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Please note that throughout this paper **should, will and must** are SNAP Cymru's or other TSANA member thoughts ONLY and are not to be considered as having emanated from Welsh Government

When timescales are set they should be set to the betterment of the families and young people

FROM WELSH GOVERNMENT BRIEFING PAPER

Background Paper for the fifth meeting of the TSANA and Welsh Government Task and Finish Group.

As agreed in the Terms of Reference for the Task and Finish group between the Third Sector Additional Needs Alliance (TSANA) and the Welsh Government the fifth meeting will cover the following topics:

- Disagreement Resolution
- Information and Advice Service (Family Partnership Services)
- Independent advocacy
- Tribunal Appeals

This paper provides a background to the topics to be addressed.

Executive summary

All families and young people possibly needing, having or wanting an IDP must be informed of their right to FPS, DRS and IA

Dispute Resolution is a form of expert mediation

- DRS must be independent – with an independent facilitator and the availability of neutral spaces
- DRS must be appropriately trained and managed, and quality assured by an outside agency
- Families and young people must be proactively advised of this alongside FPS and IA
- DRS should be the usual route to dispute resolution but cannot be forced

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Family partnership is a form of expert advising and supporting families and young people to be empowered to make their own informed decisions. FPS may also offer independent advocacy where appropriate

- FPS must be independent with clear guidance given as to what constitutes independence in the eyes of families and young people
- FPS must be appropriately trained and managed, and quality assured by an outside agency
- FPS must be adequately resourced so that all families that want advice and support can get this to all levels including appeal, ETW and PTR

Independent advocacy is a way of enabling families and young people have expert support to ensure their voices are heard and listened to

- IA must be independent and appropriately trained and managed, and quality assured by an outside agency
- IA must be adequately resourced so that all families that want advocacy can get this to all levels including appeal, ETW and PTR

Other important points

- Early Years must be considered the responsibility of the LA even if, for a time ,mainly resourced by health and social care
- LAs must make all families with children outside education aware of IDP, FPS, DRS, IA and PTR
- All young people outside school or FEI who are NEET with a known ALN/disability must have an IDP considered
- Transient groups, young people outside education and those crossing borders must have their IDP or pathway to IDP lodged electronically with the LA for ease of transfer and meeting needs. A universal format to the IDP would assist these groups
- PTR needs to be carefully planned for and explained
- Links need to be made between the Health and Wellbeing CoP and this one

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PLEASE SEE GLOSSARY OF TERMS FOLLOWING

WG – Welsh Government

DRS – Disagreement Resolution Service (DR - Disagreement Resolution)

LA – Local Authority

ALN – Additional Learning Need (this includes all disabilities which cause or are co-morbid with additional learning needs)

ALP – Additional Learning Provision

TAF – Team Around the Family

ETW – Education Tribunal Wales

Families – all those with caring responsibility which legally enables them to enter into appeal and ETW

Young people - all those aged 0-25

FPS – Family Partnership Service

IFS – Independent Family Supporter

PCP – person Centred Practice

FEI – Further Education Institute

IA – Independent Advocacy

Permanent exclusion – where the YP cannot return to that school

Fixed term exclusion – where the young person is excluded for part or all of a day or days with a date to return to that school

CAMHS – Child and Adolescent Mental Health Service

PTR – Putting Things Right – Appeal process on health issues

TA – Teaching Assistant

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Disagreement Resolution – Welsh Government briefing paper

We want disagreements to be resolved at the most local level possible. Local authorities will be required to make arrangements for avoiding and resolving disagreements between children, young people, parents, and schools, FEIs, local authorities and others. These disagreements might include any function performed under the proposed ALN Act, including additional learning provision. The local authority will need to provide access to help in resolving a disagreement from an independent person. Local authorities will also be required to ensure that children, young people and parents are made aware of these arrangements.

The Code will emphasise that local authorities' first priority should be to avoid disagreements arising by developing ways of ensuring that children, young people and parents are supported to understand and participate in decisions which are taken that affect them, provide appropriate reassurance, and offered opportunities to raise concerns and have their questions answered.

However, where disagreements do arise, arrangements should focus on ensuring that these are resolved at the earliest opportunity and at the most local level possible. The development and implementation of effective disagreement avoidance and resolution arrangements is key to improving the trust that children, young people and parents have in the system and minimising the extent to which they feel the need to appeal against decisions.

1 All LAs must put in place Family Partnership Services which provide solution focussed activities designed to circumvent the need for DRS or appeal, as well as information, advice and support for all Families and Young People in relation to ALN.

1.1 FPS should be promoted but not compulsory and all aspects of the services must be available with or without FPS

1.2 LAs must ensure access to Disagreement Resolution Service (DRS) arrangements that can demonstrate independence and credibility in working towards early and informal dispute resolution. DRS should be offered where FPS and solution focussed activities have not obtained consensus.

- FPS services can be obtained by Families, Young People, education/other providers, TAF and the LA.
- DRS should be offered pro-actively but is not compulsory

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- DRS should not be used to delay access to ETW
- DRS arrangements must include the appointment of persons who are independent of the LA, the parents, and the professionals involved
- Family and Young Person DRS must include access to advocacy that is experienced and knowledgeable of the issues involved and personal support as necessary
- DRS should occur in a timely manner

A young person with a severe hearing or visual impairment, for example, might be supported by an advocate with a knowledge of his/her impairment alongside an Independent Family Supporter (IFS) knowledgeable about educational legislation if the advocate did not have this knowledge. The cost of these to be allocated through the LA. Communication assistance where needed should be available for all parties

A young person with Multi-sensory impairments or cerebral palsy or other disability affecting communication may require a specialist communication support worker to enable them to participate in the process as well as an advocate with knowledge and understanding of the ALN framework.

