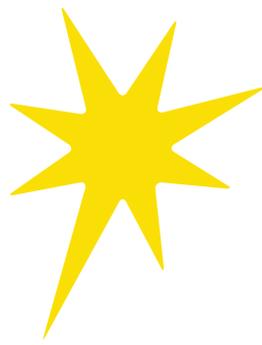


Education in Wales

A Guide for Parents



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Introduction

This guide has been prepared for parents of children with special educational needs (SEN) and/or disabled children living in Wales. It only applies to Wales and we have written separate guidance for England.

Before looking at education and SEN in Wales in more detail it is important to discuss a widespread misunderstanding. For one reason or another many parents and some professionals in Wales believe that local authorities (LAs) are no longer required to produce Statements of special educational needs (Statements). It is true that the Welsh Government has been considering changing the SEN system in Wales since the summer of 2007. However, although it produced a document¹ in 2015 proposing to replace Statements, the law has not actually been changed yet.

¹ The draft Additional Learning Needs and Educational Tribunal (Wales) Bill

Until the law does change LAs must consider requests from parents for Statements and if necessary issue and maintain them. The Minister for Education and Skills, Huw Lewis, wrote to all the LAs in Wales to remind them of exactly that in May 2014 and again in July 2015. In the last letter he said:

“...for the time being (i.e. until new legislation is introduced) local authorities, and all those who work with children and young people with SEN, must ensure that they continue to comply with the duties placed upon them by the Education Act 1996. They must also continue to have regard to the SEN Code of Practice for Wales.”

This means that the statementing process remains in place. Moreover, it is highly unlikely that any changes will be made to the system we have at the moment before September 2017 at the earliest.

If the Welsh Government's reforms are introduced as proposed, Statements and

Learning and Skills Plans (LSPs), both of which are discussed later in this guide, will be replaced by a single new document called an Independent Development Plan which will cover the 0-25 year-old age range.

The importance of education

All children have the right to an education but some children will need additional support to enable them to learn. This guide is a summary of the support that might be available to your child before s/he reaches school age and during his/her time at school.

This guide covers the following areas:

- Overview of responsibilities
- Children with SEN
- What the Equality Act 2010 means for school pupils
- Moving on from school
- Complaints and claims about support in schools

It also provides information on these areas through a series of questions and answers. It also includes a Glossary (see page 21) which provides an explanation of commonly used terms (these are highlighted in **blue** in the text).

The guide is no substitute for specialist advice. The Resources section (see page 23) provides information on where to obtain further help and assistance and gives details of useful guidance.



Overview of responsibilities

Q. 1. When might my child have a right to additional learning support at school?

Additional learning support is available in schools and **early years** settings for children with SEN through the SEN framework. Children have special educational needs if they have a **learning difficulty** which requires **special educational provision** to be made for them. This includes children who have a **disability** which affects their ability to make use of the educational facilities provided for their peers. LAs have a duty to ensure that the special educational needs of children in their areas are met.

In addition, ALL schools have duties to make 'reasonable adjustments' (explained below at Q.2 1) for pupils, prospective pupils and in some cases former pupils who have a **disability** within the meaning of the Equality Act 2010 (EA). The EA duties are designed to sit alongside the duties under the SEN framework. Some children may be disabled under the EA 2010 but not have special educational needs under the SEN framework and vice versa.

The guide looks first at the duties under the SEN framework and then at the duties under the EA.



Children with Special Educational Needs

This section describes the current position relating to SEN in Wales. As explained above, the Welsh Government intends to reform the SEN system but until it does so the following information describes what LAs and schools in Wales must do until the law is actually changed.

Q.2. Is support under the Special Educational Needs framework available in any school?

The SEN framework operates in all government funded early years settings and maintained schools, whether they are mainstream or special schools. In addition, an LA may agree to place a child with a statement of special educational needs in an independent/non-maintained school.

Q.3. How will I know if my child has Special Educational Needs?

You may be aware that your child has SEN from your own observations. Your child's school must let you know if they decide to put SEN provision in place for your child.

If your child is under [compulsory school age](#) (that is any time before the start of term following your child's 5th birthday) the health service must inform you and your LA if they consider that your child has SEN.

Q.4. If my child has Special Educational Needs what support is in place for me?

Your LA must arrange for you to have advice and information about matters that relate to your child's SEN and let you know if they think a particular voluntary organisation is likely to be able to help you in connection with your child's SEN.

LAs must ensure that a parent partnership service (which provides information and support to parents) is available in their area and they must inform parents, schools and others about the service and how it can be contacted for help.

Q.5. What support will be available to my child and how is it put in place?

The type and level of support that your child receives will depend on their particular needs. The three areas of support are as follows:

Early Years Action (for children aged 3 to 5 in an [Early Years Setting](#) (for example a nursery) / School Action (for children at primary and secondary school)

This is support that is additional to, or different from, the support that is usually provided by the Early Years Setting/school, such as additional learning materials, specialist equipment or extra one to one support.

Your child's early education practitioner/teacher or Special Educational Needs Coordinator ('SENCO') should consult you about the needs of your child and the action to be taken. The different strategies and provision should be recorded in an [Individual Education Plan](#) (IEP) together with short-term targets for your child and the IEP should be reviewed regularly at least 3 times a year in an [Early Years Setting](#) and twice a year in a primary or secondary school. As part of the review process, you should be consulted and asked for your views on your child's progress.

