

Access to Education

Mencap WISE Student Advice Project

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Introduction

All children learn at different rates and in different ways. However, a child with a learning disability may need additional support in order to be able to achieve their potential. The purpose of this toolkit is to assist people who are acting as learning disability advocates (be that parent, carer, volunteer or professional) by explaining the law relating to special educational needs and providing information about how to access support services.

The way in which support is provided varies depending upon the age of the child. Broadly, the compulsory school age is from age 5 to age 16. The toolkit focuses on children who are under the compulsory school age. The law relating to meeting educational needs where the young person is over the compulsory school age is different, and is dealt with in the separate toolkit on [Applying for specialist further education provision](#).

This toolkit has been prepared as part of the Mencap WISE project, funded by the Welsh Government. Therefore, it focuses on the law and procedure applicable in Wales. The toolkit is divided into the following Parts:

- **Part 1 – The Legal Framework**
- **Part 2 – What to do if your child is having difficulties**
- **Part 3 – The Statutory Assessment Process**
- **Part 4 – Challenging Decisions**
- **Part 5 – Special Educational Needs Tribunal for Wales**

Currently, the law relating to special educational needs is similar in both Wales and England. However, the Welsh Government is in the process of introducing a new system to support children with special educational needs in Wales. The new system will begin to operate from September 2020, and so the toolkit also includes a section explaining the main changes:

- **Part 6 – Future Changes**

The toolkit concludes with an **Additional Resources** section, which contains details of organisations providing relevant information and services. Hyperlinks to key online resources are also provided, and wherever a reference appears underlined in the text there is a hyperlink, which will take you to the relevant external resource.

Part 1 – The Legal Framework

The law relating to special educational needs is complicated. To help you to understand the educational support that your child may be entitled to receive, Part 1 of the toolkit provides an overview of:

- **The law relating to special educational needs in Wales**
- **What is meant by the term special educational needs**
- **The provision of schools and other education for children in Wales**
- **The Graduated Response**



Key Information and Resources: 'Jargon Buster'

Official documents, and professionals working in the education sector, can use a lot of technical terminology, and you might find the National Autistic Society's guide to **Education Jargon in Wales** useful.

The law relating to special educational needs in Wales

The law relating to special educational needs is mainly contained in the **Education Act 1996**, which sets out the obligations that exist to provide support to children with special educational needs.

The Education Act 1996 also states that the government should provide guidance regarding how education providers should meet their obligations to children with special educational needs. In Wales, the guidance is set out in the **Special Educational Needs Code of Practice for Wales**. The Code includes a number of 'fundamental principles' (para. 1:5), which should be followed by education providers:

- a child with special educational needs should have their needs met;

- the special educational needs of children will normally be met in mainstream schools or settings;
- the views of the child should be sought and taken into account;
- parents have a vital role to play in supporting their child's education; and
- children with special educational needs should be offered full access to a broad, balanced and relevant education.

In addition, the **Equality Act 2010** prohibits discrimination in relation to disability. This means that if a child with special educational needs also has a disability, this may place additional obligations upon the education provider/local authority as it is unlawful to discriminate against a disabled child on the basis of their disability (see [Making a claim for disability discrimination](#)).

What is meant by the term special educational needs

The Education Act 1996 defines what 'special educational needs' means. Section 312 of the Act states that a child will have special educational needs if:

- the child has a learning difficulty; and
- as a result of the learning difficulty the child needs special educational provision.

Generally, a child will be assessed as having a *learning difficulty* if they have significantly greater difficulty learning than the majority of children of the same age. This includes children whose disability restricts their ability to use educational facilities. Therefore, the term learning difficulty covers a wide range of different situations, including:

- behavioural difficulties (e.g. struggling to socialise and to make friends);
- difficulties with learning (e.g. finding reading and writing harder due to having dyslexia);
- poor concentration levels (e.g. as a result of ADHD); and
- physical or sensory impairments (e.g. restricted vision or hearing).

The Act also sets out what is meant by *special educational provision*. Where a child is aged 2 years or over, special provision is any educational provision that is

additional to, or different from, the provision generally provided to children of the same age. If the child is less than 2 years old, any educational provision is capable of being special provision.

