

Foreword:

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Dear Colleagues

As you will be aware the Additional Learning Needs and Education Tribunal [Wales] Act 2018 has received Royal Assent.

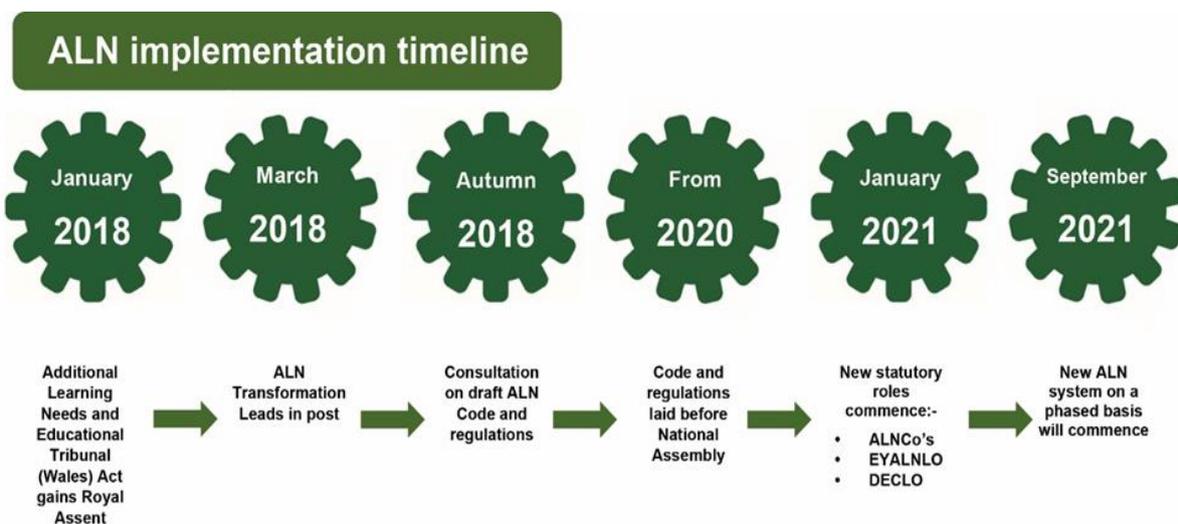
Prior to receiving Royal Assent, the Bill underwent a process of public consultation and was also scrutinised by the National Assembly for Wales’ Children and Young People’s Committee. As a result, a number of amendments were made that were included in the Act.

Kirsty Williams Minister for Education within the Welsh Government issued a statement on the 17th September 2019 advising of her decision to delay implementation of the reforms until September 2021

“I will always take the time to reflect on feedback and conversations with teachers, parents, educators and unions. Rolling out the new system from September 2021 does not mean time to stand still, it will ensure services are fully prepared for the coming into force of the new system, which in turn will lead to a smoother and more successful implementation”

Kirsty Williams

The new time-line for implementation of the Act is as follows:





N.B. From September 2021 until September 2024 the two systems (SEN and ALN Transformation) will run concurrently. The Welsh Government will issue updated statutory implementation guidance for cohorts of children and young people shortly.

This guide provides a brief overview of the Act and the main implications for schools, including PRUs and local authorities.

The guide **does not** cover matters relating to: looked-after children, cross border issues and children/young people that are detained, or young people entering into further education institutions. These will be available after the final publication of the new ALN Code in 2020.

The Additional Learning Needs and Education Tribunal [Wales] Act 2018, **does not** replace duties placed on public bodies, including schools and local authorities, arising from the Equality Act 2010.

This guide **does not** constitute legal advice.

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The Welsh Government has stated the following broad aims of the Act:

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| | <p>The introduction of the term “additional learning needs” (ALN)</p> <p>The Act replaces the term “special educational needs” (SEN) and “learning difficulties and disabilities” (LDD) with the new term “additional learning needs”.</p> |
| | <p>A 0-25 age range</p> <p>There will be a single legislative system relating to the support given to children¹ and young people aged between 0-25 years who have an ALN. This is instead of the two separate systems currently operating to support children and young people of compulsory school age who have SEN, and young people in further education who have LDD.</p> |
| | <p>A unified plan</p> <p>The Act creates a single statutory plan (the individual development plan, IDP) to replace the existing variety of statutory and non-statutory SEN or LDD plans for learners in schools and further education.</p> |
| | <p>Increased participation of children and young people</p> <p>The Act requires that learners’ views should² always be considered as part of the planning process, along with those of their parents/carers. It is imperative that children and young people see the planning process as something which is done with them rather than to them.</p> |
| | <p>High aspirations and improved outcomes</p> <p>The emphasis of IDPs will be on making provision that delivers tangible outcomes that contribute in a meaningful way to the child or young person³'s achievement of their full potential.</p> |

