

Draft Additional Learning Needs and Education Tribunal (Wales) Bill

Consultation response form

Your name: Debbie Thomas

Organisation (if applicable): **National Deaf Children's Society (NDCS) Cymru.**

NDCS is the national charity dedicated to creating a world without barriers for deaf children and young people.

We support and represent the interests of deaf children and young people from birth through to independence.

Please note: This submission is supported by Action on Hearing Loss Cymru, BDA, Deaf Access Cymru, Wales Council for Deaf People, North Wales Deaf Association and Hearing Link.

Please also note that over 80 NDCS Cymru and Sense Cymru members took part in an e-action, calling on the Welsh Government to improve the draft Bill and Code to better protect learners with a sensory impairment.

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Responses should be returned by **18 December 2015** to:

Additional Learning Needs Reform Branch
Support for Learners Division
Department for Education and Skills
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: SENReforms@wales.gsi.gov.uk

Category of respondent	Schools	<input type="checkbox"/>
	Special schools	<input type="checkbox"/>
	Special Educational Needs Co-ordinators	<input type="checkbox"/>
	Further education sector	<input type="checkbox"/>
	Preschool organisations	<input type="checkbox"/>
	Education professionals	<input type="checkbox"/>
	Teaching Unions	<input type="checkbox"/>
	Local government	<input type="checkbox"/>
	Work Based Learning organisations	<input type="checkbox"/>
	Local Health Boards	<input type="checkbox"/>
	Health professionals	<input type="checkbox"/>
	Other public sector organisations	<input type="checkbox"/>
	Third sector organisations	<input checked="" type="checkbox"/>
	Individuals	<input type="checkbox"/>
Other	<input type="checkbox"/>	

Consultation questions

These questions should be read in conjunction with the draft Bill, draft Explanatory Notes and the draft Explanatory Memorandum.

Question 1 – The introduction of the term ALN and a 0–25 age range

Do you agree that the definitions of ALN and ALP set out in the draft Bill appropriately reflect our intended focus on educational needs and do you agree that the draft Bill would deal properly with the age range it sets out to capture?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

NDCS Cymru is broadly satisfied with the proposed definitions of ALN and ALP, but wishes to raise the following points:

- NDCS Cymru has concerns regarding how schools will interpret the definitions provided. The Bill passes great responsibility over to schools to determine who meets the definition and is, therefore, eligible for an IDP. We are worried that schools will not appreciate that deaf children and young people will always meet the terms of this definition. Indeed, there is a general misconception that assistive listening devices like hearing aids, cochlear

implants and radio aids restore typical hearing levels. Often frontline education staff are not aware that these pupils cannot hear to the same level as others and do not understand the impact that this hearing loss can have on their learning. If the next iteration of the Bill continues to place schools and FEIs as the primary decision-makers for IDP eligibility, it will be imperative that statutory guidance is provided to assist appropriate identification of ALN. As identified within the current definition of SEN in the Education Act 1996, a disability can lead to special requirements in order to ensure that a child can access education. Those with a sensory impairment will consequently have specific requirements in order to access learning and should, therefore, automatically receive an IDP. This would reflect the Welsh Government's current position that all those with any permanent level of hearing loss should be on at least School Action.¹

- We would urge that the definition refers to “learning” as opposed to education. We feel that this term would be more reflective of the fact that learning in environments outside of school, particularly the home setting for 0-5 year olds, is an important aspect of their development. It also better encompasses the learning support which may be required from departments other than traditional “education departments” eg equipment/aids.
- We would welcome some acknowledgement within the Code or accompanying guidance that those with a temporary disability would be covered by the definition of ALN. For example, children suffering from glue ear for a prolonged period can experience deafness over many years, which can impact greatly on their learning experience.
- It is important that (as identified in the definition) those who have “greater difficulty in learning than the majority of children” are included in the definition. However, it is imperative that this is not interpreted as a child having to demonstrate this difficulty, or “fail” before an intervention can take place. Whilst failing is obviously to be considered an important trigger point for an IDP, it must not be considered an essential factor for IDP eligibility. The definition, or accompanying guidance must prompt authorities to initiate an IDP at the earliest opportunity: this should, wherever possible, be before a child reaches a point when s/he is falling behind the attainment of her/his peers. It will also be important to acknowledge that a disabled child may be achieving on a par with peers, but still not actually reaching his/her full potential because access requirements have not been met.

NDCS Cymru welcomes the intention for the new IDP system to cover the 0-25 age range, but strongly disagrees that the draft Bill appropriately encapsulates the full age range. In particular, we would highlight the following points:

- We are disappointed and frustrated that the Bill, for the 16-25 age range, is limited to those studying in further education as it will be equally important for those moving onto apprenticeships and higher education to have their support needs met. In this regard, it is particularly disappointing that apprentices within this age range in Wales will not enjoy parity with those in England, who will be entitled to an EHCP. Furthermore, it is worth noting that the recent proposals on Disabled Students' Allowance would place more responsibility

¹ Ministerial letter to Directors of Education, December 2009

on universities to provide support for disabled students, further compounding the need for IDPs to continue into the higher education sector. NDCS Cymru ran consultation sessions with deaf young people on key aspects of the reforms where some expressed concern about not having an IDP going into university. One young person, who will soon be applying for university, said: “I would be worried because they wouldn’t know what support I would need.”