It may be that your child's early education practitioner/teacher or SENCO has raised concerns about your child's progress with you. Alternatively, if you have concerns that your child is not progressing appropriately, you should raise these concerns with your child's early education practitioner/teacher or SENCO and discuss

whether extra support should be put in place (this is referred to as 'Early Years Action/School Action').

Early Years Action Plus/School Action Plus

If despite the support at Early Years Action/School Action, an IEP review meeting identifies that your child is still not progressing, help may be sought from external support services. The types and level of support available will depend on local policies. Sometimes external specialists will provide advisory support but they might also teach your child. This additional support is referred to as Early Years Action Plus/School Action Plus.

Statement of Special Educational Needs (Statement)

If this further support through Early Years Action Plus/School Action Plus is insufficient, you or your school can ask your Local Authority to carry out a statutory assessment of your child's SEN which is the first step towards obtaining a Statement (see below). Another agency such as the health service or social services can make a referral for a statutory assessment. Your child does not have to have received support at Early Years/School Action or Action Plus before you make such a request; you can do so at any time. There are special provisions for children under 2 which are covered below (see Q.10).

Q.6. What is a 'Statement of Special Needs'?

A Statement is a document that sets out a child's special educational, and other non-educational needs, the provision to meet those needs and their school or type of school. Your LA has a legal obligation to ensure that the special educational provision set out in Part 3 of the Statement is provided.

The contents of a Statement are as follows:

Part 1

Introduction: Child's name, address, date of birth, home language and religion and names and addresses of the child's parents.

Part 2

Description of the child's special educational needs.

Part 3

Details of special educational provision the Local Authority considers necessary to meet the child's SEN as set out in Part 2.

This is broken down into the following three areas:

- the objectives the special educational provision should meet;
- the actual special educational provision required;
- monitoring arrangements.

Part 4

Type and name of the school where the provision set out in Part 3 is to be made, or the LA's arrangements for provision to be made otherwise than at school.

Part 5

Non-educational needs

Part 6

Non-educational provision (see Q.9 below).

Q.7. How do I obtain a Statement for my child?

On receipt of a written request from you or your child's school for a statutory assessment of your child's special educational needs, your LA must let you and the school (if they made the request) know within 6 weeks whether it will carry out an assessment of your child's SEN. (See Complaints section (page 19) for what to do if your LA refuses to carry out an assessment).

If your LA confirms to you that it will carry out an assessment, it is required to complete the assessment and reach a decision as to whether or not a statement is necessary within 10 weeks. (This is subject to certain specific exceptions such as waiting for responses from the health service or social services). During this time the LA will seek

reports from other relevant professionals such as the Head teacher of your child's school and the LA's educational psychologist, as well as from you.

Once the LA has reached its decision it must inform you in writing of this decision within 2 weeks (this means the whole process should normally be completed within 12 weeks of the start of the statutory assessment) and either send you a draft proposed Statement to consider or written reasons for concluding that a Statement is unnecessary. (The Complaints section of this guide (page 19) explains what you can do if you are unhappy with this decision).

If your LA decides not to issue a Statement, it may issue what is known as a non-legally binding 'note in lieu'. While this document may look similar to a Statement, the LA has no legal obligation to ensure the special educational provision it identifies is put in place. If such a 'note in lieu' is offered to you, you should think very carefully about whether it is acceptable, given that it has no legal standing.

Q.8. What should I do if I receive a draft proposed Statement?

This is your opportunity to check that you agree with your Local Authority's assessment of your child's SEN and the provision it considers will meet these needs. At this stage you can also express a preference for a maintained school (be this mainstream or special) or state why you think your child should go to an independent or non-maintained school. The law and procedure relating to placement choices and admissions is beyond the scope of this guide; for further information see the Resources section on page 23.

Q.9. What should I look out for?

Your LA has no legal duty to ensure the provision set out in Part 6 of your child's statement is made; you should therefore try and ensure that all therapy provision is included in Part 3 (which

sets out the special educational provision the LA considers necessary to meet your child's SEN).

Even though some therapies such as speech and language therapy or physiotherapy may be provided by the health service for example, rather than the LA, the LA is under a duty to arrange for the special educational provision set out in Part 3 of the Statement, such as therapy provision, one on one support or specialist equipment to be made.

It is important that the provision set out in Part 3 (SEN provision) is specific and quantifiable so that there is no room for argument about what has been agreed.

Part 3 should set out the amount of support required (i.e. how many hours), on what basis (i.e. weekly or daily) and by whom (i.e. an appropriate professional).

You may request meetings with your LA (subject to certain timescales), in relation to your choice of school and any concerns you may have about the proposed Statement.

When your LA sends you a copy of the final Statement it must also inform you in writing of your right to appeal to the Tribunal and the time limits for doing so (see the Complaints section on page 19 below).

This is a summary of the statutory assessment and statementing procedure. Further information can be found from the organisations and publications listed in the Resources section on page 23).

Q.10. My child is not yet 2 but I think they have special educational needs. What can I do?

