

CYPE(4)–28–15 Papur | Paper 1

TSANA: evidence for CYPE Committee consultation on Additional Learning Needs and Education Tribunal (Wales) Bill

TSANA agrees to this evidence being made available publically

1. The Third Sector Additional Needs Alliance (TSANA) is a group of voluntary organisations which seek to protect and promote the rights of children with additional needs in Wales. Members include:
 - Action for Children
 - Afasic Cymru
 - Barnardo's Cymru
 - Contact a Family
 - Children in Wales
 - Learning Disability Wales
 - Mencap Cymru
 - Mudiad Meithrin
 - National Autistic Society (NAS) Cymru
 - National Deaf Children's Society (NDCS) Cymru
 - RNIB Cymru
 - Sense Cymru
 - SNAP Cymru
 - The Down's Syndrome Association
2. TSANA welcomes the opportunity to contribute evidence to the National Assembly for Wales Children, Young People and Education Committee as part of its consultation on the draft Additional Learning Needs and Education Tribunal (Wales) Bill.
3. This evidence primarily refers to the draft bill in question but is also informed by, and makes reference to, the accompanying draft Code of Practice and draft Explanatory Memorandum where this serves to illuminate commentary on the bill.
4. TSANA's evidence aims to inform scrutiny of the overarching principles of the bill and how it will impact children and young people with Additional Learning Needs (ALN). TSANA member organisations may submit evidence which informs scrutiny of the bill with that organisation's specialism in mind.
5. **Context – TSANA's recommendations to the Minister for Education and Skills**
6. TSANA submitted recommendations to the Minister for Education and Skills and his officials on the ALN bill and Code of Practice in July 2015 following joint engagement in a Task and Finish Group between January and July 2015.

7. The purpose of the Task and Finish Group was to bring together TSANA representatives with Welsh Government officials to act as a critical friend by providing ideas, proposals and suggestions to support the development of the proposed Bill on ALN and, in particular, the accompanying draft Code of Practice on ALN.
8. The recommendations paper can be found at appendix 1. TSANA's concerns about the draft bill and Code of Practice are consistent with those highlighted in the recommendations paper. For this reason, we ask that the CYPE committee consider this paper as the basis of TSANA's written evidence to this inquiry.
9. **Key concerns**
10. To supplement the attached paper, TSANA would also like to highlight key areas of concern in the light of its reading of the draft Additional Learning Needs and Education Tribunal (Wales) Bill and accompanying draft Code of Practice.
11. **The Definition of Additional Learning Needs.** The definition used is medically focused and refers only to education and not learning in its wider sense.
12. **Multi-Agency Working.** Effective multi-agency working for the benefit of the child goes beyond information sharing. There must be a duty to deliver multi-agency services, underpinned by local protocols between Health, Social Services and Education. Examples of successful programmes promoting multi-agency working exist – eg the Early Support programme and Real Opportunities and learning from these should be adopted. We are also very concerned at the lack of involvement placed on Health by the draft Bill. This is a missed opportunity.
13. **Early Years.** The new legislative framework is from 0-25 years of age but there is a lack of information in the draft Bill and the Code of Practice about children in the early years. Learning begins from birth and ALN reform should consider the implications for children from 0-2 in particular, who are likely to be supported primarily by colleagues in health rather than the local authority. The early years are crucial in a child's development and it is imperative that children of this age with ALN have access to an IDP. This must include recognition of the role of play in learning. There is no reference in the Code of Practice to structures used within the 4 year positively evaluated WG funded Early Support programme which offered improved coordination and multi-agency support for disabled children under the age of 5 and their families. TSANA is concerned that learning from the programme is being lost.
14. **Post Compulsory Education.** As the SEN/ALN framework is extended to the 16-25 age group there are wide-ranging implications for the delivery of support to young people with ALN in FEIs and specialist placements. The new arrangements must be clear about funding devolved to local authorities for specialist placements and funding for delivering the framework in FEIs. Further information is needed regarding expectations on FEIs for planning the young person's transition following their time at the FEI. TSANA is disappointed that the IDP will be limited to further education settings. We are concerned that young people with ALN wishing to pursue alternative

learning paths, such as those undertaking apprenticeships, will not be afforded the same support as their peers in further education.