- NDCS Cymru believes it is essential that the new system works effectively for the early years as these years are vital in laying the foundations for a child’s educational development. However, neither the Bill nor the accompanying draft Code of Practice provides sufficient detail to ensure that the system will work within the early years context. More detail is urgently needed on how the co-ordination of an IDP will operate within the early years context. It is also worth noting that while it is to be welcomed that parents of all pre-school children will have a right to request an IDP of a local authority, realistically, many parents will not know about this right. It is important that professionals who come into contact with parents in the early years have knowledge of the system and a duty to refer on. This would include health visitors, nursery workers, audiologists, and staff working for programmes such as the Newborn Hearing Screening Programme.
- Similarly, there is a lack of clarity on how the system will operate within the post-16 context. Key points, including the following need to be addressed:
 - More detailed guidance and information is required to ensure that FEIs have the appropriate systems and structures in place to co-ordinate and maintain IDPs.
 - NDCS Cymru appreciates that the Code of Practice is still in draft stages, but wishes to emphasise that much more detail will be needed in the final draft regarding transition to further education. In addition, we are concerned that references to transition planning in the current draft Code often include “should” statements, as opposed to “must”. Historically, the transition from school to FE has proved difficult for many learners with ALN, so it is important that the new Code of Practice provides a clear directive. For example, paragraph 164 states that applicants and enrolled learners “should” be given the opportunity to declare whether they have ALN and that following such a declaration, the FEI “should” discuss with the learner how they will provide support. If the system is to operate effectively, it is imperative that these actions are mandatory for all FEIs.
 - In the interests of seamless transition, NDCS Cymru recommends that FEIs be required to continue IDPs for learners leaving school unless/until an assessment determines that the learner no longer has ALN.
 - Transition planning must be an integral part of the IDP process. It is, therefore, frustrating and disappointing that transition planning is not listed within Chapter 10 of the draft Code of Practice, which identifies the mandatory content for IDPs.
 - At present the draft Bill and Code do not address the needs of young people who may decide to attend FE after taking a break in their education. Systems and structures must be in place to ensure that these young people can easily access an IDP in a timely fashion. These individuals must also be made aware of their ability to approach their local authority about the possibility of gaining a placement at a specialist college.
 - NDCS Cymru has previously highlighted concerns that the new funding mechanisms for FE offer a great incentive for local authorities to give bias towards mainstream FE placements and similarly, and vice versa, for FEIs.

NDCS Cymru requires guidance to safeguard against learners becoming caught up in lengthy disputes between FEIs and local authorities.

- NDCS Cymru has previously raised concerns about funding for specialist FEI placements being passed to local authorities as part of the Revenue Support Grant. It will be important to ensure that this funding is not subsumed and that local authorities are meeting their responsibilities in this regard.
- NDCS Cymru would also welcome further information regarding the determination of funding to FEIs for supporting ALN in mainstream placements.

- NDCS Cymru demands further guidance on transition more generally. The present arrangements for children and young people at other transition stages, such as starting primary or secondary school,
- could be much improved. These transition stages can be challenging for any young person, but particularly so for those who require additional support.
- NDCS Cymru acknowledges that the published Draft Code of Practice will be further developed, but we are concerned that the current draft is very focused on schools. It neither adopts a language that is applicable to the 0-25 context nor does it sufficiently outline the process outside of the school context. In particular, outside of the school context it is unclear who will be responsible for co-ordinating an IDP. In order to secure accountability, it is imperative that families have a clear point of contact. NDCS Cymru believes that the local authority should have a duty to appoint a key co-ordinator.

Question 2 – A unified planning process with increased participation by children and young people

Do you agree that the draft Bill would create a robust legal framework for the preparation, maintenance and review of Individual Development Plans (IDPs)?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Disagree. NDCS Cymru welcomes aspects of the proposed reforms. However, NDCS Cymru strongly disagrees that in its current format the draft Bill facilitates a robust legal framework for the preparation, maintenance and review of IDPs. In order to achieve this, NDCS Cymru considers that further work is required in the following areas:

Timeframes

In order to provide a robust legal framework for the new system, it is imperative that firm and fair timeframes are provided. The current Code of Practice fails to provide timeframes for many key aspects of the process. For example, paragraph 170 states that the school must notify the child and the parent of its decision on whether a child has ALN “as soon as possible”, but it is important to determine a timeframe for this. There are also various other key timeframes missing from the current draft version of the Code of Practice. NDCS Cymru would wish to work with the Welsh Government to further develop clear timeframes for the IDP process.

Assessment process

It is clear that the quality of an assessment will have an impact on the quality of subsequent plans and, ultimately, outcomes. NDCS Cymru is, therefore, concerned that schools/colleges will be the primary gatekeepers for determining whether a learner requires an IDP. Many frontline staff will not have the training or knowledge to determine when a young person may have needs that require local authority or specialist input. This is particularly the case for low incidence needs, such as deafness, which are often misunderstood. Indeed, there is a common misconception that listening aids like hearing aids and cochlear implants restore typical hearing level. In fact, these devices are assistive aids which provide improved access to sound, but do not eliminate a hearing loss and, as such, these pupils will require further support in accessing learning. If staff do not have an understanding of the need to include specialists in an assessment, the plan will fail the learner at the first hurdle. Therefore, NDCS Cymru recommends that certain low incidence disabilities, such as deafness, should be clearly identified as needing to be passed to local authorities.

This concern is further exacerbated by the lack of detail in the draft Code of Practice about the content of an assessment and the lack of reference to the inclusion of specialist professionals and educational psychologists. We recommend that the final version of the Code of Practice places greater emphasis on the need for rigorous assessment and also appropriately references the role of educational psychologists and specialist professionals. In particular, we would strongly urge that the Code of Practice clearly references the need for Teachers of the Deaf to be involved in assessments of hearing impaired learners. Indeed, paragraph 9.49 of the English Code of practice states: “If the child or young person is either vision or hearing impaired, or both, the educational advice and information **must** be given after consultation with a person who is qualified to teach pupils or students with these impairments.”

NDCS Cymru recommends that the Welsh Government develops provision pathways for specific needs, including deafness, to help those co-ordinating IDPs to identify the professionals that may be required. The attached NatSIP (National Sensory Impairment Partnership) document Better Assessments, Better Plans, Better Outcomes (accessed at http://www.ndcs.org.uk/professional_support/news/better_plans.html) highlights the professionals and assessments that should be considered for deaf learners and could be utilised in such a pathway.