You can ask your LA to carry out a statutory assessment of your child's SEN and the authority MUST carry out an assessment if they believe your child has SEN for which they must determine special educational provision. It may

be that the LA has raised concerns about your child's SEN and in these circumstances it can carry out a statutory assessment provided you consent to this. In either case, an assessment does not need to follow the statutory procedures described above (i.e. the procedures that apply to children aged 2 and over). It is rare for children aged under 2 to have a Statement and there are no legal procedures covering this, although there is statutory guidance setting out what these statements should address (see the SEN Code of Practice in the Resources section on page 24). For children over 2, the procedures are the same as for children of school age.

Q. 11. How long will my child's Statement stay in force?

A Statement may last until a child leaves school (the end of the academic year in which the child turns 19 – see SEN Code of Practice 9.61) but the Statement must be reviewed at least once a year (other than statements for children under 2) which could result in a decision to cease to maintain it.

Your LA must ensure the first review is carried out within 12 months of a Statement being made (the original Statement or a new Statement following a reassessment of your child's needs) and subsequent reviews carried out within 12 months of the previous review.

With some exceptions, in school phase transfer years (such as from primary to secondary school), a Statement must be amended to name the new school by 15 February in the year of transfer; see Q.31 for details of what you can do if you are unhappy with an amended statement.

For more information about reassessments and the phase transfer process, see the Resources section on page 23.

Q. 12. What will happen at the Annual Review meeting of my child's Special Educational Needs statement?

The purpose of the review meeting is to monitor and evaluate the appropriateness and effectiveness of the services and support being provided to meet your child's special educational needs.

In advance of the review meeting, your child's Head Teacher will seek written advice from you, anyone specified by your LA, and anyone else the Head Teacher considers relevant. The Head Teacher will invite you and the other people consulted, together with a representative from the LA and a relevant teacher to the review meeting.

If your child is educated otherwise than at school, the LA convenes the annual review meeting which should be held in the most appropriate location, such as your home or the LA offices.

At the Annual Review meeting, your child's progress and the provisions in their statement will be looked at and recommendations may be made. Any differences of opinion should be recorded.

The Head Teacher must prepare and send a report to the LA (and everyone else involved in the review including you), no later than 10 days after the Annual Review meeting or the end of that school term, whichever is the earlier.

The report should include recommendations as to whether or not the Statement should be amended or maintained.

The LA must then review the Statement in light of the Head Teacher's report and other relevant information and decide whether to accept the Head Teacher's recommendations and what action to take in relation to your child's Statement (for example to amend it or to cease to maintain it).

Within a week of making this decision, the LA must send a copy of its decision to you, the Head Teacher and anyone else it considers appropriate. (See the Complaints section on page 19 for what you can do if you are unhappy with the outcome.)

For further information about the Annual Review procedure please see the Resources section on page 23.

Q. 13. I have heard that the Year 9 Annual Review is important – why?

This Annual Review is very important as it marks the start of the planning needed to ensure that your child receives appropriate support as they become a young adult, which will mean moving from services that provide for children and families to those that focus on the needs of adults. This is known as 'transition planning'. As well as reviewing your child's Statement, a Transition Plan must be drawn up with the involvement of a specialist careers officer and reviewed at any subsequent annual reviews until your child leaves school. The Transition Plan is built on information from a wide range of relevant sources and plans for your child's transition to adult life. When it is first drawn up the Transition Plan should address ongoing school provision as well as plans for post-school arrangements.

Q. 14. What happens when my child is about to leave school?

Your child may leave school at the end of Year 11 or Year 13 and occasionally in Year 12. In your child's last year of school, if your child has a Statement, and the Welsh Government expects your child to leave school to go into post-16 education (for example at a sixth form college, mainstream Further Education college or independent specialist college), or training (for example an apprenticeship) or higher education, it must arrange for a Learning and Skills Plan

(LSP) assessment (see below) of your child to be carried out.

You may also hear of an LSP being referred to by the more technical names of Section 140 assessment or Section 140 report and possibly even a Moving On report.

If your child attends a residential school, the Welsh Government will arrange for the LSP to be carried out with support from the 'hosting authority' (i.e. the LA in which your child's school is located).

Q. 15. What is a Learning and Skills Plan (LSP)?

An LSP is an assessment of a young person's training, education and other needs in relation to their post-16 education, training or higher education. The Welsh Government must arrange for an LSP in the last year of school for all young people who have a Statement and who are expected to go into post-16 education, training or higher education. They also have a power to arrange an LSP in relation to young people without Statements but who appear to have learning difficulties and are receiving or are likely to receive post-16 education.

At the moment, Careers Wales carry out LSPs on behalf of the Welsh Government.

If your child has a Statement, the LSP should be linked to their final Annual Review and their Transition Plan (see Q. 13) so that a holistic approach continues. Your child's Careers Wales SEN Advisor, who will carry out the LSP, should attend the final Annual Review.

The purpose of an LSP is to identify the young person's training, education and other needs in relation to their post-16 education, training or higher education and decide on how those needs will be met. The results should be recorded in a written report.

Building on existing Transition Plans, the LSP should ensure that relevant links are in place across all relevant services such as travel, health,

medical and social care and are reviewed regularly.

LSPs are important, not only because they identify a young person's continuing educational needs but they can unlock funding – including funding for specialist residential placements (see below).

If your child has been being educated at home, the post 16 education or training does not cover on-going education at home.

Q. I 6. What should a Learning and Skills Plan (LSP) cover?

The LSP should identify:

- the young person's educational and training needs; and
- the provision required to meet those needs.