A young person, able to communicate and comfortable with the process, might receive both (advocacy and FPS) from the same person

2. Provision of flexible services for Families and Young People should have access to an Independent Family Supporter able to assist the family/YP through the whole length of the process if required. This would include practical and emotional support to appeal to all stages including appeal, support to attend ETW and access to Information, Advice and Support following decisions made as required.
3. Where families are in dispute over the issues there must be provision of dual services to support the young person separately from the family. This process would include family mediation through solution focussed activities
4. Families should have access to DRS at any time during the ALN process, including where there is a disagreement about any aspect of their child's Additional Learning Provision. This is additional to the usual routes of discussion at school Head Teacher/ALNCo and appeal to Governor level
 - LAs must ensure appropriate access to DRS to resolve disputes at School/FEI level
 - TSANA believes that low incidence ALN must be held by LA and overseen by specialists in the appropriate field

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A family wishes their child to be assessed for a suspected Additional Learning Need. The school does not see the child's needs as a priority, or A family requests that their child has an IDP and this is refused.

Solution focussed activities facilitated by FPS could help to resolve these issues without the need for appeal to Governing Body or DRS. Where consensus is not reached appeal to governing body must be swift. If no agreement is reached the LA might escalate the issues to a panel meeting or offer access to Disagreement Resolution.

5. All LAs must provide DRS. They should demonstrate independence and credibility in working towards early and informal resolution of disagreements. It is essential that parents are aware of the arrangements and how and when they can access them. LAs must therefore pro-actively inform parents, schools, and others about the arrangements for the service and how they can access it.
 - Families and young people who have a right of appeal to the Education Tribunal continue to be able to exercise that right.
 - LAs must inform families and young people in writing that their legal right to appeal is not affected by entering into DRS. DRS can run alongside the appeals process
 - LAs must work with others to produce accessible documentation

- 6 In delivering an effective disagreement resolution service, and in meeting the following minimum standards, LAs:
 - should take responsibility for the overall standard of the service which should operate to national standards (Specialist Quality Mark/Welsh Advice Givers Quality Standards)
 - should have clear funding and budgeting plans for the service
 - should ensure that the service is neutral and must involve an independent element
 - should ensure that the service, has a development plan which sets out clear targets and is regularly reviewed
 - Such plans should specify arrangements for evaluation and quality assurance against national quality standards
 - must make the arrangements for disagreement resolution and how they will make it known to families and young people, schools, education providers and others they consider appropriate

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- must inform families and young people, about the arrangements for disagreement resolution at the time an assessment for IDP request is made as well as at the time a proposed IDP or amended IDP is issued, and that entering disagreement resolution does not affect their right of appeal to the ETW of the timescale for this process
- should ensure that the independent persons appointed as facilitators have:
 - the appropriate skills, knowledge and expertise in disagreement resolution;
 - an understanding of ALN processes, procedures and legislation;
 - knowledge of ALN and disability
 - have no role in the decisions taken about a particular case, nor any vested interest in the terms of the settlement;
 - are unbiased; maintain confidentiality; carry out the process quickly and to the timetable decided by the parties
 - assess the needs to be met for a neutral independent DR to take place through having received; disability awareness training, training in working with young people/PCP, an awareness of how to access support for communication needs and translation services, as they are required.

And the LA

- should establish protocols and mechanisms for referring families and young to disagreement resolution
- be required to inform families of their rights to access these services and how they do so at the start of the IDP process (and then at key points throughout the process, ie when the IDP is drawn up). Template letters could help to ensure that across Wales, families are given appropriate information.
- should ensure that those providing the service receive appropriate initial and ongoing training and development to enable them to carry out their role effectively (e.g. having disability awareness training)
- should establish a service level agreement for delivering the service which ensures sufficient levels of resources and training, and sets out the appropriate standards expected of, and the responsibilities delegated to, the provider
- should have appropriate arrangements for overseeing, regularly monitoring and reviewing the service, taking account of best practice
- should actively seek feedback from the service to inform and influence decisions on ALN policies, procedures and practices
- should monitor and evaluate the performance of the service
- should actively work with DRS to resolve disputes
- information about these services and rights must be provided in an accessible format to the family and efforts made to ensure that the family have understood the information

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- 7** The aim of DRS is to prevent the development of long-term problems thus reducing, in time, the number of appeals going to ETW. Confidence in disagreement resolution arrangements will be greatest when all concerned consider that the service offered is genuinely independent. Most importantly disagreement resolution should ensure that practical learning solutions – acceptable to all parties – are reached as quickly as possible ensuring the minimum disruption to the learner’s education.

- 8** It is envisaged that a facilitator will bring together all of the parties in a nonthreatening environment, to seek to resolve the disagreement through discussion and negotiation. The facilitator is not there to determine the outcome. Rather all parties need to openly discuss the issues and the full range of options available, and seek to agree how to resolve the disagreement. Disagreement resolution can be entered into at any point, but will be more commonly used when families and young people are dissatisfied with the proposed provision. It is not envisaged that the various parties would require legal representation at this stage; that would be contrary to the spirit of DRS. All participants, including the young person, need to feel confident that their views and concerns will receive equal respect. The purpose of disagreement resolution is not to apportion blame but to achieve a solution to a difference of views in the best interest of the young person.