15. **Transition to Adulthood.** The draft Bill and Code of Practice gives little information about this and makes no reference to the Welsh Government funded Transition Key Worker programme which ran from 2008 – 2013 or to the convergence funded Regional SEN Transition to Employment Initiative Real Opportunities Programme which ran from 2011 to 2014. Both programmes were positively evaluated and TSANA is concerned that learning from the programmes is being lost.
16. **The duty to favour the education of children at mainstream maintained schools.** It is concerning that the Code of Practice mentions that the child with ALN must be educated in a mainstream school except “where such mainstream education would be incompatible with the provision of efficient education for other children”. This makes no reference to the fact that the child with ALN themselves may require provision in a specialist placement because their needs are not being met in a mainstream school or indeed to the views, wishes and feelings of the child or young person.
17. **Additional Learning Needs Coordinators (ALNCo).** We agree that an ALNCo should be appropriately qualified and experienced; form part of the senior leadership team; and have sufficient time and resource to undertake their responsibilities effectively, including time away from teaching. However TSANA feels that the workload, expectations, roles and responsibilities of the ALNCo are onerous and wonder whether an ALNCo, especially in a small rural primary school, would be able to fulfil this role. We therefore suggest that an ALNCo could possibly cover a number of schools within a region.
18. **The Individual Development Plan.** As no template is being proposed for the IDP, each setting will potentially develop their own. This will result in extra work for professionals and make the IDP less portable across settings. Additionally if each IDP is different, agencies who support children and young people to achieve their rights, will find it difficult to check whether the IDP contains all the required information. TSANA is also concerned about the action plan aspect of the IDP and recommend that ongoing support needs are separated out from short term and specific learning objectives. If these are not separated, key ongoing support could be missed out of the statutory plan when reviewed. Another concern is that although health bodies will be required to deliver any Additional Learning Provision it has agreed to secure, health could potentially negate any involvement by not agreeing to any provision.

Appendix 1

Task & Finish Group on Additional Learning Needs Reform: TSANA final report

This paper has been prepared by the Third Sector Additional Needs Alliance (TSANA) following its participation in the Task & Finish Group on Additional Learning Needs Reform with Welsh Government officials, as established by the Minister for Education and Skills on 3 December 2014.

Recommendations for the Additional Learning Needs Bill and Code of Practice

1. **A wide ranging definition of learning that spans the 0-25 age range** should be adopted that recognises a child or young person's social and emotional development, the role of play in learning and the importance of learning skills for life, in addition to more formal curriculum-based learning.
2. **A Human Rights based approach should be evident in ALN provisions and processes.** In order for the promotion of an individual's potential, hopes and aspirations the child or young person must be the clear and unequivocal focus of ALN development and delivery.
3. **There should be a presumption of support need in order to promote a Human Rights based approach** to ensure children and young people do not have to be seen to be failing before accessing an IDP. Children and young people with certain specific disabilities should always be entitled to an IDP.
4. **Additional Learning Provision should encompass the multi-agency support children and young people may require to access learning,** including supporting their communication, physical, sensory and environmental needs.
5. **The full ALN framework must be Person Centred and involve children, young people and families** in all decisions that affect them, including the use of Person Centred Planning in the co-production of the IDP.
6. **The ALN framework should ensure consistent access to Welsh language specialist assessments and services** through encouraging regional commissioning and provision.
7. **The IDP should be a uniform statutory template that clearly details agreed ALP** to aid consistent presentation of information, improve clarity of entitlement for children, young people and their families, portability and the dispute and appeals process. Recommendations about format can be found in Appendix 2.

