

Kirsty Williams AC/AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/KW/0757/17

Lynne Neagle AM
Chair
Children, Young People and Education Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA
SeneddCYPE@assembly.wales

17 November 2017

Dear Lynne,

ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) BILL

During Stage 2 Committee of the Additional Learning Needs and Education Tribunal (Wales) Bill (*“the Bill”*), the then Minister committed to writing to the Committee ahead of Stage 3 proceedings with further information about two specific issues raised by Members during the session. These were:

- Additional Learning Needs Co-ordinators (*“ALNCos”*) in special schools; and
- Persons detained under mental health legislation.

In addition, the Minister also informed the Committee that we would consider further the position regarding learner travel to determine the extent to which it will be possible to tie together guidance made under the Learner Travel (Wales) Measure 2008 with guidance on the subject of learner travel given under the Additional Learning Needs (ALN) Code. If this wasn't possible to a satisfactory degree, the Minister committed to bringing forward a related amendment to the Bill at Stage 3.

I have set out below further information in relation to each of these three issues.

ALNCos in special schools

The Committee asked for further detail about the survey we undertook of Special School head teachers in respect of a potential statutory ALNCo role in their schools.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Kirsty.Williams@llyw.cymru
Correspondence.Kirsty.Williams@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Minister wrote to the Committee on 7 September with an update on the ALN Transformation Programme. In this letter he included information about the survey of Special Schools by way of a response to recommendation 17 of the Committee's Stage 1 report, which said:

The Minister should provide further explanation as to why special schools have been removed from the list of schools for which the duty to designate an ALNCo would apply.

In response, the Minister said:

I asked my officials to write to special schools to seek their views about a statutory requirement for them to have an ALN co-ordinator. Of the 39 schools we wrote to asking for a response before the summer holidays, 15 replied; 10 said they would not favour a statutory duty to appoint an ALNCo.

Eight of the 10 who opposed a duty expressed a clear view that every teacher within a Special School takes on the role of an ALNCo, with specific duties fulfilled by head teachers and other senior leadership team colleagues. This is consistent with the Welsh Government's view, as reflected in the provisions in the Bill and explained in my response to the Committee's recommendation. Two of the five head teachers who supported a statutory duty raised specific issues about training, funding, collaborative working, general staff development and development opportunities for teachers with specialist knowledge of ALN. Similar issues were highlighted by four of the 10 head teachers opposed to a statutory ALNCo.

There is a concern among some Special Schools that if they do not have a designated ALNCo, they could miss out on some of the funding, training and joint working initiatives that will accompany the introduction of this role in mainstream schools. While these are important issues, we believe they can be addressed as part of the wider transformation programme and we consider the Bill's requirement on education settings to designate an ALNCo should not be extended to include special schools. We will maintain our dialogue with special schools as we take the programme forward.

In addition to the information provided previously by the Minister, it is worth noting that two of the respondents were also very clear that the written evidence submitted to the Committee and reported in its Stage 1 report (namely "*that the vast majority of Special School heads....wanted to have ALNCo's in Special Schools*") did not accurately reflect the views of most Special School head teachers.

In the light of this information, and the obvious absence of any consensus about this matter on the part of those who run Special Schools, I am satisfied the current position is appropriate and see no reason to alter the provisions in the Bill.

I do wish to reiterate, however, the confirmation the Minister provided to the Committee around access to funding and training. Special Schools not being required by the Bill to have an ALNCo will not preclude them from accessing

opportunities available through the Transformation Programme. We will ensure Special Schools are fully involved in the wider activities of the Programme and monitor this during the implementation phase. My officials are already engaging directly with Special Schools about the implications of our proposed implementation approach and will discuss opportunities to maximise their involvement in the wider activities of the Programme as part of this.

Persons detained under the Mental Health Act

During the Stage 2 discussions, the Minister was asked whether “*young people detained under the mental health legislative framework will still be entitled to additional learning needs support*”. He committed to consider this further and update the Committee.

The Bill applies in respect of children and young people who are detained under the civil provisions (i.e. not the criminal justice provisions) of the Mental Health Act 1983 (“the 1983 Act”) (see Part 2 of it) in the same way as it does generally for children and young persons. This is because such detention is not pursuant to an order made by a court or an order of recall made by the Secretary of State (see the definition of being subject to a detention order in section 37(1) of the Bill, which refers to section 562 of the Education Act 1996).

The consequence of this in terms of the application of duties in the Bill is as follows.