- 9** It is essential that independent persons appointed to facilitate disagreement resolution have a range of experience, knowledge and qualifications, for instance:
 - training and experience in disagreement resolution
 - counselling and negotiation skills
 - the ability to establish and maintain communications
 - knowledge of ALN legislation and framework, the ALN Code of Practice and other educational issues
 - Ability to work with young people, where appropriate.
 - Knowledge of, or access to knowledge of. the particular disability or need of the young person
 - Knowledge of any systems for booking communication support.
 - The family or young person may have an advocate skilled in particular needs of disabilities where needed and wanted

- 10** It is essential that the professional attending on behalf of the LA/School/FEI/EY has a clear brief of the level of decision making available to them on the day and states clearly which elements, if any, cannot be agreed to without being referred back to the decision makers.

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11 Before the meeting the DR facilitator will discover from each set of participants what the issues to be resolved are.

- The facilitator will further discover what the decision making capacity of the meeting is and the timescales for further layers of decision making should this be required
- Further decision making could be through convening a panel (virtual or other) to happen within a reasonably fast timescale - suggest 5 working days.
- The facilitator will make these timescales clear to the families and young people

- The notification of the panel decision on aspects of the DR unresolved must be communicated to the families and young people within 2 working days of the panel being held.
- Reasons for the decision must be communicated in writing to the families and young people within 1 working week of the panel being held

- There are a number of models that LAs might adopt to include an independent element in their disagreement resolution arrangements, for example the LA Should consider that many organisations have expertise in disagreement resolution and can be a valuable resource in providing trained and experienced independent facilitators. LAs should therefore consider working in partnership with other organisations in making their arrangements for disagreement resolution services such as:
 - using a panel of trained facilitators, affiliated to a recognised body in the field of disagreement resolution. LAs could then buy the services as they were required
 - expanding existing disagreement resolution services that cover a wide range of areas across the work of the authority to include ALN expertise
 - using regional panels funded by a number of neighbouring LAs

The LA:

- should establish a service level agreement for delivering the service which ensures sufficient levels of resources and training, and sets out the

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appropriate standards expected of, and the responsibilities delegated to, the provider

- should have appropriate arrangements for overseeing, regularly monitoring and reviewing the service, taking account of local and national best practice
- should actively seek feedback from the service to inform and influence decisions on ALN policies, procedures and practices
- should monitor and evaluate the performance of the service against nationally agreed criteria (e.g. SQM/WAGs)

12 Roles and responsibilities

Disagreement Resolution – The LA

The LA will provide DRS at any stage of the appeals process

Governor level:

- Where discussions (with the support where requested from FPS) with the school/FEI ALNCo and Head have not resolved issues the governing body could be appealed to on the following points:
 - a decision as to whether a person has additional learning needs;
 - a decision not to request advice from sources such as Educational psychologist, Physiotherapist, Occupational Therapist, CAMHS, Speech and language therapist etc.
 - the description of a person's Additional Learning Needs in an individual development plan but not the description of Additional Health Needs
 - the additional learning provision specified in an individual development plan but not the description of Additional Health Provision
 - a decision to not revise an Individual Development Plan;
 - a decision to cease to maintain an Individual Development Plan;
 - Health needs may be appealed to the Putting Things Right System and the School/FEI has a duty to signpost families and young people to this service and to where they may get support for this process

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The School/FEI should provide other means of addressing disagreements over areas outside of ETW jurisdiction to do with issues such as capacity, quality of service and transport.

While for the majority of families and young people the DRS process will start with the school there are families where the young person is not in school or FEI by reason of age, being NEET or not having a school/FEI place these families and young people will take their request for an IDP and any need for DRS directly to the LA.

LA Level

- a decision as to whether a person has additional learning needs;
- a decision as to whether to request advice from sources such as Educational psychologist, Physiotherapist, Occupational Therapist, CAMHS, Speech and language therapist etc.
- the description of a person's additional learning needs in an individual development plan but not the description of Additional Health Needs
- the additional learning provision specified in an individual development plan but not the description of Additional Health Provision
- the school named in an individual development plan for the purpose of admission or the type of school or institution specified in the plan;
- if no school or institution is named in an individual development plan;
- if a residential placement is named in the plan the accommodation, and other provision
- a decision by the local authority not to take over responsibility for an individual development plan following a request to consider doing so;
- a decision to not revise an individual development plan;
- a decision to cease to maintain an individual development plan;
- Health needs may be appealed to the Putting Things Right System and the LA has a duty to signpost families and young people to this service and to where they may get support for this process

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The LA should provide other means of addressing disagreements over areas outside of ETW jurisdiction to do with issues such as capacity, quality of service and transport.