8. **Training on PCP and specific disabilities** should be delivered to all staff involved in the IDP.
9. **There must be clarity with regards to the local authority's duties to meet the ALN of children in the early years**, specifically in relation to delegated functions to other agencies, including health, in the 0-2 age range and in non-maintained settings.
10. **There must be clarity for local authorities and Further Education Institutions with regards the duties to develop IDPs** and meet the needs of all learners 16-25, including extending entitlement to IDPs for those who pursue learning through apprenticeships.
11. **There must be clarity for all agencies about the support needed at key transition points** by children and young people.
12. **ALNCOs and their equivalents in all settings should be adequately resourced, have appropriate qualifications, training and expertise and should be allocated specific time** to fulfil their ALN duties.
13. **Disability-specific provision pathways should be developed** that support professionals to ensure the involvement of the right agencies at the right time.
14. **Guidance should be provided to local authorities on maintaining central provision of support for low-incidence conditions**, such as sensory loss. This should include guidance on delegation of budgets to schools and the promotion of greater regional working for very low incidence conditions.
15. **The assigning of a support co-ordinator** should be a standard offer from local authorities to all children, young people and families to act as a single point of contact in developing, co-ordinating and driving forward the IDP.
16. **Specialist independent advice and support should be available to both young people and families as an integral aspect of local authority Dispute Resolution Services.**
17. **The Dispute Resolution Service should be accessible concurrently with appeals to Tribunal and streamlined with Putting Things Right.**
18. **The remit of Education Tribunal Wales should be extended, including having powers to sanction, and should be renamed** to better reflect this remit and the age range of those who will receive an IDP.
19. **Estyn should have a role in monitoring** ALN provision, assessment, support systems, complaints and disputes, including within their inspection framework of pupil well-being.

20. **TSANA should act as an advisory group to the Children, Young People and Education Committee** in order to provide support and advice as the Bill progresses through the Committee stage.

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Background to the Task and Finish Group on Additional Learning Needs Reform

Purpose

The purpose of the Task and Finish Group was to bring together TSANA representatives with Welsh Government officials to act as a critical friend by providing ideas, proposals and suggestions to support the development of the proposed Bill on Additional Learning Needs and, in particular, the accompanying draft Code of Practice on ALN.

Full membership of TSANA can be found in Appendix 1.

Structure

Six meetings were held between January and June 2015, each with a particular area of focus:

1. Involving children, young people and families in developing the ALN Bill and Code of Practice
2. Principles
3. Roles and responsibilities
4. Individual Development Plans and the planning process
5. Advice, disagreement resolution and Tribunal appeals
6. Key recommendations

Welsh Government officials shared a briefing paper ahead of each meeting. TSANA prepared a detailed paper responding to this brief, which was discussed at the meeting.

Established and agreed in the early meetings was the need to ensure a proper consideration of Human Rights and due regard to the UNCRC and UNCRDP throughout and that this should be appropriately reflected in the draft Codes of Practice.

All TSANA papers and Minutes from meetings are available in the public domain and can be obtained on request.

Key areas of discussion and concern

1. Early years

The new ALN framework must recognise that learning begins from birth and that ALN reform should consider the implications for children from 0-2 in particular, who are likely to be supported primarily by colleagues in health rather than the local authority.

The early years are crucial in a child's development and it is imperative that children with additional learning needs have access to an IDP. TSANA therefore recommends that an IDP referral is made following identification of ALN to ensure appropriate support is in place at the earliest opportunity; waiting for an assessment should not be a barrier to a setting providing suitable provision.

Families must have clarity regarding the agencies responsible and involved in ensuring that young children with additional needs receive support in pre-school settings; families need to know who is responsible for the funding if required; and who is responsible for initiating an IDP, for example, a Health Visitor.

The Bill must clarify the IDP process in the early years (outside the school setting), including proposals for cooperation between agencies in identifying ALN and delivering ALP, the ultimate responsibility of the local authority to meet the needs of all children with ALN and the role of maintained and non-maintained nurseries.

2. Post-compulsory education

As the SEN/ALN framework is extended to the 16-25 age group, there are wide-ranging implications for the delivery of support to young people with ALN in FEIs and specialist placements. The new arrangements must be clear about funding devolved to local authorities for specialist placements and funding for delivering the framework in FEIs.

Clarity is needed with regards identifying who is responsible for IDPs in FEIs. Further information is needed regarding expectations on FEIs for planning the young person's transition following their time at the FEI.

TSANA is disappointed that the IDP will be limited to further education settings. We are concerned that young people with ALN wishing to pursue alternative learning paths, such as those undertaking apprenticeships, will not be afforded the same support as their peers in further education.