¹ A person of or below compulsory school age

² E.g....do something...must consider this and follow it unless it is justifiable not to do so

³ A person over compulsory school age, but under 25

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| | <p>A simpler and less adversarial system</p> <p>The process of producing and revising an IDP should be much simpler that is currently the case with statements of SEN.</p> |
| | <p>Increased collaboration</p> <p>The new system encourages improved collaboration and information sharing between agencies, which are essential to ensuring that needs are identified early and the right support is put in place to enable children and young people to achieve positive outcomes.</p> |
| | <p>Avoiding disagreements and earlier disagreement resolution</p> <p>The new system focusses on ensuring that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.</p> |
| | <p>Clear and consistent rights of appeal</p> <p>Where disagreements about the contents of an IDP cannot be resolved at the local level, the Act ensures that children and young people entitled to an IDP (and their parents/carers in the case of those that are under the age of 16) have a right of appeal to tribunal.</p> |
| | <p>The ALN Code</p> <p>The ALN Code will provide a set of clear, legally enforceable parameters within which local authorities and those other organisations responsible for the delivery of services for children and young people with ALN, must⁴ act.</p> |
| | <p>A bilingual system</p> <p>The Act requires that services must consider whether a child or young person needs additional learning provision in Welsh. In they do, this must be documented in the IDP and “all reasonable steps” must be taken to secure the provision in Welsh.</p> |

⁴ As per Additional Learning Needs and Education Tribunal [Wales] Act 2018

Additional Learning Needs (ALN)

Whilst the definition of the new term additional learning needs (ALN) is very similar to the current definition of special educational needs (SEN) its application is not confined to those under the age of 18, or for those pupils under the age of 19 if attending special schools. Under the Act, young people who have ALN may, in some circumstances, receive assistance up to the age of 25.

The Act states that a person has additional learning needs if they have a learning difficulty or disability which calls for additional learning provision

A child of compulsory school age or a person over that age has a learning difficulty or disability if:

they have a significantly greater difficulty in learning than the majority of others of the same age

Or

they have a disability under the Equality Act 2010 which prevents or hinders them from making use of facilities for education of a kind generally provided for others of the same age in mainstream schools.

Importantly, the definition of ALN covers learners whose learning difficulty or disability arises from a medical condition.

Pupils who have a medical need that does not impact on their learning should be supported through a **Supporting Health Care Needs Plan** (see Supporting Health Care Needs Policy for SEWC LAs and schools 2018).

A person does **not** have a learning difficulty or disability solely because the language in which they will be taught is different from the language used at home.

A child or young person would not have ALN if their lack of progress or difficulties can be addressed through differentiated teaching. Teaching which recognises and responds to the needs of individual learners is a key component of all high quality education; ***most children and young people will require a differentiated approach in some aspect of their education at some point.***

Such differentiated teaching **does not**, itself, constitute ALP. **ALP will encompass additional or different educational or training provision**, which goes beyond that generally made available.

Additional Learning Provision (ALP)

The definition of ALN can only be interpreted by reference to the definition of additional learning provision (ALP). ***The two things have to be considered together.***

The new decision making duty on governing bodies

When a Governing body is made aware that a child or young person (a young person is defined by the Act as someone over compulsory school age but under the age of 25) at the school may have additional learning needs (ALN) it **must** decide whether that child or young person does have additional learning needs unless:

- an individual development plan (IDP) is already being maintained
- a decision has already been made that the child or young person does have ALN and the needs have not changed materially since then and there is no new information to effect that decision
- the child or young person is also a registered pupil at another school or at a Further Education Institute (FEI), in which case the matter must be referred to the local authority
- the young person does not consent to the decision being made.

The duty to favour education at mainstream maintained schools

Local authorities have a duty to favour educating children in mainstream schools unless –

- education in a mainstream maintained school is incompatible with the efficient education of other children. A local authority must take reasonable steps to prevent the incompatibility.
- educating the child other than in a mainstream maintained school is appropriate in the best interests of the child and that this is compatible with the provision of efficient education for other children.
- the parents wish the child to be educated otherwise than in mainstream maintained school.