NDCS Cymru is concerned that for learners at school or college, the process is overly reliant on the ALNCo role, which can lead to the quality of IDPs being dependent on one individual. It is difficult to see how ALNCoS will have appropriate training to cover the range of disabilities and needs that they will encounter during their careers. Ensuring that ALNCoS have adequate time to fulfil the role of co-

ordinating IDPs could also be problematic. Furthermore, it is not clear who will be responsible for driving forward the process outside of the school/college context. NDCS Cymru recommends that the local authority has the responsibility for naming a key co-ordinator in these cases, so that it is clear to families and professionals who they need to contact.

NDCS Cymru considers that the duty placed on health bodies in the draft Bill is weak and could be detrimental to the inclusion of health provision in IDPs. NDCS Cymru is concerned that health bodies could be reluctant to include any provision within the IDP in order to evade legal duties.

The IDP Document

NDCS Cymru is highly concerned by the proposal not to issue a standard template for the IDP. We believe that the Welsh Government must provide a national template in order to secure a consistent, transparent and portable IDP. A template would also help to uphold the legal integrity of the document. In addition to this response, NDCS Cymru has attached a recently published report by NatSIP (National Sensory Impairment Partnership) which analyses the use of English EHC plans. The report reveals that, even with a model in which local authorities are required to include statutory headings, many key aspects of the plans are often missed out (page 7). It also concludes that “very few plans used clearly marked sub sections making it difficult to find the required information” (page 9). The report indicates that of the 40 EHC plans analysed, not one consistently met the five requirements of “SMART” (specific, measurable, achievable, relevant, time bound) outcomes. Furthermore, it was recognised that “many plans described provision in woolly terms such as ‘would benefit from...’, ‘have access to...’ (page 15), reducing the legal accountability of the plans. This, again, leads NDCS Cymru to the conclusion that a national template IDP is needed to secure a robust system, which takes heed of the pitfalls of the English EHC Plans.

NDCS Cymru is an active member of TSANA (Third Sector Additional Needs Alliance), which has identified a number of key points to be included in the content of an IDP. These can be viewed in the attached paper which was submitted to the Welsh Government as part of a Task and Finish Group advising on the reforms. Although some of the points identified have now been taken on board in the descriptions provided in the Code of Practice, some key content points remain unaddressed eg: the inclusion of transport and accommodation requirements should be a mandatory part of the IDP. A clear section on planning for transition points is also missing. In addition, NDCS Cymru believes it is important for the IDP to include a section on parental views as the NatSIP review of EHCPs in England revealed that parental aspirations were most helpful to the assessment process when divided into short, medium and long term.

It appears that IDPs will be permitted to identify an *intention* to explore provision further if it cannot be agreed at the meeting, i.e. “ALNCo to seek advice from speech and language therapy.” Although working in this way does enable a certain degree of flexibility and ensures that IDPs will not be inappropriately delayed by one aspect of provision, it is concerning that such descriptions would ultimately leave learners without legal entitlements to provision included in this way. It is imperative that further direction and timeframes are provided to ensure that working in this way is not to the detriment of the learner and his/her right to access appropriate ALP.

NDCS Cymru seeks clarification on the process should a FEI refuse support to a learner. Will local authorities only be allocated funding to support FE learners in

maintained school-based sixth forms or for placements at specialist colleges? Or will local authorities also be allocated funding to assist with specialist cases in mainstream FE?

Should a learner be turned down by a FEI, it will be vital that they have support in finding an alternative placement or in finding a temporary placement whilst an appeal is pending. We also seek clarification on the situation should a local authority decline a request to place a learner at a specialist college and a FEI similarly decline a placement for the learner, as it is not within the power of the local authority to order a FEI to enrol a learner. It is imperative that in such a situation, the learner is not left in limbo, or that time delays are avoided in accessing further education for reasons beyond the learner's control.

NDCS Cymru recommends that the process requires assessment information to be with families prior to the IDP meeting, allowing time to consider and prevent them from feeling "railroaded" at the meeting. This suggestion was part of earlier proposals, but now appears to be missing.

Person Centred Planning

NDCS Cymru strongly welcomes the ethos of person centred planning, but is concerned that the draft Bill and Code at present do little to ensure that PCP practice will be of a meaningful and consistent standard across Wales. It is worth noting the points highlighted in the attached TSANA paper about meaningful PCP. Crucially, NDCS Cymru wishes to see a commitment to train key staff in PCP, and the development of minimum standards for involving children/young people in both the IDP process and the advocacy support available to them.

Review

NDCS Cymru agrees that as a minimum, IDPs should be reviewed every 12 Months, with the ability to request a review prior to the 12 months if it is deemed necessary. However, we are concerned that the current provisions placed in the Bill make it possible for local authorities, schools or FEIs to make alterations to/cease an IDP without meaningful consultation and engagement with the learner and family. We strongly urge that this is rectified.

Question 3 – High aspirations and improved outcomes

Do you agree that the draft Bill would help to ensure that the interests of children and young people with ALN would be protected and promoted?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Disagree. As outlined in response to question 2, NDCS Cymru considers that the

proposed reforms place too much emphasis on schools as the gatekeepers to support. This makes those with low incidence needs liable to slip through the net as ALNCoS may be unaware of the need to involve key specialist professionals in an IDP assessment or to pass the case onto the local authority. Consequently, the ability of deaf children and young people to receive specialist support could be severely compromised with detrimental effect on educational progress. We strongly recommend that the need to include Teachers of the Deaf in an assessment of a deaf child is clearly identified, as in the English EHCP system. We would also recommend the use of provision pathways which provide guidance on key professionals and assessments that may need to be considered.