Although there is no set format for an LSP the Welsh Government have consulted with Careers Wales to devise a template or model report.

The Welsh Government stresses that an LSP must be based on accurate and up-to-date information (no more than one year old) provided by Careers Wales, its partners and other providers.

In most instances it will take the form of a short report, which:

- draws on information gathered during the Transition Process to summarise individual education and training needs;
- identifies a programme of study and its duration, along with the additional required support where it is needed;
- identifies a local college or training provider which has confirmed that the programme and support is available;
- identifies the learner's desired outcomes, such as employment, higher education, or semi-independent/independent living and

how the identified provision, including the programme of study, will equip the learner to achieve these outcomes.

However, much more detail will be required where:

- the young person's needs are high and/or complex;
- several agencies are involved; and/or specialist provision either in a mainstream or an independent specialist college is likely to be needed (see below).

The Welsh Government also stresses that the Careers Wales SEN Advisor must make every reasonable effort to ensure that the young person and their family have all the information necessary to engage with the transition process and the production of the LSP.

LSPs and residential specialist colleges

If your child's LSP has identified that their needs cannot be met in a local college, your child may receive funding from the Welsh Government to attend a residential college which specialises in educating disabled students. If your child has significant care needs it is highly likely that the Welsh Government will ask your social services department to contribute to the funding. Consequently, if it is likely that you will be making a request for a specialist residential college placement it is important that you bring it to the attention of your social services department as early as possible in the process.

More information about applications to independent specialist colleges can be found in the Mencap Toolkit in the Resources section on page 24.

What the Equality Act 2010 ('the EA') means for school pupils

Q.17. What protection does the EA offer my child?

The Equality Act 2010 offers protection from discrimination and harassment to people based on a 'protected characteristic'. Victimisation is also unlawful. The protected characteristics that apply (with varying degrees of protection) in a schools context are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

This guide focuses on the protected characteristic of [disability](#).

Pupils, prospective pupils and in some cases former pupils all have protection.

The Equality and Human Rights Commission has issued a range of guidance on the Equality Act (see Resources section on page 23).

Q.18. Does this protection apply to all aspects of school life?

Effectively yes although exceptions apply. It is unlawful for a school to discriminate against or harass (subject to some exceptions) a prospective pupil or existing pupil on the basis of a protected characteristic in relation to:

- Admissions
- The provision of education and access to any benefit, facility or service (such as school facilities, school trips and sports activities)
- Exclusions

Q.19. Does this protection apply to any school?

Yes. All schools are subject to the duties regardless of whether they are in the state or private sector.

Nursery schools maintained by a LA and nursery education provided within a school are under the same duties as schools. Other early years education providers such as private nurseries are covered by another part of the Equality Act 2010.

Local Authorities also have duties under both the education and other provisions of the Equality Act 2010.

Bodies which award academic school qualifications (such as the GCSE examination boards) also have duties under the education provisions of the Equality Act 2010.

Q.20. What are the different forms of discrimination?

Direct discrimination

Treating a person less favourably than you treat or would treat others because of a protected characteristic—for example not allowing a pupil with a speech impairment to join the school debating team. Direct discrimination cannot be justified in a schools context. It is always lawful to treat a disabled person more favourably than a non-disabled person because of their disability. Direct discrimination by association (see Q.25) and by perception are also unlawful.

Indirect discrimination

applying a provision, practice or criteria in the same way for all people but which has the effect of putting people who share a protected characteristic at a particular disadvantage compared with people who do not have that characteristic, unless it can be shown that it is a

'proportionate means of achieving a legitimate aim'. For example: a school has a policy of limiting tours of its site for prospective parents to 30 minutes. The school realises that this policy puts disabled prospective parents and pupils with mobility impairments at a particular disadvantage. It decides the policy cannot be justified and amends it so as to avoid directly discriminating against this group.

Pregnancy and maternity discrimination

Treating a girl/woman unfavourably because she is or has been pregnant, has given birth within the last 26 weeks or is breastfeeding a baby who is 26 weeks old or under.

Discrimination arising from disability (for disabled people only)

Treating a disabled person unfavourably because of something arising in consequence of their disability unless it can be shown that the treatment is a proportionate means of achieving a legitimate aim. If the school has failed to make an appropriate reasonable adjustment it will be very difficult for them to prove the treatment was justified. If the school did not know and could not reasonably have been expected to know that the person was disabled the unfavourable treatment will not amount to discrimination arising from disability. For example, a pupil with Tourette's syndrome is not allowed to go on any school trips because the school is concerned that their reputation will be damaged by his swearing (which is an involuntary consequence of his disability).

A failure to make reasonable adjustments (for disabled people only)

See below.

Q.21. How does the reasonable adjustments (RA) duty apply to schools?

The RA duty is anticipatory and continuing and requires schools to take reasonable steps to:

- avoid substantial disadvantage where a practice, provision or criterion puts disabled people at a substantial disadvantage (Note: 'Substantial' means more than minor or trivial).

Example:

a school gives detention to children who are regularly late to their lessons. It adapts this policy in relation to one of its pupils who has hemiplegia and who is often late to lessons because he needs to take rest breaks on his way around the school.