13 Dispute Resolution – The Provider(s)

- the LA will commission a Dispute Resolution Provider or commission from a list of Providers trained in the areas of the dispute
- LAs may consider regional commissioning
- the provider(s) should offer a confidential bilingual service which is facilitated through an independent person trained in dispute resolution and working to a code of conduct available to all parties
- the provider must hold an appropriate, externally validated quality assurance certificate
- the facilitator should be able to inspire confidence in the Family , Young Person and School/FEI or LA that the process is unbiased and that the person facilitating is not benefitting from the outcome of the process
- the provider must have a written procedure available to all parties
- the provider must have a robust complaints procedure

14. Disagreement resolution - 0-5 years – The LA

- The LA is responsible for ensuring that parents are aware of their child's right to play and learn in the early years and if the child requires additional support to do this then, it is vitally important that the parents knows whose responsibility it is to enable this to happen. If it does not happen then they need to know exactly who they turn to and the processes to follow.
- The very young child may have their additional learning needs identified and met mainly through health and social care provision. However the process for disagreement resolution will not lie entirely with these bodies.
- Families may wish to dispute the education description of needs, or provision to meet needs, of a plan or that no plan has been put in place.
- In particular as the very young child moves towards pre-school playgroup , nursery then school based early years provision the IDP will increasingly take on an educational nature
- FPS support should be made available to avoid the need for DRS as much as possible
- DRS must be made available at all stages of the process should the family and the providers not agree
- Once identified with a disability an IDP should automatically be considered and not after the very young child begins to miss milestones

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15. Disagreement resolution – transient families

- Families may be transient because of lifestyle or because they are Looked After or because of their political status. They may find it harder to obtain an IDP in the first instance because they are not recognised or not identified in a short term placement or because they fail to obtain any school place (This should be covered elsewhere)
- Accelerated access to IDP processes and Dispute Resolution should be made available as appropriate
- Protocols and systems for transferring information quickly and easily across boundaries

16. Disagreement resolution – Young People

- All young people will be informed of FPS, DRS and Independent Advocacy and have access to FPS to explain and support the DRS process if requested
- Young people appealing any stage of the IDP process will have the opportunity for a Case Friend and an Independent Advocate
- Where a case friend is not identified FPS will ensure that this is put in place
- All young people without a school place should be offered FPS and advocacy
- FPS can prepare the YP and Case Friend for DRS and should be made available to them at the earliest stages
- FPS can support the YP and Case Friend to understand the possible outcomes of DRS
- The involvement of FPS can offer informal support to all parties to get the best understanding and resolution of issues before looking at the DRS
- DRS for young people will take place in a neutral location and set up with break out rooms to ensure maximum support for the young person

Information and Advice Service (Family Partnership Services) WG briefing paper

A local authority will be required to provide information and advice about ALN and the new ALN system. Local authorities are currently required to provide information and advice; they do this through Parent Partnership Services.

The information and advice provided will need to be suitable for children, young people and parents. Children and young people should be able to access information and advice separately from their parents/family if desired.

We are keen to ensure that every parent, child and young person receives the information and advice which they need in order to have confidence in the system,

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make informed choices, and provide challenge where this is required. At the moment, this may not always be the case. We want to introduce greater clarity and consistency across Wales in relation to the provision of advice and information.

The information and advice service will support children, young people and parents to participate as fully as possible in the person-centred approach to identifying needs and decisions that are taken in relation to their ALN and the ALP (additional learning provision) that is provided for them

18. Information and Advice Service (Family Partnership Services)

18.1. Family Partnership Services must be put in place with the capacity to support the 24% of Families and young people where young people have additional learning needs, at any one time (Annual census report 2013)

- FPS will offer support to all Families and young people possibly needing, wanting or having an IDP
- FPS should also have in its remit the capacity to support all learners excluded from school/FEI: (<http://gov.wales/docs/statistics/2014/140305-exclusions-schools-2012-13-revised-en.pdf>)
 - Pupils with special educational needs accounted for a little over 60 per cent of all exclusions in Wales
 - in 2012/13. In 2012/13 pupils with school action or school action plus SEN had the highest rate of permanent exclusions (0.6 exclusions per 1,000 pupils).
 - Pupils with a statement of special educational need had the highest rate of fixed-term exclusions of 5 days or fewer (132.6 exclusions per 1,000 pupils)
 - while pupils with no special educational need had the lowest rate (19.0 exclusions per 1,000 pupils).
 - Pupils with a statement of special educational need also had the highest rate of fixed-term exclusions of 6 days or more (11.2 exclusions per 1,000 pupils).

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19. Given the above it is essential that FPS has a brief to support all learners who are excluded as there may be additional numbers of learners in the excluded group who upon further investigation may need to apply for an IDP

19.1. Young people requiring an IDP with no school place should have their needs assessed and the provision to meet needs directed by the LA. The families and young people should have access to FPS.

20. Roles and responsibilities

21. Family Partnership – the LA

- The LA will provide accurate neutral information about the processes and services available and the timescales within which the process will happen
- This information in accessible formats will be available to all families and young people
- The LA will make clear the additional information that is available to families and young people if they request it
- The LA will, on request, provide families and Young People with further information about out of county and independent provision
- The LA will provide families and Young People with details of funding given to individual maintained schools in the authority for meeting additional learning needs and the type of expectations placed on schools to provide services
- TSANA believes that the LA should retain funding and responsibility for low incidence needs
- The LA will make clear retained funding to cover age related, exceptional or low incidence needs
- The LA will advise families on the above
- The LA will advise families on the availability of FPS, the remit of FPS and how to contact them
- The LA will take account of the views of families and young people when commissioning services

22. Family Partnership the FPS

- The FPS will provide a confidential, independent, neutral service enabling families to have confidence in the advice and support provided with information and advice available bilingually to families and young people aged 0-25

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- WG will give clear guidance on how independence is to be evidenced e.g.:
 - Not managed by any service involved in the IDP process
 - Having external quality assurance mechanisms not related to any service within the IDP process where neutrality and accuracy are assessed criteria
 - Not benefitting from any of the advice and support provided
 - Not providing any of the services that occur as a result of ALP