A local authority must take into account parental wishes but may still decide that a mainstream maintained school is appropriate, even if parents have expressed a wish to the contrary.

So far as it is reasonably practicable and compatible, children with ALN should engage in the activities of the school together with children who do not have ALN.

If a local authority is satisfied that it would be inappropriate for the ALP to be made in a mainstream school then it may arrange for the provision to be made elsewhere.

For a child aged three or over, ALP means educational or training provision that is additional to, or different from, that made generally for others of the same age range.

For a child under three, ALP means educational provision of any kind.

If the decision is that the child or young person does **not** have ALN the governing body must notify the child or young person and their parents of that decision and the reasons for it.

If the governing body decides that the child or young person **does** have additional learning needs, or where it has been directed to, it **must** prepare and maintain an individual development plan (IDP). In addition, it must *secure* the ALP described in the IDP. Where a particular kind of ALP is to be made in Welsh, the governing body **must** take all reasonable steps to secure this. The plan must continue to be maintained unless a young person does not consent.

If however, the governing body considers that the child or young person has additional learning needs that may call for additional learning provision that it would not be *reasonable* of the Governing Body to secure, or the extent and nature of the provision cannot be adequately determined by the Governing Body, it **may** refer the case to the local authority rather than prepare an IDP.

Local authority decision making

Where it appears to a local authority that a child or young person may have additional learning needs the Authority **must** decide whether the child or young person has additional learning needs unless:

- an IDP is already being maintained for the pupil
- the local authority has previously decided the issue and is satisfied that the pupil's needs have not changed materially since that decision and there is no new information which materially affects that decision
- the local authority is satisfied that the question of whether or not the pupil has ALN is being decided by a governing body
- the pupil is a young person who does not consent to the decision being made

If the Authority decides that a child or young person has additional learning needs the Local authority **must**:

- prepare and maintain an IDP

or

- prepare an IDP and direct a governing body to maintain it or
- direct the governing body to prepare and maintain the plan.

Following such a direction the governing body must prepare and/or maintain the plan unless the young person does not give consent.

If the reasonable needs of the child or young person with ALN cannot be met except at a particular school or through board and lodging a description of that provision

must be included in the plan. If the local authority maintains an IDP it must *secure* the additional learning provision in the plan including any other provision described in the plan such as a particular school or board and lodging. If the plan so specifies, all reasonable steps should be taken to secure provision in Welsh.

A local authority must keep under review the arrangements for meeting ALN and to consider their sufficiency. If the arrangements are not sufficient the local authority must take all reasonable steps to remedy the matter.

In order to help local authorities fulfil its functions, local authorities may⁵ request other “persons” to provide it with information. These persons, amongst others include: other local authorities, governing bodies and health bodies. Requests for information must be provided within a prescribed time period.

Reconsideration

A child or young person or parent may request a local authority reconsider the decision of the governing body in respect of the learner’s ALN. The local authority must then decide whether the child or young person has ALN. In such cases the local authority must inform the governing body of the request and invite representations from the governing body. The same applies also, where a governing body maintains an IDP and the child or young person or parent request the local authority reconsider the plan with a view to it being revised.

A child or young person, their parent/carer or a governing body may request a local authority to take over responsibility for maintaining the plan from the governing body. A local authority must notify the others of the request and invite representations.

The local authority must decide whether to take over the plan unless it has previously made a decision and the child or young persons’ needs have not changed materially and there is no new information to effect the decision.

Implementing the new system – person centred practice:

The Act requires that local authorities and governing bodies **must** have regard to the views, wishes and feelings of the child or young person and their parents and stresses the importance of them participating as fully as possible in decisions and to provide them with the information and support necessary to participate in those decisions.

The Welsh Government states that “person centred practice” is to be integral to the ALN system and has published [canllaw ar gyfer blynyddoedd cynnar, ysgoliion a choolegau yng Nghymru](#) / [guidance on person centred practice for early years, schools and colleges in Wales](#).

⁵ Are permitted to

In addition, Welsh Government have published a number of resources to assist schools, families and learners.