If a child or young person with ALN is detained under Part 2 of the 1983 Act, the duties on governing bodies will continue to apply if the learner is, and for as long as the learner remains, a registered pupil or enrolled student of a maintained school or institution in the further education sector (“FEI”) in Wales. Local authority duties will also apply as they otherwise would and so the governing body could request a responsible local authority to take over (under section 26) responsibility for an individual development plan (“IDP”) and if the authority agrees, it would become responsible.

As local authority duties continue to apply, if the learner is not, or ceases to be, a registered pupil but is a child, then any responsible local authority will be responsible for ALN matters under the Bill (such as the duties to decide and to prepare and maintain an IDP).

If the learner is a young person and is not or has ceased to be an enrolled student of an FEI in Wales (without a local authority having taken over responsibility for the IDP), then a responsible local authority will be subject to the section 11 duty to decide whether the person has ALN (if aware of that possibility). As with other young persons not in a maintained school or FEI, whether the local authority must then prepare and maintain an IDP for the young person will depend upon its decision under section 12(1)(c)(ii). Similarly, if a responsible local authority is maintaining an IDP for a young person with ALN, whether it may cease to maintain it would depend upon a section 29(6)(b) decision.

I think it is also worth pointing out that, although not detention under the Mental Health Act 1983, the duties in the Bill also apply in respect of looked after children

kept in secure accommodation pursuant to a court authorisation under section 119 of the Social Services and Well-being (Wales) Act 2014 or section 25 of the Children Act 1989 in the same way as it applies to children and young people generally.

Part 3 of the 1983 Act gives power to criminal courts to make mental health-based disposals of persons in the criminal justice system. These powers involve orders being made by a court pursuant to which a person would be detained and orders of recall made by the Secretary of State pursuant to which a person would be detained. Where such orders have been made in respect of a child or young person, that person would be subject to a detention order within the meaning of section 37 of the Bill. Therefore the general duties in the Bill would not apply in relation to that child or young person (see section 42 of the Bill and section 562 of the Education Act 1996).

I note that amendment 62 in the name of Darren Millar gives a regulation making power to provide for local authority and governing body functions in the Bill to be applied in the case of persons subject to a detention order and detained in hospital under Part 3 of the 1983, where the functions do not otherwise apply because of section 42 of the Bill or section 562 of the Education Act 1996. I look forward to discussing this during Stage 3 proceedings next week.

Learner travel

In line with the Minister's commitment during Stage 2, we have considered carefully the guidance making powers given to the Welsh Ministers under the Learner Travel (Wales) Measure 2008 and the current document issued under these powers – the *Learner Travel Statutory Provision and Operational Guidance 2014*. We have also looked again at the ALN Code making powers contained in the Bill.

Our conclusion is there is already sufficient legal scope to enable revisions to be made to the Learner Travel guidance so that it properly reflects and takes account of the new statutory ALN system and I am happy to commit the Welsh Government to undertake that work. I am also reassured that the ALN Code will be able to provide an appropriate degree of guidance on the place of transport considerations within individual development plans and the process of producing them, including cross references to the Learner Travel Measure and guidance. On that basis, I do not think it necessary to bring forward a Stage 3 amendment to the Bill in relation to this matter.

Under the Bill's provisions, Members will have an opportunity, in due course, to have their say on the content of the ALN Code. In addition, any revisions made to the Learner Travel guidance will be subject to prior consultation. If there are concerns about the interaction of the guidance given by the ALN Code in relation to transport considerations, and the guidance issued under the Learner Travel, I would expect those concerns to be subject to discussion and resolution at the appropriate time.

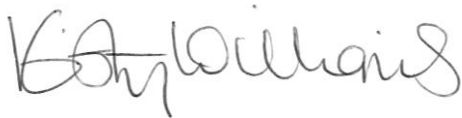
I, like the then Minister, recognise the importance of transport issues within the current SEN system and future ALN system – it is an aspect of the arrangements that has to work for the core ALN system to be fully effective. For that reason, I intend to include within the post implementation review of the Act, in due course, specific consideration of transport issues. This will enable us to check-in on the operation of

the transport elements of the new system, consider any issues in the round and decide on any appropriate further action at that time.

Members will have seen the Stage 3 amendments tabled in my name last Friday. A number of these seek to directly address other commitments made by the former Minister during Stage 2. I look forward to discussing these during the debate on 21 November.

I am copying this letter to all Assembly Members ahead of the Stage 3 debate on the Bill on 21 November.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams', written in a cursive style.

Kirsty Williams AC/AM

Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education