3. The IDP

The Bill must clarify entitlement to the IDP to ensure that: learners should not have to "fail" before accessing an IDP; some children and young people with specific disabilities (e.g. sensory loss) will always need an IDP; families or the professionals working with children and young people must be able to request an assessment for an IDP; those with a temporary disability likely to impact on their learning experience over a sustained period should be entitled to an IDP.

TSANA feels strongly that the IDP must not represent a step backwards in entitlements and clarity in comparison with the current SEN framework, especially for those children and young people who currently have Statements of SEN. We therefore welcome that the IDP will be a statutory document.

There must be a uniform statutory template to aid consistent presentation of information, portability and the dispute and appeals process.

We strongly recommend further amendments to the current draft layout of an IDP, in line with recommendations made in Task and Finish Group paper 4 (please see Appendix 2). The IDP must record the agreed ALP a child or young person is entitled to. Whilst there is merit in recording the agreed actions each professional will take, as proposed in the draft IDP, this does not guarantee access to services or ALP in the same way as does the current Statement document.

4. Coordination and planning

Disability-specific provision pathways would support colleagues to ensure that the appropriate professionals are consulted in the assessment process. They would also help determine when IDP development should be delegated to a school or college and

would support education institutions in identifying the relevant agencies that should be involved in developing the IDP and delivering its content. TSANA has specific concerns around low incidence needs, such as Multi-Sensory Impairment, Visual impairment, Hearing impairment, Specific Language impairment, and believes there is a strong case for disability specific provision pathways in these cases.

A support co-ordinator should be assigned to children, young people and families to act as a single point of contact in developing and co-ordinating the IDP, This will ensure that children, young people and families have access to information and are appropriately involved in the process. The impact of this support has been demonstrated in the Welsh Government funded pilot projects on transitions for young people 14-25¹ and the Welsh Government funded Early Support programme.²

Key staff involved in the IDP process and supporting systems should have training in PCP and how it relates to the IDP process, as well as training and awareness of specific disabilities.

ALNCOs should have appropriate qualifications, training and expertise. ALNCOs must also be allocated specific non-contact time to fulfil their ALN duties. The ALNCO role will likewise need to be funded appropriately. There is need for specific funding to be allocated for the provision of ALNCO, and greater clarity about the hosting agency for ALNCOs, in the early years. Likewise clarity is needed for the development of the ALNCO in further education settings.

5. Specialist placements

Children and young people with additional learning needs must be supported to access and participate in the educational provision that best meets their needs, whether this is in mainstream or special education provision.

A learner's needs must be established following an assessment by a suitably qualified person. This assessment will determine whether the learner's needs can be appropriately met by participating in mainstream education and through accessing the national curriculum. Consideration should be given to the learner's wider development, including access to appropriate peer groups and specialist curriculums. For those learners for whom assessment has deemed mainstream education and participating in the national curriculum as appropriate, the feasibility of their full participation will be dependent on: having trained staff, including mainstream teachers, specialist advisory teachers holding the mandatory qualification for sensory impairment, and learning support staff; as well as the provision of communication aids and accessible educational materials.

¹ Holtom, Duncan and Sarah Lloyd-Jones, 'The costs and benefits of transition key working: an analysis of five pilot projects', Welsh Government Social Research, 2012.

² <http://www.earlysupportwales.org.uk/> accessed 16.06.15

Children and young people whose needs can best be met in a special school or an Independent Specialist Colleges should be supported to access out of county and/or cross border placements. Local authorities must arrange the timely funding of placements to enable children, young people and their families to positively manage transition.

6. Low-incidence conditions

Support for low-incidence conditions, such as sensory impairments, should be maintained centrally by local authorities. More information and clearer guidelines are needed on the delegation of budgets by local authorities to nurseries and schools to ensure provision for low-incidence needs is protected. For very low incidence needs greater emphasis should be placed on regional working to make best use of expertise and to promote consistent access to specialist assessments and services across Wales.