[Pecyn cymorth adolygiadau sy'n canolbwyntio ar unigolion: canllawiau ar gyfer darparwyr addysg](#) / [Person centred review toolkit: guidance for education providers](#)

[Adolygiadau sy'n canolbwyntio ar unigolion: canllawiau i deuluoedd](#) / [Person centred reviews: guidance for families](#)

[Sut i baratoi ar gyfer eich adolygiad sy'n canolbwyntio ar yr unigolyn](#) / [How to prepare for your person centred review: guidance for learners](#)

[Adolygiadau sy'n canolbwyntio ar unigolion: canllawiau i weithwyr proffesiynol](#) / [Person centred reviews: guidance for professionals](#)

Converting to individual development plans (IDPs):

Statements of special educational needs and non-statutory plans will be phased out and replaced by the individual development plans (IDPs). The IDP will be available at either an LA or school-based level. The IDP will be a statutory document and as such will provide a greater level of protection for children or young persons that are currently supported by non-statutory plans.

The Welsh Government expects that governing bodies will be responsible for the majority of plans with local authority's responsible for the more severe and complex cases, largely reflecting the current division between a child or young person with a statement and those at school action or school action plus.

It is intended that from **September 2021**, individual development plans will begin to replace plans that currently support learners with SEN. Statutory Implementation Guidance previously issued by the Welsh Government in 2018 will be updated to reflect the changing time-frame.

The Welsh Government expects the legislation to be fully implemented in the period from **September 2021 to August 2024**. During implementation the new ALN system will operate in parallel to the existing special education needs system. Until a child or young person has moved to the ALN system the current SEN system will continue to apply.

After the start of the implementation period the ALN system will apply to a child or young person newly identified with ALN (i.e. not engaged with the current SEN system).

Reviews

A copy of the IDP must be provided to the child or young person and their parent/carer and must be reviewed within every twelve months. Upon a request by an NHS body or by the child or young person or parents, a review of the IDP must take place, unless the local authority / governing body considers a review to be unnecessary.

Whether a review is **unnecessary** will depend upon the circumstances.

Factors which are likely to be relevant would include:

- how long it has been since the plan was prepared or reviewed, whether there has been a change in circumstances which might affect the plan
- or whether new evidence or information has come to light which might affect the plan

A governing body or local authority may review a plan at any time and revise a plan following the review. The child or young person and parent must be supplied with a copy of the revised plan. If a decision is made that the plan should not be revised the child or young person and parent should be advised of the decision and the reasons for it.

Ceasing to maintain IDPs

The governing body duty ceases if the child or young person leaves the school or the child becomes looked-after by a local authority. (ALN ET Act 2018)

The duty of a local authority ceases to apply if the local authority ceases to be responsible⁶ for the child or young person.

A governing body and/or local authority **may** cease to maintain a plan if it decides that the child or young person no longer has additional learning needs.

In the case of a young person who is not registered at a maintained school nor at a further education institute if the local authority decides that it is no longer necessary to maintain a plan to meet the reasonable needs for education or training then the plan **may** be ceased.

Before deciding to cease to maintain an IDP the child or young person and parent/carer must be notified of the proposal. The child or young person and parent/carer must then be notified of the decision and the reasons for it. The governing body must also notify the child or young person and parent of their right to request the local authority to reconsider the governing body's decision.

If the local authority is asked to reconsider the matter then it must decide whether the plan should be ceased. The local authority must notify the child or young person and parents of the decision and the reasons for it. If the local authority decides that the plan should be maintained the governing body must continue to maintain the plan.

Where a governing body decides that a child or young person no longer has ALN the plan **must** be maintained until:

- the time period for reconsideration has expired or;
- the appeal period has expired or;
- an appeal has been brought to the Tribunal and determined.

The duty to maintain an IDP ceases at the end of the academic year during which the young person attains the age of 25.

⁶ A local authority is responsible for a child or young person if he or she is in the area of the authority.

Governing Body duties in relation to children and young people with local authority maintained plans

A Governing Body must take **all reasonable steps** to secure⁷ the additional learning provision to meet the pupil's ALN and help the local authority maintaining a plan to secure the additional learning provision in it. Before naming a school in a plan a local authority must consult the governing body of the school and the local authority for the area in which the school is located. A school may only be named if the authority is satisfied that the child or young persons' interests requires the provision to be made at the school and it is appropriate for the child or young person to be provided with education at the school. The limits on infant class sizes does not apply in these circumstances. If the Authority names a school in a plan then the governing body of the school **must** admit the child.

No charge may be made to a child or young person or parent under the legislation.