- provide an auxiliary aid (such as electronic or manual note taking equipment) or service where failure to do so would put a person at a substantial disadvantage. This duty came into force on 1 September 2012. Whether it is reasonable for a school to provide an auxiliary aid or service will depend on a number of factors including whether or not these have been provided through the SEN route. The Equality and Human Rights Commission have issued guidance explaining the impact of the new duty (see Resources section on page 23).

If the provision, practice or criteria or the need for an auxiliary aid relates to the provision of information, the duty includes ensuring that the information is provided in an accessible format.

Q.22. Can the school charge us for the cost of making a reasonable adjustment?

No – a disabled pupil cannot be charged for the cost of making a reasonable adjustment; the question to consider is whether the adjustment is reasonable.

Q.23. What about a school's duties in respect of physical access to school buildings?

Schools in Wales have a duty to prepare Accessibility Plans setting out how they will:

- improve the physical environment;
- increase the accessibility of the school curriculum for disabled pupils; and
- improve the provision of information to them.

Schools must consider the need to allocate adequate resources to these plans.

LAs have to prepare Accessibility Strategies covering the same areas in relation to the schools they are responsible for.

Both the Accessibility Plans and the Accessibility Strategies must be implemented after considering pupils' disabilities and the preferences of them and their parents.

They must also be reviewed regularly. You can ask to see a copy of these documents.

Q.24. Is the public sector equality duty relevant to my school?

All LA maintained schools in Wales are subject to the public sector equality duty. This duty covers all the protected characteristics which apply to schools and consists of a general duty and a number of specific duties.

The general duty has three aims. It requires schools in carrying out their functions to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not;

- publish annual equality reports covering specific information about the school's progress in complying with the public sector equality duty.

Q.25. Am I protected from discrimination because of my relationship with my disabled child?

You are protected from direct discrimination and harassment if you are treated less favourably because of your association with your disabled child by, for example, your child's education provider, a service provider or your employer.

Moving on from school

When your child leaves school, be this at the end of Year 11 or 13, or even Year 12, they may choose to continue their education elsewhere. This may be further education (such as in a sixth form college, general further education college or independent residential specialist college), higher education or an Apprenticeship.

When your child leaves school and moves into further or higher education their Statement will cease. There are various general forms of funding as well as funding specifically for students with learning difficulties and disabilities.

Q.26. What financial support is available in a further education setting?

Education Maintenance Allowance (Wales)

The Education Maintenance Allowance is still in existence in Wales. It provides financial support to 16-18 year olds whose household income is below a certain amount and who are studying at a participating school or college on an eligible course which is:

- an academic or vocational course up to and including Level 3; and
- full-time at school; or
- a minimum of 12 guided hours at college;
- courses must last at least 10 weeks.

The types of courses that can be studied include:

- GCSE's
- 'A' or 'AS' levels
- BTEC, GNVQ, NVQ courses
- Basic Skills courses

Support for young people with learning difficulties and disabilities

Additional Learning Support funding currently comes from the department of the Minister for

Education and Skills which is part of the Welsh Government although this may change in the future as a result of the SEN reforms.

Private colleges do not receive such funding but have a duty to make reasonable adjustments under the Equality Act 2010 (see below).

The types of Additional Learning Support provided in general Further Education colleges are:

- specialist teaching for students with specific learning difficulties such as dyslexia;
- sign language interpreters and materials in accessible formats;
- specialist equipment (this will remain the property of the college; charities may provide grants for students to purchase their own items).

If your child's LSP has identified that their needs cannot be met in a local college, they may receive funding to attend a residential specialist college which are for disabled students only. If your child has significant care needs, social services may contribute towards the cost of the placement.

For more information about these and other sources of Further Education funding, see the Resources section on page 24.

Q.27. What financial support is available in a higher education setting?

There is a wide variety of financial support available to higher education students including: student grants, student loans, bursaries, scholarships and awards and access to learning funds.

In addition, there are funds which disabled students may be able to access, depending on their programme of study, to assist with the additional study costs they incur as a result of their disability. These funds are known as the

Disabled Students Allowances (DSA). You may have heard that the Welsh Government was considering making significant changes to DSA funding from September 2016. However, the Minister for Education and Skills has announced that the Welsh Government will instead carry out a consultation with the intention of introducing changes from September 2017.

The allowances can help with purchasing specialist equipment, paying for support workers and other disability-related study items such as extra books, photocopying and batteries.

Application forms are available from Student Finance Wales or from the Open University for their students. Students who are eligible for the DSA or equivalent may be able to claim the travel allowance component. This is designed to help with any extra travel costs your child has to pay to attend their Higher Education course, for example if your child needs to take a taxi because their disability prevents them from taking public transport. The travel allowance does not cover every day travel costs which a student would be expected to pay. The amount payable will be determined by the DSA needs assessment and is not income related.

For further information about higher education funding, see the Resources section on page 24.

Q.28. What does the Apprenticeship route entail?

Apprenticeships are open to all people aged 16 and over who are not in full time education: there is no upper age limit. There are three different levels of apprenticeship:

- Foundation Apprenticeships
- Apprenticeships
- Higher Apprenticeships

There are three different types because different jobs need different levels of qualifications, some higher than others.

An apprenticeship provides essential job-specific

skills, knowledge and a professional work-based qualification which will be at least Level 2 on the Qualification and Credit Framework (QCF).