NDCS Cymru is concerned that provision is made for young people over the age of 16 to refuse an IDP, but requires appropriate statutory guidance and legal exceptions to ensure that this clause is not abused. In particular, the Bill and Code should acknowledge that, in some cases, a young person will not have the mental capacity to make this decision. NDCS Cymru would recommend the Fraser and Gillick competencies as a guide in this regard. Furthermore, it is imperative that where a young person with the appropriate capacity takes the decision to refuse an IDP, all efforts are made to ensure that the young person fully understands the IDP process and the statutory protection that an IDP provides. NDCS Cymru would urge that the Code of Practice outlines systems and structures for ensuring that such appropriate and thorough consultation has taken place in these scenarios.

NDCS Cymru would also call for strengthened provision in the Code of Practice to ensure that children and young people are made aware of their rights to advocacy/complain/appeal at each stage of the IDP process.

Furthermore, it is important that deaf children and young people feel comfortable and confident in working with the person co-ordinating their IDP and facilitating their involvement. It will be important that these professionals have appropriate training in PCP. The attached TSANA paper, which was submitted as part of a task and finish group advising on the reforms, outlines a number of key points which we feel are essential if the new system is to be person-centred in a meaningful way. NDCS Cymru is concerned that many of these points are not reflected in the draft Bill and Code of Practice.

NDCS Cymru held two consultation sessions with deaf young people. At both sessions reservation was expressed about the ALNCo co-ordinating the IDP. When asked about the qualities an ALNCo should have, the young people identified points such as “helpful”, “friendly”, “respectful” and known to them. However, the most common theme was the importance of the ALNCo having good deaf awareness skills. The young people raised points such as “clear signing”, “good facial expression and BSL user”, “clear speaking” and “deaf aware”. Clearly, it is really important for deaf young people to feel comfortable that the person co-ordinating their IDP is able to communicate effectively with them. In light of the points that the young people raised, we would urge that the new system puts measures in place for young people to be able to seek an alternative co-ordinator if they so wish.

Question 4 – Increased collaboration

Do you agree that the draft Bill would provide the basis for an improvement in the way that agencies work together to deliver for children and young people with ALN?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Disagree. NDCS Cymru is disappointed that the draft Bill appears to fall short of the initial intention at the start of discussions on reform for a new multi-agency approach. In particular, NDCS Cymru would highlight the following points:

- The duty placed on health providers is very weak. Health bodies can evade any responsibility by refusing to commit to providing support in an IDP. NDCS Cymru wishes to clarify whether local authorities, schools and FEIs will have a duty to provide any support identified in the assessment process for which health bodies do not commit. We also seek clarification on any sanction there may be on health bodies which fail to offer/provide support identified within an IDP.
- In principle, NDCS Cymru welcomes the development of a Designated Clinical/Medical Officer to provide liaison between health boards and schools/colleges/local authorities. However, we believe that more clarity is needed to ensure that this role operates effectively. In particular, we wish to ensure that the role will not discourage or prevent specialist professionals from being involved in the assessment of a child/young person's needs.
- Paragraph 132 of the draft Code of Practice states that "where a health body, in the course of exercising its functions in relation to a child who is under compulsory school age, and for whom a local authority in Wales is responsible, forms the opinion that the child has (or probably has) ALN, the health body may bring the matter to the attention of the appropriate local authority." The Code goes on to state that this should only happen where it is in the "best interests of the child". NDCS Cymru fails to see how this could ever be other than in the best interests of the child. We also question why this duty is only applicable to those "under compulsory school age", when the IDP will have a larger remit than this. Furthermore, we consider that the word "may" weakens this responsibility to refer considerably.

The duty placed on health bodies in England is much stronger. Clause 23 of the Children and Families Act states that where the NHS forms the opinion that a child has (or probably has) special educational needs or a disability, they must inform the child's parent and give them the opportunity to discuss the matter with them. They "**must** then bring their opinion to the attention of the appropriate local authority in England." This clause also places a duty on health bodies to signpost onto any relevant voluntary organisation to provide advice or assistance.

- NDCS Cymru considers that other public bodies, in addition to health bodies, should also have a duty to refer cases in this way. For example, paragraph 138 of the Code of Practice highlights that many children under compulsory

school age attend non-maintained settings and that parents of these children can contact the local authority to determine if their child has ALN. We suggest that professionals at non-maintained settings be enabled to make referrals similarly.

- NDCS Cymru is disappointed that there is no reference to health visitors and the role that, as the primary professional contact for many young families, they can play in early identification of children with ALN.
- There is a lack of reference to social care within the reforms. It is worth noting that the EHCP system in England, which does have a specific social care remit, appears to be failing to achieve this in practice (see attached NatSIP review of EHCPs). In light of this, it is difficult to see how the proposed system for Wales, which places less emphasis on collaboration with social care, will deliver on this front.
- More detailed guidance is required for meaningful and consistent collaboration between schools and FEIs, as well as between FEIs and HEIs.
- Provisions are made for multiple plans and assessments to take place at the same time. NDCS Cymru appreciates that this proposal has benefits in terms of sharing key information, the ease of processes for families and the time constraints of professionals. However, it is important that a decision to combine assessments in this way should not be made to the detriment of the young person's best interests. For example, it may not be appropriate to combine assessments if it could lead to a considerable time delay in the young person receiving support.

