

P-06-1406: Financial penalties for local education authorities who do not comply with timeframes for ALN

Y Pwyllgor Deisebau | 18 Mawrth 2024
Petitions Committee | 18 March 2024

Reference: SR24/8142-2

Petition Number: P-06-1406

Petition title: Financial penalties for local education authorities who do not comply with timeframes for Additional Learning Needs (ALN)

Petition text: Additional Learning Needs (ALN) Reform Wales has identified significant failures by local education authorities when complying with the timeframes for

- 1) ALN determination
- 2) Finalising Individual Development Plans
- 3) Complying with tribunal orders

We believe local education authorities should be held accountable for these failings. We believe there should be financial penalties to the local education authority for these failings.

1. Introduction

The Committee received a briefing on 4 March for its consideration of petition P-06-1392 Reform of the Additional Learning Needs (ALN) Code. That briefing provided background information on the ALN reforms and issues that have come up during the Senedd's scrutiny. Rather than reiterating all of that information



here, Members may wish to refer to the previous briefing provided earlier this month for general information on ALN reform.

The Minister for Education and Welsh Language's letter regarding this petition acknowledges that "there is a lack of consistency in the application of the ALN Act and Code" but says "**financial penalties [for local authorities] are not under consideration**".

2. Required timescales for decisions to be taken about ALN and IDPs to be issued

In terms of information specific to this petition, section 4(6) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 requires that the ALN Code (issued in 2021) sets timescales within which schools, further education institutions (FEIs) and local authorities must take decisions about whether a learner has ALN and, if applicable, prepare and issue an Individual Development Plan (IDP).

2.1. Timescales for schools and FEIs

The ALN Code requires schools to either decide that a learner does not have ALN or issue them with an IDP within **35 school days** (paras 12.12 and 12.21 of the ALN Code). There is a similar required timescale for FEIs of **35 term time days** (paras 16.16 and 16.26).

Schools and FEIs need not comply with this timescale if it is impractical to do so due to circumstances beyond their control.

2.2. Timescales for local authorities

Where it is brought to the attention of a local authority that a child/learner may have ALN, for example if the child is below compulsory school age and not in school, or a school refers the case to the local authority due its complex nature, the **local authority has 12 weeks** to decide that the learner does not have ALN or issue them with an IDP (paras 11.17, 11.24, 12.63 and 12.75 of the ALN Code).

This period is **7 weeks if the local authority is reconsidering a school's decision** about ALN, for example if a parent has requested it to do so.

The local authority may also direct a school to prepare and maintain an IDP for a learner, which must all happen within 12 weeks (para 12.96).

2.3. Exception to timescales

Local authorities need not comply with this timescale if it is impractical to do so due to circumstances beyond their control. The Minister's letter says that "where the local authority has decided that the exception to the timescale applies, it should explain this in writing to the family at the earliest opportunity" (as per para 1.51 of the ALN Code).

Paragraphs 1.41 to 1.51 in the introductory chapter 1 of the ALN Code give some guidance on how timescales are to be interpreted. In particular, paragraphs 1.48 to 1.51 give guidance on how the exception to the timescales should be applied.

3. Appeals to the Tribunal

The Education Tribunal for Wales (the 'Tribunal') hears appeals from learners and families against decisions taken under the ALN system. The Tribunal also operates under its former name, the Special Educational Needs Tribunal for Wales (SENTW), in respect of appeals under the SEN system, which is not being fully phased out until August 2025.

In respect of the new ALN system, the Tribunal **hears appeals against decisions by local authorities and FEIs** (not schools as families would ask local authorities to reconsider schools' decisions and then appeal against local authorities' action or lack of action).

The Tribunal may dismiss appeals, or uphold appeals by ordering that a learner does have ALN, order that an IDP be prepared or an existing one be revised, or order that a decision be reconsidered with regard to the Tribunal's observations. The Tribunal **can also make recommendations to health boards** who have to respond explaining whether they will follow them and if not, why not.

Information about the appeals process is available on the Tribunal's website, including specific guidance.

3.1. Timescales for complying with Tribunal orders

Tribunal Orders are legally binding, although the Tribunal does not enforce them itself. Families will have to go through the courts or complain to the Welsh Government.

Most time limits for carrying out a Tribunal Order are 7 weeks for local authorities, and 35 term time days for FEIs (although some orders must be followed immediately). The [Tribunal's guidance on Appeal Orders](#) explains further.

Health boards have six weeks to respond to Tribunal recommendations

4. The Senedd's scrutiny

As explained in our [previous briefing](#), the Senedd's Children, Young People and Education Committee is [scrutinising the implementation](#) of the ALN reforms (along with other major reforms to the curriculum) throughout this Senedd.

In the Committee's [discussion on 4 March of the petition calling for reform of the ALN Code](#), reference was made to other petitions regarding ALN which have been under consideration. The Committee agreed to request a Plenary debate on the petition in respect of the ALN Code, which may also be able to refer to the other petitions on ALN.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.