Transfer of IDPs

Where a child or young person with an IDP maintained by a school transfers to another maintained school in Wales (or to an FEI in Wales), responsibility for maintaining the IDP will usually transfer at the same time. Similarly, where a child or young person with an IDP maintained by a local authority moves to another local authority area, responsibility for maintaining the IDP will normally transfer between the local authorities.

The IDP is designed to evolve over time and is intended to remain with a child or young person across the various stages of their education, provided that they continue to have an ALN.

Where a child or young person with ALN becomes a registered pupil at a maintained school in Wales the school must maintain the IDP if:

1. Immediately before the child or young person became a registered pupil at the school, an IDP was being maintained by another school; and
2. It is not intended that the child or young person will continue to be provided with education and training at that other school.

Where a child or young person with ALN becomes a registered pupil at a maintained school in Wales before the end of September in an academic year, that school must maintain the IDP if:

1. The child or young person was a registered pupil at another maintained school during the previous academic year; and

⁷ Greater than best endeavours...must show real effort to...

2. An IDP was being maintained for the pupil by the other school on the last day of education or training provided for them at the school.

Transfers between local authorities

Where a child or young person with ALN becomes the responsibility of a local authority, that local authority **must** maintain the IDP if immediately before the child or young person became its responsibility, an IDP was being maintained for the child or young person by another local authority.

Process by which the duty to maintain an IDP transfers

Where there is a transfer of the duty to maintain an IDP, the “old body” must send a copy of the IDP to the “new body” promptly upon becoming aware of the transfer.

The new body should consider whether to review the IDP once it has become responsible for maintaining it, in order to ensure that its contents, in particular the ALP that it contains, are appropriate in the context of the child or young person’s new circumstances.

Where a local authority is under a duty to secure a place at a particular school or other institution described in the plan and it is no longer practicable for the child or young person to attend the institution, the local authority’s duty to secure the place at the school or institution does not apply until such time as is possible to revise the plan.

Transfer of an IDP in dual registration cases

Where a school is maintaining an IDP for a child or young person and they become registered or enrolled at another school or FEI (i.e. they become dual registered) then the school must inform the local authority responsible for the child or young person that they are maintaining an IDP. The local authority must maintain the IDP from the day on which it becomes aware that the child or young person is dual-registered.

Where there is not a transfer of duty to maintain an IDP, but a child or young person recently had one

There may be occasions where the duty to maintain an IDP ceases without it being transferred to another body. However, shortly afterwards a body is subject to the duty to decide whether the child or young person has ALN.

The above may be the case in the following circumstances:

- A child or young person moves from one educational setting to another following a gap in their education and the duty to maintain does not transfer;
- A young person objects to the IDP being maintained, but later changes their mind

- A person with an IDP has a short spell in prison and upon release, returns to the FEI they attended previously

IN such cases, a school, FEI or local authority may, under the duty, have to decide whether the person has ALN and if so, conform to the duty to prepare and maintain an IDP.

Where it is known that the child or young person recently had an IDP, the school, FEI or local authority should take into account that previous IDP.

Advice and information

Local authorities must make arrangements to provide information and advice about additional learning needs and the system under the law. This must be provided in an impartial manner and reasonable steps must be taken to make disagreement resolution and independent advocacy services known to child or young persons, parents and governing bodies in its area. Governing bodies when informed of these arrangements must take reasonable steps to make them known to child or young persons and parents.

Avoiding and resolving disagreements

A local authority must make arrangements to avoid and resolve disagreements between education bodies and child or young persons and parents. Provision must be made for parties to access help in resolving disagreements. This **must** be from independent persons and the arrangements must be promoted by the local authority.

The local authority must take reasonable steps to inform children, young people and parents that their rights to appeal to the Tribunal are unaffected.

Local authorities must arrange for independent advocacy services for children and young people to be available and to refer any child or young person to them. Independent advocacy services provide advice and assistance which may include representation on appeals to the Tribunal or for dispute or resolution. They must be independent and payment may be made to them.

New statutory roles (January 2021)

Governing bodies must appoint an additional learning needs co-ordinator (ALNCo) to have responsibility for co-ordinating additional learning provision for a child or young persons with ALN. Further details on the role of the ALNCo will be set out in regulations and will be described in the final version of the ALN Code (expected 2020)

Welsh Government has committed resources to the ongoing professional development of ALNCos. An announcement on the details of this pathway is expected in 2020.

A local authority must appoint an early year's additional learning needs lead officer (EYALNLO) to have responsibility for co-ordinating the authority's responsibilities in relation to children under compulsory school age.