Question 5 – Avoiding disagreements, earlier disagreement resolution and clear and consistent rights of appeal

Do you agree that the draft Bill would provide an appropriate framework to support disagreement avoidance and resolution, and that the provisions relating to appeals are properly founded?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

NDCS Cymru is pleased that the right of appeal is available across the whole range

of complexity of needs and agrees that this is a positive step forward. However, we have a number of concerns which we wish the Welsh Government to address prior to the introduction of the reforms:

- Statutory guidance is needed to ensure advocacy and DRS services meet a minimum and consistent national standard. NDCS Cymru would welcome the opportunity to work with the Welsh Government in this regard.
- Firmer timeframes are required for core aspects of the IDP process in order to secure legal accountability.
- The Code of Practice needs to be strengthened to ensure that accessible advice on advocacy, complaints and appeals is given and understood by families at all key stages of the IDP process. This is also applicable to the Draft Bill, for example section 18 should require that in informing families of a decision not to reconsider an IDP, the notification must also include details of the right to appeal this decision.
- It is unclear how disputes around provision for which health is named within the IDP will be dealt. Will local authorities, as the ultimate responsible bodies, be accountable at tribunal for any provision in the plan? Or, as previously outlined in discussions with the Welsh Government, will families be expected to appeal through Putting Things Right? NDCS Cymru is dissatisfied with this suggestion, as it believes the appeals process should be clear and simple.
- While the Draft Bill does state that a governing body or local authority must inform a child and parent of an intention to cease to maintain a plan (section 20), it does not require representations from the family to be invited and considered. NDCS Cymru urges that this is rectified.
- NDCS Cymru agrees with the grounds of appeal to the Education Tribunal outlined in the draft Bill, but wishes to clarify the following points:
 - Could a decision on the transport/accommodation needs associated with a placement be added to the tribunal remit, or would this be covered under the right to appeal “the ALP in the IDP, or the fact that ALP is not in an IDP”?
 - Could the tribunal hear cases on failure to provide what has been outlined in a plan?
 - Could appeals on the objectives/outcomes outlined in a plan be added to the grounds of appeal?
 - Should the tribunal hear appeals on the way in which an IDP assessment was conducted (i.e. disagreement over whether appropriate professionals were involved in the assessment, whether the process was inclusive of the young person)?
 - It is unclear whether the Tribunal’s remit of disability discrimination in education will be extended to cover the post-16 age range.
 - It is not clear what action would be taken if a local authority or FEI fails to comply with a tribunal order.
 - The draft Bill highlights that local authorities or FEI governing bodies can be taken to tribunal, but does not highlight school governing bodies. Since school governing bodies are to be responsible for drafting and maintaining many IDPs, it will need to be clear to families that they still have a right of appeal to the local authority and the steps that they would need to take to lodge an appeal.

Views of deaf young people on advocacy services

NDCS Cymru recently undertook two consultation sessions with deaf children and young people to seek their views on key aspects of the proposals. Our session at the hearing impaired resource base at Queen Elizabeth High School in Carmarthen focused on advocacy services. Their feedback is outlined below:

How do you feel about being involved in the meeting?

Of the eight young people present, five said they felt happy about being involved in the IDP meeting, two said they were unsure and one said that the idea made them feel nervous. The young people expressed reservations about not being “stared” at, or feeling awkward working with people they didn’t know. Another young person expressed a worry that the professionals might say something negative about them. It was clear that the unique needs of each individual should be considered in order to ensure that the IDP meeting is effective and that they feel confident and happy to express their opinions.

My dream advocate...

When asked what qualities an advocate should have, the group made the following comments:

- My dream advocate is going to be nice, not interfering how I present my work, helpful, one of my best friend, young, know my needs and how to explain it in my view of understanding. *and I am asking for a familiar person I know.
- The things that would make me comfortable to ask help from the service are to ask other people such as the head of deaf, parent’s opinions and ideas.
- Good conversation
- Trust
- Young
- Good English
- To make you confident
- One to one
- Important help people
- High level for sign language
- Knows about deaf
- My dream advocate would be nice, kind, beautiful (she), friendly and personally close.
- The skills they should have should be brainy and skilful.
- Respect
- Important to be a nice person and friends
- To talk to someone you met it not good to meet someone you don’t know.
- Sign would help me boost my confidence
- It would be good to include someone close and friendly.
- We need help with English
- Deaf need sign
- I want to be involved
- Help plan

In reading through the young people’s comments, it is clear that it will be important for advocates to be trained in deaf awareness and to be able to access sign language interpretation. It will also be important for some young people to be able to

include a family member or someone they know well in meeting with an advocacy service. It is imperative that young people feel comfortable with their advocate so services should enable young people to change advocate if they so wish.

I would like to contact an advocacy by...

Many of the young people indicated that they would like to be able to contact an advocacy service by text or by email.

Others highlighted Facebook and other social media (snap chat) and also highlighted the need for an interpreter for those who use sign language.

Question 6 – Supporting documents

Please provide any feedback you think would be useful in relation to the supporting documents published alongside this consultation, i.e. draft Explanatory Memorandum (including the Regulatory Impact Assessment), all Impact Assessments and the draft ALN Code (which will be published in the autumn).

Draft Additional Learning Needs and Education Tribunal (Wales) Bill: Outline of plans for legislative changes to be implemented across Wales

NDCS Cymru would welcome much greater detail than is provided in this document. In particular:

- It is not clear how the introduction of IDPs across all settings is to be phased in over a two year period. If the implementation is to be phased across two years, will certain groups of learners be given priority in the early stages of the reforms?
- The nature of the training on statutory requirements and which professional groups will receive this training is unclear.
- Similarly, the nature of the ongoing programme of engagement and support is

unclear.

Impact Assessments

The Equality Impact Assessment states that the Bill will have a “positive” impact for those with hearing impairment (page 7). Whilst we agree that the statutory nature of the IDP will be positive, the reason provided for rating the impact in this way is not specific to the hearing impaired population and does not account for the issues that we have identified during the course of this response. In particular, our concern is that it will become increasingly difficult for deaf children and young people to access assessments by appropriate specialist professionals. Moreover, we are concerned that this document indicates that “not all children and young people with the impairments listed opposite [of which one is hearing impairment] would have ALN.” This is contrary to existing guidance from the Welsh Government issued in 2009 by Jane Hutt that all pupils with a permanent hearing loss of any level should be recorded as having special educational needs. In addition, this appears to be contrary to the definition provided in the draft Bill. NDCS Cymru considers that any level of hearing loss can have an impact on a child’s learning needs and that if appropriate adaptations and support are not provided, that the child’s learning will be hindered.