7. Information, advice, assistance and dispute resolution

The availability of reliable and specialist information, advice and independent advocacy should be a feature of the whole ALN system, not only in relation to dispute resolution. Specialist advice must be independently provided by a body that is able to act entirely in the client's interests and is independently audited.³ Independent Family Supporters should be available to accompany the young person and/or the family on the whole of their journey and be seen by the family to be independent of any interested party.

We recommend that national guidelines are developed to ensure that Independent Advocacy Services, Family Partnership Services and Dispute Resolution Services are appropriately distinct, independent and of a consistent minimum standard and that there are guidelines for consistency in complaints mechanisms. As many children and young people will require input from health as part of their journey through the ALN system, clarity is needed with regards streamlining DRS with Putting Things Right.

To prevent mandatory dispute resolution being used as a delaying tactic, we recommend that the tribunal appeal process can be concurrent.

8. Tribunal

The tribunal must have power to affect change and TSANA recommends that it is given powers of sanction. These could be similar to those of the Welsh Language Commissioner.

The current proposed name, Education Tribunal Wales, does not feel appropriate in the 0-25 context, especially given the adoption of 'learning' elsewhere in this framework for this very reason. We therefore recommend that the tribunal be renamed to reflect the remit and the age range of those who will receive and IDP.

³ Recommendation accepted by the Welsh Government from 'Review of advice services in Wales', Independent Advice Providers Forum, 2013.

In addition to the areas identified by the Welsh Government as being within the jurisdiction of the ETW (background paper 5), the following areas should also be considered for jurisdiction:

- a. transport/accommodation needs associated with a placement
- b. failure to provide what has been outlined in a plan
- c. IDP objectives/outcomes
- d. The way in which an IDP assessment was conducted.
- e. Disability Discrimination claims 0-25

9. Monitoring and accountability

Estyn should have a role in monitoring the ALN framework. This could be as part of their inspection framework of pupil wellbeing.

The substance and quantity of disputes/appeals should be monitored, identifying any recurring issues within an area. Support systems such as the FPS and the DRS should be subject to quality assurance.

Local authorities, regional consortia and Welsh Government should have duties in relation to collating data and quality assurance of the new system.

Appendix 1: About TSANA

The Third Sector Additional Needs Alliance (TSANA) is a group of voluntary organisations which seek to protect and promote the rights of children with additional needs in Wales.

Members:

Action for Children

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Barnardo's Cymru

Contact a Family

Children in Wales

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Mencap Cymru

Mudiad Meithrin

National Autistic Society (NAS) Cymru

National Deaf Children's Society (NDCS) Cymru

RNIB Cymru

Sense Cymru

Shine Cymru

SNAP Cymru

The Down's Syndrome Association

Appendix 2: Recommendations on IDP format

Excerpt from TSANA's paper for Task & Finish Group meeting 4

5. The IDP

5.1. TSANA believes it is essential that the IDP is regarded as statutory and that the plan clearly identifies the provision the child/young person is entitled to. The child's support needs must be clearly identified to ensure the IDP has integrity as a legal document. In order to achieve this clarity, we recommend that there is a common statutory layout for the plan.

5.2. TSANA also considers that clear guidance on drafting an IDP is essential as this should help to provide a more consistent standard throughout the country.

5.3. **One Page Profile:** TSANA welcomes the concept of the One Page Profile as one of many aspects of a person-centred approach to IDPs. Given the fluid and flexible nature of the One Page Profile, we strongly urge that families and children/young people are provided with guidance and support to understand what type of information may be included within this section. In previous conversations with the Welsh Government, TSANA understood that this role would be fulfilled by a support co-ordinator. TSANA would welcome more information as to whether or not this role is still part of the proposals.

5.4. Given the nature of the One Page Profile, it is important that this information is reviewed and content updated appropriately. Children/young people and their families should be supported to update the profile accordingly and as frequently as required.

5.5. **Record of discussions at the meeting:** TSANA notes that early proposals called for families and relevant professionals to have the opportunity to view each others' comments/assessments in advance of the meeting. We recommend that this would help all parties to plan constructively for the meeting.

5.6. **Priorities and Intended Outcomes:** TSANA agrees that outcomes listed should be SMART (specific, measureable, achievable, realistic and time-bound). We believe that guidance is required to help provide consistency in setting SMART outcomes. These outcomes should be informed by the views of the family and child/young person and the professionals working with them, as well as by assessments.