- The FPS will be resourced to offer a service to all families and young people to meet their needs this will take account of population, rurality and any increased needs that are within the area
- The FPS will maintain a register of services available in each LA and signpost families to appropriate local services
- FPS will provide accurate, neutral, information advice and support to any family or young person, having or wanting an IDP
- FPS will further inform, advise and support any family or young person where their education is at risk and who therefore might need an IDP to address their needs at some point in the future. For example: being LAC; being without a school place; being bullied (recent research indicates the impact of bullying has long term educational, health and wellbeing impacts); being excluded from school; facing a reduced timetable; facing a managed move etc.
- The remit of the FPS will include advising on the rights and responsibilities of all stages, and supporting in all stages from simple information giving through to school/FEI meeting support; appeals to the governors, LA and ETW, and also to the ombudsman or other related complaints procedures, such as Putting Things Right, where these arise. This provides a seamless support service to young people and families enabling them to gain confidence and take control of their circumstances
- The FPS will inform families and young people of their right to independent advocacy and the ways in which this can be obtained in their LA
- The FPS will provide advocacy for young people, on request, separate from other services provided
- The FPS will offer the family or YP additional support to both understand and work with any decisions made during the process
- Young people 16-25 with a gap in their education who refer themselves or are referred by family, carers or other agencies and wish to return to education will be able to request a copy of their last IDP (which will have

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been lodged with the LA on leaving education?). The FPS will support the YP to obtain or re-establish and update the support needed

- The FPS will hold appropriate advice giving standards. Staff (paid and unpaid) will have training in the areas of expertise being provided such as IDP, exclusion, the ETW process or Advocacy; Disability Awareness, working with young people, speech, language and communication needs dealing with difficult emotional situations (i.e. young people could be in a difficult emotional situation if their views contradict that of the staff supporting them daily at school).
- The above are essential and awareness training should be mandatory for FPS staff given relatively high incidence and cross-cutting relevance with a range of needs and disabilities
- The FPS will be available to families during the working week, including early start and late finish support for meetings etc., through a combination of methods which should include telephone, email, and web based support as well as face to face contact.
- The FPS will be funded to ensure it can meet any access requirements of families and young people
- Families and young people will be assured from the outset that the service is independent and able to support challenge where needed
- The FPS will undertake all these activities in partnership with schools, FEI and the LA
- The FPS will seek to resolve issues as they arise and provide support through partnership working with the school, FEI and LA as well as the wider Team Around the Family (TAF) where the family has more complex needs
- The FPS should be involved in supporting the LA to include the views of families and young people in wider planning decisions
- The FPS will maintain confidential records available to the family or young person. These records should be made available for internal monitoring and external audit with permission
- The FPS could be involved in giving an independent input of family and young people views into appeals processes or other decision making areas
- The FPS will provide the LA with a six monthly overview of issues and have regular meetings to discuss trends in needs in the LA
- FPS will support quality assured services through constructive feedback
- The FPS will both offer and attend training with schools FEI and the LA
- The FPS will offer training to families and young people and involve them in planning and decision making

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Independent advocacy WG briefing paper

To help ensure that children and young people are able to fully exercise their right to appeal under this Bill, to engage in disagreement resolution procedures and ensure their voice and opinion is heard, local authorities will be required to provide children or young people (or case friend) with an independent advocacy service. These are services providing advice and assistance to a child, young person or parent who are:

- making, or intending to make, an appeal to the Education Tribunal
- considering whether to appeal to the Education Tribunal, or
- taking part in or intending to take part in dispute resolution arrangements.

The advocacy service must be independent. That means it must be independent of any person who is:

- The subject of an appeal to the Tribunal, or
- Involved in investigating or adjudicating on such an appeal.

23. Independent advocacy

- Advocacy should, where appropriate, first be considered from the pool of professionals currently supporting the families and young people to minimise stress
- Where this is inappropriate, independent advocacy must be available to families and young people appealing any aspects of the IDP process.
- The independent advocate should be given a brief of what type of support is required
- Independent advocacy will entirely support the family or young person and not work to any external agenda or make any report other than the testimony of the family or young person to any other agency
- Independent advocates should have relevant expertise in the issues within the process and the measures available to resolve them and the needs of the families and young people engaging in the process.
- Advocacy must be provided in a way that meets access requirements

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Roles and responsibilities

24. Independent advocacy - The LA

- The LA will maintain agreements with the FPS and other advocacy providers to ensure appropriate advocacy is available
- At the start of the IDP process, families and young people must be made aware that free advocacy is available to them if they wish to use it and they should at that point be given the contact details for advocacy providers
- The LA will have a list of specialist providers available to families or young people who request AP and will inform families and young people of this availability, contact details, what each advocacy provider can offer them and the particular expertise of the provider
- The family and the YP may require separate advocates
- Many children and young people with idiosyncratic communication may only be able to communicate effectively with those family and professionals working closely with them.