Applications for apprenticeships are made through Careers Wales.

Q.29. What does the Equality Act 2010 mean for further and higher education students?

The Equality Act 2010 offers protection from discrimination and harassment based on a protected characteristic. Victimisation is also unlawful. In addition to the protected characteristics set out above in relation to schools (Q.17) age is an additional protected characteristic for the further and higher education sector. It is unlawful (with some exceptions) for a further or higher education institution to discriminate against an applicant or student in relation to:

- admissions
- the provision of education
- access to any benefit, facility or service
- exclusions

In addition, disabled people who are not students but are applicants for a qualification which an FE or HE institution confers are also protected.

In relation to the reasonable adjustments duty, unlike schools, further and higher education providers have an additional duty to make reasonable adjustments to the physical features of premises where these place disabled students at a substantial disadvantage, compared to non-disabled students.

In relation to the public sector equality duty, many further or higher education institutions are either public authorities or bodies carrying out a public function and are therefore subject to the general public sector equality duty; some are also subject to the specific duties. For more information see the Special Educational Needs/Disability discrimination section on page 24.

Apprentices are protected from discrimination from their employers under the work provisions of the Act; they will also have protection from their training provider under either the education or services provisions of the Act, depending on the type of training provider.

There are separate provisions under the education provisions of the Equality Act 2010 in relation to local authority secured further or higher education and provision of recreational and training facilities and to the provision of further education courses by maintained schools.

Trade organisations and qualifications bodies (which grant professional or trade qualifications such as City and Guilds) have duties under the work provisions of the Equality Act 2010.

Complaints and claims about support in schools

Q.30. What should I do if I am unhappy with aspects of my child's education provision?

You should consider seeking legal advice as a matter of urgency as there are tight time limits involved in all routes of redress. Schools and LAs will have internal complaints procedures and you can of course continue to negotiate with your education provider or LA even after a claim or legal proceedings have been started or a complaint has been made.

Q.31. What if I have concerns about my child's Special Educational Needs support?

Your local parent partnership service will be able to provide free information and support to help you approach your child's school and/or LA with any concerns you may have about your child's schooling. Your LA and child's school will be able to give you their contact details (also see Q.4).

In addition, your LA must make arrangements for independent disagreement resolution services to provide formal mediation between parents and the LA, or the school, with anything to do with the SEN provision for a child. Your LA will have arranged for this free service to be available either through your parent partnership service or another provider. Again, your LA and child's school will be able to give you their contact details.

Some parent support organisations (such as the National Autistic Society, the Down's Syndrome Association and Shine) can also offer information and support regarding SEN issues.

Depending on the nature of your concern, there are a number of additional or alternative ways you can try to resolve it:

SEN Appeals to the Special Educational Needs Tribunal for Wales (SENTW)

You can appeal to the SENTW within 2 months of the date of your LA's final decision letter about the LA:

- refusing to carry out a statutory assessment of your child's SEN following a request by you or your child's school;
- refusing to make a statement, following a statutory assessment;
- refusing to reassess your child's needs (provided it has not carried out a new assessment for at least 6 months) following a request by you or your child's school;
- deciding to refuse to maintain your child's Statement;
- deciding not to change the Statement following a reassessment of your child's needs;
- making either a new statement or issuing an amended statement, where you disagree with parts 2, 3 and/or 4 of the Statement.

From January 2015 children and young people have also had the right to make a SEN appeal.

These new rights are not limited by your child's age or competence, but an appeal can be brought on your child's behalf by an adult known as a case friend if, for example, your child does not feel confident enough to actually make the appeal or take part in the process. Also, SENTW may decide that your child does not have sufficient understanding to take part without a case friend, in which case they may choose one.

Children and young people with SEN have the right to appeal to the SENTW themselves in the following situations:

- their LA's decision not to:
 - ◆ o make a statement;
 - ◆ o carry out a review of educational needs;
 - ◆ o assess educational needs at the request of the child's parent;
 - ◆ o change the school named in the statement.
- their LA's decision to cease to maintain a statement
- the contents of a statement

Additional enforcement options

There are additional enforcement options which may be applicable depending on the issue, including a High Court action known as Judicial Review (which may be pursued, for example, if there is a failure to make the provision specified in Part 3 of a statement), or complaints to the Welsh Government or Public Services Ombudsman for Wales.

See the Resources section on page 23 for more information.

Disability Discrimination school claims (not claims relating to Further Education courses in maintained schools-see Q.29)

All claims concerning disability discrimination in schools are heard by SENTW (with some exceptions relating to admissions and permanent exclusions – see below) and must be made within 6 months of the incident.

Disability discrimination claims concerning admissions to maintained schools are heard by admission appeal panels and must be made within the time limits set out in the relevant regulations.

Disability discrimination claims relating to permanent exclusions from maintained schools and pupil referral units are heard by exclusion appeal panels and must be made within the time limits set out in the relevant regulations.

The law relating to admissions and exclusions is outside the scope of this guide. For more information about the scope, time limits and procedure for disability discrimination claims to SENTW, please see the guidance on SENTW's website (also listed in the Resources section on page 24).

Discrimination claims in relation to other protected characteristics (for example, race or sex) are made to the County Court.

Claims in relation to the general public sector equality duty are brought by way of Judicial Review in the High Court. These can be brought by individuals, interested parties and/or the Equality and Human Rights Commission. The Commission can bring enforcement action in relation to the specific duties.