5.7. The IDP should also include clear information on how the outcomes will be measured. TSANA considers that subsequent measurements against listed outcomes must be shared with families and the child/young person and should form addenda to the IDP.

5.8. **Action Plan:** TSANA agrees it is important to have an action plan in order to meet intended outcomes, and that it should be clear who has responsibility for these actions.

5.9. However, we are concerned about placing short-term actions in the same section as details of specialist provision. TSANA strongly recommends that distinct sections are included for actions and support/provision. Whilst these sections may help to inform each other, they represent different types of information. Keeping this information distinct will ensure that details of specialist support are clearly identified and transparent.

5.10. This would also safeguard against details of ongoing specialist provision being “lost” as shorter term actions are reviewed. Indeed, some learners with ALN will require ongoing support throughout the entirety of their educational career, for example communication support or specific teaching strategies. Of course, the nature and effectiveness of such ongoing support must be regularly reviewed (i.e. a BSL user may initially require a communication support worker and later a BSL interpreter); but changes to ongoing support resulting from such reviews are likely to be less frequent than changes to short term actions and, as such, could become “lost” if these two sections are combined.

5.11. TSANA recommends that a clear and distinct section is added for summarising specialist provision/support. Such a section must include headings/subheadings on each of the following:

Support:

- Type of support (e.g. Speech and Language Therapist, support and training for school staff)
- Provider and level of support (e.g. Communication Support Worker qualified to minimum of BSL level 3)
- Frequency of support (i.e. daily, weekly, termly)
- Hours/length of sessions (i.e. two hours)
- Which agency is responsible for providing/funding the support

Equipment:

- Any specialist equipment that is required.
- Relevant maintenance details (i.e. ensuring that class teachers are aware of how to change a battery in a radio aid).
- Which agency is responsible for providing/funding, repairing, insuring the equipment.

Adaptations:

- Space to clearly record any other key information around ongoing specialist needs. For example, seating arrangements, adapting font size on learning resources, creating good acoustics for teaching environments.

5.12. TSANA also questions whether the action plan is the appropriate place within the IDP to name a school or placement. Again, for clarity it would be preferable to have a discrete section where a child's named placement can be outlined. There should also be clear sections to outline transport and boarding arrangements, should this be applicable.

5.13. **Timeline:** TSANA welcomes the idea of including a section to record dates of IDP meetings and other dates relevant to the child's ALN. We agree that other relevant information could be entered with the agreement of the young person or their parents.

5.14. **Other sections:** In addition to the above sections which are outlined within the Welsh Government background paper, TSANA also considers that the following sections are essential within the IDP:

- a) Description of needs – it is important that clear and succinct information is available on a child's needs. For example, a child's level of deafness and whether they are a hearing aid/cochlear implant user.
- b) Child/family's first language and additional languages
- c) Child/ young person's date of birth
- d) The name of person with parental responsibility for the child; their relationship to the child; and their contact details
- e) Any key information about the child/young person's communication needs
- f) Any key information about the parents/carers' communication needs. It is important that correspondence/meetings with parents/carers meet any access requirements.
- g) Any key information about access needs and adaptations (i.e. seating arrangements). As outlined above, this could be covered as a subheading within a section on ongoing specialist provision.
- h) The names and contact details of professionals and family involved in the plan
- i) The date that the plan was written and the date of the annual review
- j) Include both long-term and short-term actions/objectives within the IDP.
- k) A section on Transitions /Transition Planning. Throughout their education, a child will experience numerous transitions; for example moving to a new class, moving from primary to secondary school, moving on to further education. TSANA believes that the inclusion of a distinct section on transitions within the IDP will help to prompt and facilitate important discussions around how such transitions will be appropriately managed.
- l) As outlined within the "Impact monitoring" section of this paper, TSANA feels it is important to include details of a child's attainment levels; assessments of how actions from the previous IDP were met; and details of any other assessments which have helped to inform the decision around a child/young person's provision. Such information is vital for determining whether inputs have been successful, but is also important for transparency and open communication with families.