Local health boards must designate an officer, to be known as the: designated education clinical lead officer (DECLO) to have responsibility for co-ordinating the Board's functions in relation to children and young people with ALN. Further details on the role of the DECLO will be included in the final version of the ALN Code.

The role of health

A local authority may refer matters to an NHS body to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the ALN of a child or young person. The referral must be in the best interests of the child or young person and they and their parents must be informed of the intention and given an opportunity to discuss whether the referral should be made.

If the NHS body identifies such a treatment or service that is likely to be of benefit, it must secure it for the child or young person and take reasonable steps to provide it in Welsh if appropriate. Such provision must be described in the plan and the Governing body or Local authority is then **not** under a duty to secure that provision.

If the NHS body does not identify a relevant treatment or service it must inform the local authority.

In the case of children under the compulsory school age, a health body will be required to inform both the parents of the child and, if it is satisfied that it is in the best interests of the child, the local authority, if it forms the opinion that the child has, or probably has, additional learning needs.

Where a child, young person or parent has concerns in relation to health related provision, they should seek to use the "[Putting things Right](#)" process.

Education Tribunal Wales

The Special Education Needs Tribunal Wales, will be replaced by the Education Tribunal Wales. A child or young person, and in the case of a child, the child's parent may appeal to the Education Tribunal Wales. Appeals may be lodged against the following:

- A decision made by a governing body as to whether a child/young person has an ALN;
- a decision by a local authority, in the case of a young person, as to whether it is necessary to prepare and maintain an IDP;
- the description of the person's ALN;
- the additional learning provision either identified or otherwise in the IDP, including whether the provision should be provided in Welsh;
- the school named in the plan;
- if no school is named;
- a decision to revise an IDP;

- a decision not to take over responsibility for an IDP, following a request to do so;
- a decision to cease to maintain an IDP;
- a decision that a governing body should cease to maintain a plan; and
- a refusal to decide a matter.

The Act places a duty on health bodies to give evidence about its decisions to the Tribunal. The Tribunal may make recommendations to health. However, the Tribunal does not have powers to order or direct health.

The Education Tribunal Wales may decide to:

- dismiss the appeal;
- order that a person has, or doesn't have ALN;
- order the governing body of a further education institution or a local authority to prepare and/or revise and/or maintain an IDP;
- order the local authority to take over responsibility for maintaining an IDP; and
- order the governing body of a further education institution to review an IDP.

The ALN Code

A [draft code](#) was published in December 2018 and has been consulted on widely.

The final ALN Code is due to be issued in 2020, once it has been approved by the National Assembly.

Local authorities and governing bodies must act in accordance with requirements imposed by the final ALN Code and **must "have regard"** to the guidance that it contains.

Case law states that **"have regard to"** means to take into account and involves a greater degree of consideration than merely to *"consult"*.

Local authorities and governing bodies must provide clear and legitimate reasons if they choose to depart from the guidance in the Code.

Glossary

| | |
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| ALN | Additional Learning Needs |
| ALNCo | Additional Learning Needs Co-ordinator |
| ALP | Additional Learning Provision |
| DECLO | Designated Education Clinical Lead Officer |
| EYALNLO | Early Years Designated Additional Leads Officer |
| IDP | Individual Development Plan |
| NHS | National Health Service |
| SEN | Special Educational Needs |
| SENCO | Special Educational Needs Co-ordinator |

References:

National Assembly for Wales [2018] *The Additional Learning Needs and Education Tribunal [Wales] Act 2018*. Cardiff: National Assembly for Wales (Online) Available from: <http://www.legislation.gov.uk/anaw/2018/2/contents/enacted>

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UK Government (2010) *The Equality Act 2010*. London: (Online): Available from: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf



Useful web-sites/resources

Refer to: *ALN Transformation Programme -English*

<http://gov.wales/docs/dcells/publications/180124-aln-transformation-programme-en-v2.pdf>

Refer to: *ALN Transformation Programme -Welsh*

<http://gov.wales/docs/dcells/publications/180124-aln-transformation-programme-cy-v2.pdf>

Welsh Government –ALN transformation

<https://gov.wales/additional-learning-needs-transformation-programme>

Frequently asked questions:

www.assembly.waleshttps://gov.wales/additional-learning-needs-transformation-programme-frequently-asked-questions

Overview of the draft Code (2018) Code consultation

<https://gov.wales/overview-draft-additional-learning-needs-code-consultation>

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