Glossary

Case friend:

An adult who advocates on a child's behalf to make a SEN appeal or a disability discrimination claim against a school to the Special Educational Needs Tribunal for Wales (SENTW).

Compulsory school age:

Currently from the start of term following a child's 5th birthday to the last Friday in June in the academic year in which the child turns 16.

Disability:

A person is disabled under the Equality Act 2010 if they have a physical or mental impairment which has a substantial long term adverse effect on their ability to carry out normal day to day activities. A mental impairment does not have to be clinically 'well recognised' for it to be a disability under the Act. Unlike under the Disability Discrimination Act 1995 (DDA), there is no longer a list of capacities (such as speech, hearing or eyesight, memory or ability to concentrate, learn or understand, or perception of the risk of physical danger) at least one of which a person had to show under the DDA were affected in order to prove that their ability to carry out normal day-to-day activities was affected by their impairment.

Early Years Setting:

Education providers covering ages 3-5 who are in receipt of government funding are covered by the SEN Framework. However only nursery schools maintained by a Local Authority and nurseries within a school (be it maintained or private) are covered by the schools duties under the Equality Act 2010; private nursery providers are covered by the duties on service providers under Part 3 of the Act.

Harassment under the Equality Act 2010 in a schools context:

The Act prohibits three different types of harassment:

- a) harassment related to a 'relevant protected characteristic' (only disability, race and sex for the schools provisions of the Act; harassment related to pregnancy and maternity would amount to harassment related to sex while harassment related to the other characteristics protected by the schools provisions and not expressly covered here may amount to direct discrimination)
- b) sexual harassment, and
- c) less favourable treatment because of a submission to or a rejection of sexual harassment or harassment related to sex.

Clearly in relation to sexual harassment of a pupil, there is other relevant legislation including that which covers criminal behaviour.

Individual Education Plan:

A planning, teaching and reviewing guide for all teaching staff which records key short-term targets and strategies for the pupil which are either different from or additional to those used with their peer group.

Learning difficulty (in the context of a Learning and Support Plan assessment):

A young person will have a learning difficulty if they:

- a) have a significantly greater difficulty in learning than the majority of persons of their age; or
- b) they have a disability which either prevents or hinders them from making use of facilities of a kind generally providing post-16 education or training.

Learning difficulty (in the context of SEN): A child has a learning difficulty if they:

- a) have a significantly greater difficulty in learning than the majority of children of the same age; or
- b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the LA
- c) are under compulsory school age and fall within the definition at (a) or (b) above or would do so if special educational provision were not made for them.

Simply speaking a different language at home does not mean a child has a learning difficulty.

Non-statutory guidance:

Practical guidance aimed at helping people understand their rights and obligations under the relevant Act but it has no legal standing.

Special Educational Needs Tribunal for Wales (SENTW):

A specialist tribunal which hears SEN appeals and disability discrimination claims from parents and children/young people. It is financed by the Welsh Government and is independent of local authorities and schools.

Special educational provision:

- For children aged 2 and over, educational provision which is additional to or otherwise different from, the educational provision made generally for children of their age in schools maintained by the Local Authority, other than special schools, in the area.
- For children under 2, educational provision of any kind.

Statutory guidance:

Guidance that has been approved by the Secretary of State/Welsh Government and laid before Parliament/the Assembly. It is not an authoritative statement of the law. However, it can be used as evidence in court or tribunal proceedings and the court/tribunal must take into account any part of the guidance it considers relevant when determining the questions arising.

Victimisation under the Equality Act 2010 in a schools context:

If a school subjects a pupil or an applicant to a detriment because the pupil or applicant has carried out or the school believes they have or may carry out a 'protected act' this amounts to victimisation of the pupil or applicant. It is also victimisation for a school to subject a parent, or other member of the public to a detriment because they have carried out or may carry out a 'protected act'.

A 'protected act' is:

- bringing proceedings under the Equality Act 2010
- giving evidence or information in connection with proceedings brought under the Act
- doing anything else for the purposes of or in connection with the Act
- making an express or implicit allegation that another person has done something in breach of the Act (whether or not the allegation is later dropped).

If a school subjects a pupil to a detriment because their parent or sibling has carried out a 'protected act' this will also amount to victimisation of the pupil.

Resources

Useful organisations

(Please note that Cerebra does not endorse any particular organisation).

Careers Wales

Provides free, bilingual, careers information, advice and guidance for individuals of all ages.

<http://www.careerswales.com/en/>

Children in Wales

Children in Wales is the national umbrella body for organisations and individuals who work with children, young people and their families in Wales. It is a membership body, and its members are drawn from the voluntary, statutory and professional sectors. They work together to try to influence government policy on disabled children and their families in Wales.

<http://www.childreninwales.org.uk/aboutus/>

Council for Disabled Children

CDC aims to make a difference to the lives of disabled children and children with special educational needs by influencing Government policy, working with local agencies to translate policy into practice and producing guidance on issues affecting the lives of disabled children. Although England-centred they do have links with Welsh organisations.

<http://www.councilfordisabledchildren.org.uk/who-we-are>

Disability Rights UK

Further and Higher education information leaflets available to download for free.