This point has been strongly supported by members

- Where there are conflicts of interests or disputes between the child/young person and the person able to communicate with them a longer timescale for an advocate to become involved with the young person will be necessary
- LAs will need to be able to secure the correct mix of appropriate support and advocacy for the child/young person.
- The advocate can be the FPS advisor or an expert IA in a particular area of ALN

25. Independent Advocacy – The Advocacy Provider (AP)

- The AP will be able to provide support to the family and young person to enable them to have their voice heard in the process of:
 - making, or intending to make, an appeal to the Education Tribunal
 - considering whether to appeal to the Education Tribunal, or
 - taking part in or intending to take part in dispute resolution arrangements
 - taking part in or intending to take part in Putting Things Right Processes

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- The AP will hold appropriate standards; externally accredited, and have knowledge and up to date training in education advice giving and have knowledge of the particular needs of the family or YP and Person Centred Participation, Disability Awareness training and speech, language and Communication Needs Awareness Training should be mandatory for advocates given relatively high incidence and cross-cutting relevance with a range of needs and disabilities.
- The AP will be funded to ensure it can meet any access requirements of families and young people
- The AP will maintain confidential records available to the family or young person. These records should be made available for internal monitoring and external audit with permission
- AP will support quality assured services through constructive feedback
- Where the needs of the family or YP are low incidence an advocate with specialist knowledge of the disability and a FPS advisor can work together to offer appropriate support
- The AP will offer the family or YP sufficient time to understand the issues in order to properly explore the views to be advocated
- The AP will offer the family or YP sufficient time to explore and understand decisions made following the outcome of any process to support their engagement
- APs may offer training to professionals, other providers. families and YP

Tribunal Appeals WG briefing paper

The use of Tribunal should be a last resort; it is an expensive and stressful experience for all involved. However, the right of appeal to an independent tribunal whose decisions are binding will ensure the new system for supporting ALN is robust and has the confidence of children, young people and parents. It will also help ensure that the duties in respect of learners with ALN are properly discharged.

If the Tribunal makes an order the governing body or local authority concerned must comply with the order before the end of the prescribed period.

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One of the key aims of our reforms is a set of clear and consistent rights of appeal. The Bill will ensure more equitable rights of appeal by extending this right to children and young people from 0 to 25 for those who attend an FEI. The right of children to take forward an appeal will continue as before.

The proposals will enable a child, young person or parent to appeal against:

- a decision as to whether a person has additional learning needs;
- the description of a person's additional learning needs in an individual development plan;
- the additional learning provision specified in an individual development plan;
- the school named in an individual development plan for the purpose of admission or the type of school or institution specified in the plan;
- if no school or institution is named in an individual development plan;
- a decision by the local authority not to take over responsibility for an individual development plan following a request to consider doing so;
- a decision to not revise an individual development plan;
- a decision to cease to maintain an individual development plan;

The Tribunal will continue to function as before, the constitution and membership of the Tribunal will remain the same.

The Tribunal will be renamed as the Education Tribunal Wales. The new name reflects not only its role in determining appeals in relation to ALN but also the role currently undertaken by SENTW in determining disability discrimination claims relating to schools: a function which the Education Tribunal will continue.

The Bill also allows that a party to any proceedings about ALN before the Education Tribunal may appeal to the Upper Tribunal on any point of law arising from a decision made by the Education Tribunal in those proceedings.

In some circumstances LHBs will have an important part to play in the process of preparing an IDP and delivering the provision set out in it.

The health service already has a clear dispute resolution procedure in place (Putting Things Right) and we do not want to cause confusion or duplication by creating a secondary dispute resolution for LHBs. Putting Things Right is the single process for all NHS concerns, complaints and redress.

The Code will explain how complaints/ disagreements made under the disagreements/ dispute resolution can be streamlined with Putting Things Right.

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26. Tribunal Appeals

When considering an appeal from a parent, the ETW must have regard to any provision of this Code relevant to any question arising on the appeal. The Tribunal does not currently exercise a general oversight of LAs' adherence to the Code's provisions. Its task is to consider whether LAs have reached the right decision in the light of the particular circumstances of each appeal. Nonetheless, the Tribunal will expect all parties, to be able to explain the rationale for any departure from this Code where such a departure was relevant to the decision in question.

Concerns have been raised by members of the TSANA group as to how the following aspects will be dealt with:

- *a decision on the transport/accommodation needs associated with a placement*
- *failure to provide what has been outlined in a plan*
- *Objectives/outcomes*
- *The way in which an IDP assessment was conducted (i.e. disagreement over whether appropriate professionals were involved in the assessment, whether the process was inclusive of the young person).*
- *Will ETW hear Disability Discrimination claims 0-25?*
- *Should the name Employment Tribunal Wales have an addition or a strapline that ensures all know it covers 0-25?*

Will they be included in ETW or will other process be available with the same levels of support to resolve these?

It will be important to state clearly what will happen if a governing body or local authority fails to comply with a tribunal order.

27 Recourse to Tribunal may be stressful for families and young people and time consuming for the LA concerned. To minimise appeals to the Tribunal, LAs should ensure that families and young people have the fullest possible access to information and support to participate through PCP in assessment and contribution to the IDP and subsequent reviews.

28 Stages of informal (DRS/LA Panels) and formal (ETW) appeal

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TSANA has identified a difficulty where an IDP is drawn up specifying access to an agreed amount of LA peripatetic or other service. During the lifetime of the IDP it is either cut or not sufficiently resourced by the LA causing it to disappear or diminish for the young person. The appeal would at that point be directly to the responsible body - the LA. However the LA might suggest that as it has delegated a certain percentage of the budget to the school/FEI it is the schools responsibility to purchase the service. TSANA members have seen this in practice in England and understand the delays and difficulties associated in sourcing support individually for each young person and the consequent difficulty in quality assuring and maintaining such services.

TSANA asks the WG to consider the consequences of such actions and give firm guidance that the responsibility for low incidence needs stays within the remit of LAs or regional consortia of LAs.

