consultee under section 5 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the Act).

To help inform its consideration of the Code, the Committee has established a working group with key stakeholders, which met on 13 February. One area of concern that has been raised as part of its scrutiny has been in relation to Section 68 of the Act, and how this is interpreted within the Code. This was raised with officials in the ALN Transformation Team when they provided a technical brief to the Committee and the Committee has also received correspondence from SNAP Cymru regarding this matter (a copy of that letter is attached for your information).

The Committee is considering all the issues raised, and evidence provided, by the working group, and will respond to the consultation on the Code. However, before finalising our response, the Committee would be grateful if you could provide some further clarity on the specific issue raised in relation to Section 68 and 69 of the Act.

Points for Clarification

Section 68(1) & (2) of the Act require local authorities to make arrangements for the avoidance and resolution of disagreements between local authorities, governing bodies and proprietors of relevant institutions on the one hand; and children, their parents and



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young people on the other. Section 68(3) states this must include provision from persons who are independent of the parties. In relation to this, can you confirm:

(a) how such arrangements would work. Is it anticipated that local authorities will deliver the avoidance and resolution services themselves?

(b) how the Welsh Government interprets 'independent of the parties' as set out in section 68(3) of the Act. Paragraph 25.36 of the Code states that an independent person 'should have no previous involvement with the child, family or young person and should have no vested interest in the outcome'. However, the Committee is concerned that this does not provide sufficient clarity. In considering this, could you provide a response to the following questions:

- If the family's disagreement is with the school, and there has been no local authority involvement, would someone within the local authority be considered independent? Whilst a local authority is not at that stage a party to any disagreement, there is potential for them to be a party in the future, for example if a parent asked for a re-consideration of the school governing body's decision.
- If the case has been referred to the local authority, or the local authority is otherwise involved, is the local authority as a whole prevented from being able to act as an "independent person", or would they be able to satisfy the requirement for independence, by for example, using an officer or department within the authority unrelated to the case?

Section 69 of the Act requires local authorities to make arrangements for the provision of independent advocacy services to children and young people making or considering an appeal to the Tribunal or taking part in disagreement avoidance and resolution. The Code states that "current practice in Wales is to achieve independence by commissioning advocacy services from an external provider". In relation to this provision, can you confirm whether:

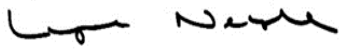
(a) it would be possible for a local authority to provide independent advocacy services, and if so, in what circumstances?

(b) if it is not possible for a local authority to provide independent advocacy services, but it is possible for them to meet the requirement for "independence" under disagreement avoidance and resolution arrangements (section 68), what the rationale is for this? Is 'independent' intended to be interpreted differently for each of the sections?



I would be very grateful for your urgent consideration of these matters, in order that the Committee can reflect on your response before it responds formally to the consultation on the Code.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynne Neagle'.

Lynne Neagle AC / AM
Cadeirydd / Chair