The Equality Impact Assessment highlights that the “Third Sector Additional Needs Alliance (TSANA) and the Welsh Government have formed a Task and Finish Group specifically to support the development of the ALN reforms. These meetings have been used to inform policy and provide further clarity and details on our proposals” (page 4). NDCS Cymru is an active member of TSANA and while we acknowledge that some aspects raised in the task and finish group have been addressed, there are many key and significant concerns that remain (see TSANA’s response to this consultation for further information.)

The Welsh Language Impact Assessment states that the draft Bill will “ensure the needs of learners with ALN, including those in Welsh medium education, are better planned for” (page 9). However, as identified in the Welsh Government’s recently published *Workforce Planning for Special Educational Needs (SEN) Specialist Services* September 2015, there are problems in recruiting Welsh medium specialist professionals and the proposals do little to improve this situation.

As identified throughout this response, NDCS Cymru is concerned that the draft Bill and Code in the current format, do not sufficiently outline meaningful support services to enable young people to participate in the IDP process; a clear or transparent system; increased multi-agency collaboration; an appropriately robust disagreement resolution system; nor clear rights of appeal. As such, we would disagree with conclusions drawn in the Children’s Rights Impact Assessment.

Draft Code of Practice

NDCS Cymru appreciates that the Code is to be considered an early draft and is pleased to be able to contribute to the Welsh Government’s group looking at the development of the Code through our involvement and membership of TSANA.

However, it should be noted that, in its current format, NDCS Cymru considers the draft Code to have major flaws and to be grossly inadequate as a legal and robust document to support a new system. We have already identified areas of weakness within the Code as part of our responses in questions 1 to 5 of this response. In addition, we would raise the following points:

- There is a lack of reference to educational psychologists and to the important role of specialist professionals (e.g. teachers of the deaf and speech and language therapists) throughout the document.
- The language throughout the Code is focused on the school context as opposed to the full 0-25 age range. For example, page 9 “meeting the needs of learners with ALN should be part of a whole school approach to school improvement”. It should also be part of a whole college approach.
- NDCS Cymru would welcome greater reference to the Equality Act in the Code, emphasising that where a child is disabled, all public bodies must make reasonable adjustment to prevent disadvantage.
- More information is required in the Code on the assessment process.
- Paragraphs 34-37. These paragraphs do not highlight the role of specialist teachers, such as teachers of the deaf in providing training and guidance.
- It is important that teachers of the deaf and MSI teachers are added to the list at paragraph 125.
- It would be beneficial if the general principles in the Code included the need to seek the best **outcomes** for the child/young person. Paragraph 1.1 of the England Code of Practice states: “The need to support the child or young person, and the child’s parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.”
- We note that the Code of Practice, like the current Code, is written for professionals. We would suggest that a further document for families and children and young people would be useful in encouraging empowerment.
- The Code would benefit from specific sections on Early Years and Post-16 to ensure that there is clarity on how the system would operate in these contexts.
- More detailed timeframes are required throughout the Code in order to maintain legal integrity and accountability within the system.
- Much more detail is required on key transition stages to ensure that there are specific duties on nurseries, schools, colleges and other relevant bodies.
- NDCS Cymru notes that Welsh Government policy is to favour mainstream education wherever possible. We appreciate that for many learners with additional learning needs, mainstream provision with relevant adaptations and

support is the most appropriate setting. However, it remains that some learners will require a specialist environment in order to reach full potential. Within the present system, local authorities can be reluctant to fund such placements. It is important that the new Code of Practice does not exacerbate this situation. NDCS Cymru considers that the Code should emphasise the importance of specialist placements for some learners.

- Paragraph 41 states that an ALNCo should be part of the senior leadership team. NDCS Cymru considers that this should be a “must.”
- Paragraph 45 outlines an extensive and perhaps unrealistic list of key responsibilities for ALNCoS. It will be important that ALNCoS are afforded appropriate dedicated time to fulfil their duties. It is also imperative that they receive training in person centred practice, the IDP process and specific disability awareness (including deaf awareness). NDCS Cymru would welcome the opportunity to discuss ALNCo training further with the Welsh Government.
- It is important throughout the Code of Practice that emphasis is placed on ensuring that all communication with learners and families is in line with the specific communication needs of each learner and family.
- Paragraph 78. In addition to being informed which staff member with whom to discuss any concerns, it is important that parents are informed of their rights in the IDP process. Parents should also have the ability to change this lead contact if they wish.
- It is imperative that families are proactively provided with appropriate information on the IDP process and of their rights at every key stage and in a format which meets their communication needs. NDCS Cymru would suggest that contact should be made with every family at the start of an IDP referral to offer advice and information.
- Paragraph 103 states that “if a person has a learning difficulty or disability which calls for ALP, the individual should be considered as having ALN.” This should be “must”.
- NDCS Cymru welcomes paragraph 120. We would add that a pupil may be achieving well across all subjects, but may still have ALN due to a disability such as deafness. Without an IDP and appropriate support, these pupils would not be afforded equality of opportunity or the opportunity to reach their full potential.
- Paragraph 138, the duty on early year providers to refer on is too weak.
- NDCS Cymru is concerned by paragraph 145, which, highlights trigger points for an IDP and states “concerns may arise, for example, where a pupil, despite receiving appropriate education experiences [...] has sensory or physical problems, and continues to make little or no progress against that which is expected of the individual, despite the provision of specialist

equipment.” This statement implies that assistive listening devices alone can be sufficient adaptation for a deaf child. This is not the case. Assistive listening devices do not restore typical hearing levels. The statement also implies that these children should have to demonstrate that they are failing before further support is provided. However, as identified above, deaf pupils will have access requirements which should be addressed as a matter of equality of opportunity. Deafness in itself should be regarded as a trigger for an IDP.