Stages

- 1 Appeal to the Governors
- 2 Appeal to the LA
- 3 Appeal to ETW

Some possible scenarios

The school/FEI refuses to put the IDP in place pending the outcome of an assessment or information to be received. The family disagree as they feel the needs are known and the other information will input into any document when it arrives. The family is aware that the waiting list to be assessed is over 12 months. They have spoken to the school/FEI but have not received the outcome they hoped for.

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The school, after discussion with ALNCo and Head teacher, refuses to ask for advice from EP or CAHMS the family or young person appeals this decision to the governing body

The IDP review wants to remove a provision from the IDP and the family/YP believes this is still necessary to maintain progress made

The school/FEI writes an IDP following PCP meetings but one or more recommended interventions, supports or pieces of equipment is not agreed by the providing body.

The IDP recommendations have been sent to the LA as they involve a change of placement the LA does not agree with the placement requested and states a different placement.

Speech and Language therapy is seen as an educational need in the advice presented to the PCP. Provision of this service is left to availability from the health service.

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Stage 1 – the family or young person notifies the Governing Body of this

The governing body investigates

The requested item is put in place or it is not

Stage 2 – if the family or young person is not satisfied with the response from the governing body

The family/YP appeals to the LA

The LA panel either decides the YP should have an IDP or that the decision of the governing body is upheld

Stage 3 – if the family /YP is not satisfied with the response from the LA

The Family/YP appeals to SENTW

29 Notional time frames have been provided in Appendix 2 flow chart

29.1 Stage 1 –

- the school/FEI should respond to the families and young *people*
- the school/FEI should inform the LA of this request and the outcome of their decision
- the families and young people must be given the contact details of a service providing free accurate neutral family support and advice, the DRS process and the availability of IA
- the families and young people should object to this to the school/FEI
- the ALNCo and the Governor with responsibility for ALN should meet with the parents. The School/FEI may have a note taker and the families and young people may have a Family Supporter
- the Governors should provide the family with the notes of meeting with their decision and the reasons for refusal if appropriate

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- if agreement is not reached the family should be offered independently facilitated DR
- the family has a right to request DR and the LA would need to give reasons if this request is refused
- the families and young people have a right to be informed of funding arrangements if these are seen to impact on decisions made
- the school/FEI should inform the family of their right to appeal to the LA
- the LA will work together with providers in the early years to ensure that all families understand their rights to access independent advice and support, Advocacy and DRS
- DR will not prevent the family from taking their appeal to the LA and this must be clearly explained to them

29.2 Stage 2

Families and young people not in the education system need a route to refer directly to the LA such as very young children, transient young people, young people NEET and wishing to return to education.

- the families and young people should make their objection known to the LA
- the families and young people must be given the contact details of services providing free accurate neutral family support and advice, DRS and IA
- the families and young people should have support to draw up the grounds of their appeal
- The LA should convene a panel to assess the appeal. This could form part of any appropriate existing panel structure - and should include:
 - An officer of the LA able to make decisions at this level
 - An Educational Psychologist or ALN Advisor
 - A member of FPS to advise on the voice of the family and young person

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- A head or ALNCo from a similar school/FEI - or
- A suitable person from Early Years, or specialist group
- The panel must be able to evidence that the voice of the family and young person was heard and considered in the process
- The panel must check that the family and young person has had access to FPS, DRS and IA although they may not have taken up these services

One member service suggests that: It is essential that the members of the panel are not and have not been involved with the case that is being discussed.
Other members see this as the role of ETW

- The LA must inform the families and young people of their decision in a timely and accessible manner
- the LA must inform the families and young people of their right to appeal to ETW and the availability of DRS and a Family Partnership Service able to assist them throughout their appeal process up to and including appeal to ETW and their right to independent advocacy
- if agreement is not reached the families and young people should be offered independently facilitated dispute and be further informed that:
 - Attending DR will not affect the ability to appeal to ETW nor affect the timescale
 - Agreements reached will not be binding on either party
- The families and young people have a right to request DR and the LA will need to give reasons if this request is refused
- the families and young people have a right to be informed of funding arrangements if these are considered to impact on decisions made
- families and young people should be informed of their right to expert advocacy and independent support throughout the process
- families and young people should lodge their appeal to ETW and be clearly advised of time constraints set
- the LA must advise families and young people of the local Family Partnership Service and the availability of Independent Dispute Resolution Services and Independent Advocacy

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- the LA should make every effort to resolve the situation including DR and face to face meetings with the family

30 Some scenarios that might need DRS or appeal to ETW if not resolved

A young adult with a FEI held IDP wishes to have a dyslexia assessment. The FEI attended has refused to purchase such an assessment the YA appeals

A young person NEET has approached an FEI to support him/her through an IDP - to attend a course and has been refused.

A parent wishes to have a re-assessment of a non-educational part of the child's needs e.g. physiotherapy. The physiotherapist at the IDP meeting explains that it is not their policy to re-assess children of this age and that she will let the receiving school have a set of activities beneficial to a young person of this age and with these physical difficulties. The parent considers this to be motivated by lack of funding and appeals this decision to PTR. The PTR appeal is not upheld. The parent requests an emergency review of the IDP and requests more hours and specialist training for the TA assigned to carry out the programme

The difficulty could be in getting a fully rounded assessment of the YPs needs as it could lead to a round of appealing each assessment refusal from a number of sources

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The parents of a child with a number of different needs feels their child needs assessment for Specific Learning Difficulties, ADHD, Dyspraxia and social anxiety disorder. The school has not prioritised the child for an educational psychology assessment the parent believes this is because this child is quiet and not too far behind with academic work. One or more of the other disciplines are waiting for this to happen before proceeding. The parent appeals to the school and then the LA to get the EP assessment but one of the other assessments is still on hold and not happening concurrently

There will need to be a clear process for meeting more specialist needs post school

The parents of a school leaver with an IDP naming a maintained special school agree with the PCP that his/her needs can only be met in a specialist FEI placement.