<http://www.disabilityrightsuk.org/>

Education Law Association

This association for educationalists, lawyers and advice workers concerned with the law of education seeks to support the advancement of education for the public benefit from pre-school through primary, secondary, further, higher and adult education. It provides training and advice and assistance in matters relating to education law.

<http://www.educationlawassociation.org.uk/>

Equality Challenge Unit

The ECU works to further and support equality and diversity for staff and students in higher education across all four nations of the UK, and in further education in Scotland.

<http://www.ecu.ac.uk/>

Equality and Human Rights Commission

The EHRC's role is to promote and monitor human rights; and to protect, enforce and promote equality across the nine "protected" grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

<http://www.equalityhumanrights.com/>

Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales has legal powers to look into complaints about public services in Wales and can also look into complaints that Local Authority members have broken the authority's code of conduct. The service provided is impartial and free of charge.

<http://www.ombudsman-wales.org.uk/>

SNAP Cymru

SNAP Cymru is the leading parent partnership service in Wales and provides free, independent and accurate information on educational issues to parents of children and young people with SEN and/or disabilities.

<http://www.snapcymru.org/>

NB: SNAP Cymru does not provide the parent partnership services to the following Local Authorities:

Wrexham

Wrexham Citizens Advice Bureau

35 Grosvenor Road

Wrexham

LL11 1BT

Tel: 01978 364639

Flintshire

<http://flintshirecab.org.uk/about-us/projects/parent-partnership-service>

Tel: 01352 706840

Pembrokeshire

<https://www.pembrokeshire.gov.uk/content.asp?nav=647,691,2416>

Tel: 01437 776354

Further information and guidance

(As these resources are updated on a regular basis, check the websites for updated versions).

Independent specialist colleges

Mencap Wales

Guidance on how to apply for a post-16 place in independent specialist colleges: also contains a link to information from the Welsh Government.

<https://www.mencap.org.uk/advice-and-support/children-and-young-people/education-support/further-education>

Natspec

This is the site of the Association of National Specialist Colleges and contains information

about the various independent specialist colleges which exist for parents and young people, including a college directory and a college finder.

<http://www.natspec.org.uk/>

Financial support

Students planning on attending a further education college can apply for an Education Maintenance Allowance from Student Finance Wales using the following link:

<http://www.studentfinancewales.co.uk/fe/information-for-parents/education-maintenance-allowance.aspx#.VzG2s8Lmo2w>

Students attending a university can apply for a Disabled Students' Allowance from Student Finance Wales using the following link:

<http://www.studentfinancewales.co.uk/>

Special Educational Needs / Disability discrimination

Auxiliary Aids Technical Guidance:

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/education-providers/schools-guidance/key-concepts/reasonable-adjustments>

Guidance on the Equality Act 2010 for schools:

<https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-you-education-provider-schools>

Special Educational Needs Code of Practice for Wales – available to download from:

<http://edyourself.org/SENcodepracticewales.pdf>

Special Educational Needs Tribunal for Wales (SENTW) – Special Educational Needs – how to make a SEN appeal – parents. The relevant forms and guidance can be found here:

<http://sentw.gov.wales/sentw-guidance-forms/appeals-sentw/?lang=en>

SENTW – Special Educational Needs – how to make a disability discrimination claim – parents. The relevant forms and guidance can be found here:

<http://sentw.gov.wales/sentw-guidance-forms/claims-sentw/?lang=en>

SENTW - Special Educational Needs – how to make a disability discrimination claim – children and young people. The relevant forms and guidance can be found here:

<http://sentw.gov.wales/sentw-guidance-forms/children-young-people/?lang=en>

Technical Guidance on Further and Higher Education – available to download from the EHRC website at:

<http://www.equalityhumanrights.com/publication/equality-act-2010-technical-guidance-further-and-higher-education>

For information on other topics, please refer to the Parent Guides available on Cerebra's website:

www.cerebra.org.uk



Information about the author

Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Luke Clements of Leeds University exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from the education, health and social services.

Information about the reviewer

Michael Imperato qualified as a solicitor in 1990. He is a Partner at Watkins and Gunn solicitors, who are based in South Wales, and he heads the Public/Administrative Law and Education Law Departments. His specialist areas are Public/Administrative Law, Education Law and Personal Injury.

Michael has experience of running complex, high value Personal Injury cases and has been involved in some of the highest profile cases in Wales in recent years in Judicial Review, Education and Personal Injury. In Personal Injury Michael has particular expertise in Foreign Accident, Trade Union related and Sports injury claims. Michael also represents the survivors of child abuse, and has particular expertise in group actions against individual abusers and institutional defendants including local authorities and youth organisations.

Michael is a committee member of the Wales Public Law and Human Rights Association, Law Society Personal Injury Panel, Fellow of the Association of Personal Injury Lawyers, Travel and Tourism Lawyers Association, Education Lawyers Association, Association Child Abuse Lawyers, Vice Chair of the Legal Aid Agency Special Controls Review Panel, Law Society Wales Committee, former President Cardiff & District Law Society.

Michael is also Honorary Legal Adviser to School Transport Charity BUSK, a trustee of Child Brain Injury Charity CEREBRA, a founder of Headway Pembrokeshire, a member of the Headway stakeholders group for Newport, and a School Governor.

The findings of this report are those of the author, not necessarily those of Cerebra.

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Working wonders for children with brain conditions

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