- We would urge that paragraph 150 should also highlight that a diagnosed disability should trigger a school to consider whether a child has ALN. In the case of deafness, NDCS Cymru would suggest that all deaf children would have some adaptation requirements and would require an IDP. This is in line with a Welsh Government directive that all children with any level of permanent hearing loss should be recorded at a minimum of School Action.
- Paragraphs 154 and 155. NDCS Cymru would urge that the school/FEI should seek external specialist advice as soon as possible if they have concerns. For example, from a teacher of the deaf.
- Paragraph 159 states that “every FEI has duties under the Act to identify and address the ALN of the students enrolled with them. All FEIs should have a clear approach to identifying and responding to ALN.” NDCS Cymru believes that more direction is required on the nature of this to secure a transparent and consistent approach across Wales.
- As identified earlier in this response, the points relating to the role of the FEI in identifying the needs of ALN learners and of working with schools to pre-plan for learners’ needs are weakened by the use of “should” as opposed to “must” (paragraphs 162-164).
- Paragraph 170. As indicated earlier, clear timeframes must be given in chapter 8 for making decisions on whether a child or young person has ALN in order to maintain transparency, accountability and legal integrity.
- Paragraph 171 should be compulsory and should also inform of the ultimate right to appeal to the Education Tribunal.
- Paragraphs 172, 181 and 190 require further clarification. It is important to define “differentiated teaching” and to draw a clear demarcation between “differentiation” as part of regular teaching practice and “differentiation” which becomes ALP.
- NDCS Cymru welcomes the suggestion in paragraph 184 that local authorities may wish to set up moderating groups to support consistent and transparent decision-making in relation to identification of ALN. We would suggest that such moderation groups could also be used to review the quality of the IDP process in addition to consistency.
- The points outlined in paragraph 189 should form a compulsory part of the

FEl decision. In addition to the points highlighted, we would suggest that this notification include information on how to apply to the local authority for a specialist FEl placement. As indicated earlier in this response, we seek clarification on how the learner's case will be progressed following an FEl decision not to enrol a learner with ALN.

- It is imperative that paragraph 196 also acknowledges the need for local authorities to be responsible for IDPs where a learner has low incidence needs, such as deafness. Indeed, such needs require specialist provision which is beyond the knowledge base of generalist education staff. By their very nature, low incidence needs mean that there will be low and fluctuating numbers of learners with such needs in a local area. As such, it can be difficult to sustain specialist staff on a local school level. Local authorities are better equipped to provide responsive specialist sensory service.
- As identified earlier, it is imperative that paragraph 207 acknowledges that, where a young person does not consent to an IDP, they have been fully informed and that they have the capacity to make that decision.
- In paragraph 209, we would recommend that information on the right to access Disagreement Resolution Services and to appeal to tribunal should be included within the notification that the child is not considered to have ALN. It will be important that this notification meets any specific communication needs the family may have.
- Paragraphs 222 to 230. Clarification is needed on what happens to a learner's support where a FEl requests a local authority takes over responsibility for an IDP and the local authority decides against this. Will the local authority be able to direct the FEl to continue to provide the support?

It will be important to ensure that families and learners are aware of their rights to access advocacy, disagreement resolution and to appeal at the start of the process and again when they are notified of a decision. It will also be important, as with other sections of the Code, for this process to have clear mandatory timeframes.

- NDCS Cymru is disappointed that the local authority duty to keep ALP under review relates to establishing only whether overall need for ALP is met and not also as a form of quality assurance. NDCS Cymru believes that local authorities should have responsibilities to ensure that they are providing a quality support for learners with ALN.
- Paragraph 238, NDCS Cymru would add that the local authority is considering enrolling a child or young person at the institution.
- Paragraph 247. NDCS Cymru demands that any communication needs of both the child/young person and/or their parents are recorded within the IDP.
- Paragraph 251 should also outline the need to quantify the amount of support to be given.

- NDCS Cymru would also urge that, wherever it is applicable, the mandatory aspects of an IDP include; the name of any educational institution being attended or due to attend (the current provision only makes naming of maintained schools in Wales mandatory); accommodation details (for residential placements); transport arrangements; details of specialist equipment used and any essential maintenance information for that equipment; the views and aspirations of parents.
- As indicated above, NDCS Cymru considers that paragraph 264, which suggests that it would be useful to outline any communication or access requirements, should be mandatory wherever this is relevant to the case.
- NDCS Cymru considers the information outlined in paragraph 286 to be crucial for an IDP and would, therefore, wish for this section to be strengthened beyond guidance which simply “might be useful.”
- Paragraph 287 implies that the learner will receive what the service provider is prepared to offer as opposed to the support that the learner needs. This is contrary to the ethos of person centred planning.
- Paragraph 307, NDCS Cymru would add that the child/young person must be informed of how to access advocacy support.
- NDCS Cymru would add “ongoing support needs” to paragraph 310.
- Paragraph 312. NDCS Cymru believes it is important to clarify that professionals other than the ALNCo may also be required in order to seek specialist advice on a non-complex case. For example, a deaf learner may not have any other additional needs, but it will be important to seek specialist advice from a Teacher of the Deaf.
- Paragraph 314 indicates that families could potentially see the advice submitted by professionals for the first time at the IDP meeting. It is our understanding that a draft IDP is to be agreed at this meeting. As such, NDCS Cymru is concerned that families could feel railroaded. It is imperative that following the meeting, families are provided with adequate reflection time.
- As identified earlier in this response, NDCS Cymru believes the section on timescales for preparing an IDP are unclear and require greater detail in order to ensure that the system is legally robust. It is also worth noting that, in consulting with deaf young people at Queen Elizabeth High School, they unanimously felt that two and a half months was a long time to wait for an IDP.
- Paragraph 320 states that delayed receipt of reports must not stop a local authority from producing an IDP. It states that the IDP will need to be reviewed once any outstanding reports have been finalised. However, more detail is required on the duty of local authorities to chase these reports and for a clear timeframe to be in place for the review of an IDP once these late reports have been received.