Parents have produced privately funded report(s) from professional(s) to the PCP. The LA or Health Trust professional does not agree with part of the report. It is logged in the IDP as being presented by the parent and not accepted by the relevant local professional(s). The parent appeals.

Parents of a 2 year old child with clear developmental delay but no diagnosis want the child to be placed in a local pre-school playgroup. The group has access to a small amount of time from overarching ALN support but this is not seen to be sufficient by the PCP which recommends to the LA that the child needs full time 1:1 support. The LA refuses asking for further assessments to be undertaken.

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- The timescales of a number of weeks to panel and decision then an appeal to ETW will eat into the early year's experiences of very young children and could have a seriously adverse effect on outcomes.
- Should there be an accelerated Early Years Pathway to decision making?
- Should there be an emergency fund to get children with severe and complex needs into short term placements while decisions are made?
- If so what criteria should be set for access?
- Do we need a revolving door structure for early year's assessment as part of our offer to families?
- EOTAS families and young people – clear guidance needed for them to have equal access to these measures and in particular for young people in custody/young offender units
- Responsibility for ensuring that YP 16+ who are NEET understand their right to ask for an IDP and all the information advice and support
- Do we need a national framework for FPS, IA and DRS so that quality can be assured whoever provides it

*Members have asked for a firmer IDP layout to allow appropriate understanding of the ALN/ALP and placement issues
Please see Appendix 1 for a first draft*

Some members have asked for a flow chart with timescales so this is provided in Appendix 2

Members have asked for a clearer understanding of processes in the Health and Wellbeing guidance and how they relate to this

32 Can children make their own appeal?

13.1 yes - see the **Child's Right to Appeal**

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Roles and responsibilities

33 Tribunal Appeals - the LA

- The LA will support schools and FEI to resolve disputes as soon as possible through
 - Adequate levels of FPS
 - Making DRS available at Early Years, School and FEI stage
 - Making IA available at Early Years, School and FEI stage
 - Arranging appropriate input from specialist agencies including the voluntary sector
 - Ensuring ALNCoS senior managers and governors have training in the processes involved
 - Monitoring time limits for processes including assessments

- The LA will act within prescribed timescales to consider any appeals to either
 - Consider decisions made at school/FEI and governor level or
 - Consider taking responsibility for an IDP or producing an IDP for a child or young person with needs additional to the remit of the school of FEI

34 Putting Things Right (PTR) –

- WG will make clear how this pathway will work to the benefit of families and YP

- The school/FEI/LA will make families with health issues wanted or having an IDP aware of the route for airing concerns and seeking redress at the same time as it advises on FPS, DRS and IA

- The IDP process could be affected by the timescale of PTR or could be affected by a family or YP seeking additional educational support if the LHB fails to agree input

- Access to PTR or reports from health services should not prevent an interim IDP being put in place pending reports and recommendations from these services

- The IDP process must make provision for appropriate support prior to and following the resolution of health issues

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Some members have asked for clarity here – My thinking was that sometimes health will fund equipment for home but not duplicate this if it is needed for school e.g. a stair climbing chair. Sometimes Health will not fund therapy but the LA will assign a TA to be trained in the processes the child needs.

- Accepting an interim IDP pending reports or recommendations from health must not prevent that IDP being appealed when these are available as lack of input from health could cause more demands on education
- The LA will ensure that families and YP have information about the agencies which can support them to take an appeal to the PTR process through:
 - Maintaining a list of providers including the FPS which could offer support in this process
- Having clear processes to support the inclusion of specialist health based equipment and services into the educational aspects of the IDP
 - Sensory needs such as sight, hearing etc.
 - Speech and language needs that are considered to be educational
 - Equipment to meet physical or sensory need essential to the child or YP accessing education

35 The LA will provide a clear pathway for appeals regarding social care services

Appendices

Appendix – additional comments from TSANA group

NDCS Cymru Key recommendations and concerns:

There are many things within the paper where our opinions differ from those outlined, but we have particular difficulties with the following points:

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- The draft version of the IDP does not match up to our recommendations for the IDP within the previous Task and Finish Group paper. We feel that the draft IDP included is not sufficiently robust and would confuse the case that we have already put forward to the Welsh Government.
- The flowchart/description of the DRS process. We feel that we should dispense with the timeframes (i.e. 18 weeks to contribute to an IDP is clearly too long), as even notional timeframes could compromise our negotiating position. In our view it is for the Welsh Government to provide timeframes as a basis for discussion. Aside from the timeframes, we find the flowchart and description of the process confusing, particularly as the headteacher/ALNCO are not included at the first stage and as it remains unclear how the process would operate outside of the school context (i.e. early years where there is no governing body). Perhaps this is a question we need to outrightly throw back to the Welsh Government?
- We find the paper confusing in terms of the relationship between DRS and FPS. We feel they should be regarded as distinct: FPS is support and the DRS is arbitration.
- As far as we are aware, the Welsh Government is still determining what will fall within the jurisdiction of the ETW. Comments on pages 10 and 11 are restrictive and prescriptive, out ruling areas which we feel should be covered by ETW.