- NDCS Cymru strongly urges that paragraph 330 highlights that advice from external support services will be required for low incidence needs as well as for complex cases.
- As identified earlier in this response, NDCS Cymru considers to be weak the duty placed on public bodies at paragraph 340 to respond to requests for information.
- Paragraph 358, NDCS Cymru suggests that transport needs **must** (as opposed to “should”) be discussed with the child, child’s parent or young person where relevant.
- Paragraph 361. We would add that local authorities are likely to be responsible for the preparation of IDPs for low incidence needs such as deafness.
- Paragraph 365 outlines exceptions to the duty to favour the education of children at mainstream maintained schools. While it outlines the need to consider the wishes of the parent for specialist provision, it does not outline the need to consider the wishes of the child/young person. The learner may have strong views in this regard.

NDCS Cymru insists that this paragraph also includes the exception where mainstream maintained schools cannot provide the best outcomes for the child.

- Paragraph 373. NDCS Cymru is pleased to see hearing impairment listed as an example.
- Chapter 16, review and revision of IDPs. As with other sections of the Code of Practice, NDCS Cymru believes it is important to highlight the family’s rights of appeal when notifying of a decision or a change.
- Paragraph 422. Where professionals have supplied advice in advance of the IDP meeting, this **must** be sent to the family (as opposed to “should”).
- Paragraph 440. As in other areas of the Code, it is necessary to specify “sufficient time” in order to secure a legally robust and transparent system.
- We would add transition to a new class or year group under paragraph 451. Indeed, it is imperative that new teachers are aware of learner needs and that new facilities/environments meet any access requirements.
- Paragraph 455. NDCS Cymru would add that ensuring the appropriate specialist professionals have been involved in the assessment and ensuring compliance with guidance and timeframes will also help local authorities to avoid disagreements.
- Paragraph 464. NDCS Cymru considers that the local authority **must** (as opposed to “should”) inform parties about disagreement resolution arrangements at relevant points in the process.

- Similarly, we would urge that the Code highlights the need to inform families of advocacy services at key points in the process.
- Paragraph 481. Advocacy services should be available to support families through the process of initiating and developing an IDP, not just when a problem has become apparent.
- As previously indicated, NDCS Cymru believes that, like paragraph 9.49 English Code of Practice, the Code should highlight the need to seek advice from a teacher of the deaf for hearing impaired learners.

Question 7

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

NDCS Cymru wishes to reiterate our concerns that within the draft Code it is largely schools which are to be the gatekeepers for determining whether an IDP is provided and which professionals should be invited to contribute to the IDP. It is important that statutory guidance clearly indicates the need for all deaf learners to be eligible for an IDP and for their assessment to involve specialist professionals such as a Teacher of the Deaf.

We are concerned that quality assurance of the new system seems to have been largely overlooked. The consultation highlights that Estyn will be asked to produce a thematic report in ALN, but NDCS Cymru considers that far greater inspection and quality assurance measures are required. As an example, we would suggest that:

- Estyn inspections of local authorities, schools and colleges have a specific ALN remit, as is now required of Ofsted.
- The tribunal report to the Welsh Government details appeals and any recurring issues in specific local authorities.
- The Welsh Government collates and monitors data on the attainment of pupils with ALN. At present, attainment data is collected and published by major SEN, but under proposals of the Donaldson Review, data collation is set to change. Data on the attainment of deaf learners at FE is currently limited, but NDCS Cymru urges that steps are taken to improve the collection of this data as part of quality assurance measures.
- Families should be given the opportunity to provide service user feedback. Regional consortia could play a role in reviewing service quality.
- Local authorities could retain a responsibility to monitor/spot-check IDPs maintained by governing bodies.

NDCS Cymru considers that training for key staff will be imperative to the success of these reforms. As such, we would welcome further discussions with the Welsh Government over the format of these training programmes.

There is disparity between the draft Bill and the Code in referring to the school making a decision on the learner's needs and the Governors being responsible for these decisions. If the governors are to make such decisions, consideration will need to be given to training requirements.

NDCS Cymru would welcome greater clarity on cross-border issues. For example, how would the system operate where a learner resides in Wales but attends a school in England?

NDCS Cymru would welcome further information on how the Welsh Government intends to respond to its recent report *Workforce Planning on Special Educational Needs (SEN) specialist services (September 2015)*, which highlights difficulties in planning for specialist support services. Addressing these issues is an important part of ensuring that the new system operates effectively.

NDCS Cymru considers that the success of the new system will be largely dependent on training of individual professionals. As such, we would welcome more information on training of ALNCOs and governors as well as information on raising awareness of the IDP among the general workforce who may be in a position to refer children and young people on for consideration of an IDP.

If, for school-aged learners, the initial request for an IDP is to be made to the school, where do referrals go during the school holidays? Should referrals be made to local authorities during this time in order to avoid delays to a learner's support?

NDCS Cymru would welcome further discussion around the Bill's provision to require the Welsh Government to create lists of non-maintained and independent schools and FEIs at which local authorities can place learners. NDCS Cymru has attached our submission to a previous consultation on the Education (Wales) Bill, which was originally intended to include this provision. As outlined in this response, NDCS Cymru is keen to ensure that a revised system is no less rigorous than current systems and structures. In particular, the existing section 347 application requires consideration of the qualifications of teachers employed to support pupils with a hearing impairment, visual impairment or a multi-sensory impairment (see *The Education (SEN) (Approval of Independent Schools) Regulations 1994, Schedule 1 parts 2 - 4.*) NDCS Cymru would urge that, in moving to a single system for registering and approving independent schools, the new application includes detail on the specific provision provided to pupils with SEN, including those with a sensory loss. We would also ask that inspections of such institutions include specific reference to the continued ability to meet the needs of pupils with additional learning needs.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