However, where a child's difficulties are due to being taught in a different language from the language spoken at home, then the child cannot be treated as having a relevant learning difficulty. Similarly, the courts have held that exceptional ability is not a learning difficulty for the purposes of assessing whether a child has special educational needs (in the case of *S v Special Educational Needs Tribunal* [2005] EWHC 196 (Admin)).

The provision of schools and other education for children in Wales

All children have the right to a full-time education, and it is usually the responsibility of a child's parents to ensure that an appropriate education is provided. Under s576 Education Act 1996, the term *parent* includes: a child's birth parent, anyone who has parental responsibility for the child and anyone who is responsible for caring for the child. Therefore, when parent is used in the toolkit it also includes anyone caring for the child.

Children are usually educated at either:

- a maintained school; or
- an independent school; or
- their home.

Generally, a *maintained school* is one that is wholly or substantially financially maintained by a local authority. There are many different types of maintained schools, and the Law Wales website provides an overview of **schools maintained by local authorities**. However, any school that is not an independent school will usually be a maintained school.

An *independent school* is a school that provides full-time education for five or more pupils of compulsory school age, and which is not maintained by the local authority. As it is not maintained by the local authority, an independent school will charge fees. Independent schools must be registered with the Welsh

Government, and it is a criminal offence to operate an independent school without being registered. Whilst independent schools are not governed by much of the general law relating to education, they can be approved as being suitable for children with special educational needs and also have to comply with the requirements of the Equality Act 2010.

It is also possible for a child to be educated at *home*. If a child is home educated, the parents must ensure that efficient full-time education suitable to the child's age, ability and aptitude is provided.

Where a child is assessed as having special educational needs, the parents will be able to express a preference regarding whether the child's needs are met at a maintained school or by other means. If the local authority accepts that the child's needs should be met in an independent school or at home, then the parents will become responsible for ensuring that appropriate support is provided to the child. However, the local authority will still have duty to review the child's situation on an annual basis.

There are two other terms that are often used when discussing education – 'special school' and 'mainstream school'. A *special school* is a school which is exclusively for children with special educational needs. A *mainstream school* is a school maintained by the local authority and which is not a special school. A child with special educational needs should normally be able to attend a mainstream school unless the education of other children would suffer.

You may also see the term 'local education authority' used. Local government in Wales (and England) is carried out by local authorities. Local authorities have legal duties towards both adults and children living in their geographical area, and are divided into a number of different departments, including schools/education. Therefore, a local education authority is simply part of the local authority and the terms are used interchangeably.



Key Terminology: 'Types of schools'

Maintained School - a school wholly or substantially financed by a local authority.

Independent school - a school that is not maintained/financed by a local authority, and which charges fees.

Home tuition - where parents ensure that a child receives efficient full-time education at home.

Special school - a school which is exclusively for children with special educational needs.

Mainstream school - a school maintained by the local authority which is not a special school.

The Graduated Response

Children learn in different ways and can have different kinds of special educational needs. The approach that education providers (both early years providers and schools) should take to meeting a child's needs is known as the graduated response. Effectively, this means that once a child has been identified as having special educational needs, they should be provided with the least interventionist level of support necessary to ensure that they are able to make adequate progress in their education.

The Welsh Government's **Information for Parents and Carers of Children and Young People who may have special educational needs** summarises the stages in the graduated response as being:

Approach	Response to Special Educational Need
Identification	A child's SEN is identified based on their inadequate progress.
Early Years/School Action	Early Years Providers/School informs parents that their child is considered as having SEN. SEN co-ordinator (SENCO) and colleagues gather information about the child, including parents. SENCO organises additional provision and ensures that an individual education plan (IEP) is drawn up, working with the child's teachers to devise school-based interventions.
Early Years/School Action Plus	SENCO brings in outside specialists to advise on further changes that could be made within the school to meet the child's needs.
Statutory Assessment	LEA considers the need for statutory assessment and, if appropriate, makes a multi-disciplinary assessment.
After assessment	LEA considers the need for a statement of SEN and, if appropriate, makes a statement and arranges, monitors and reviews provision.

Information about 'Early Years/School Action' and 'Early Years/School Action Plus' is in **Part 2 – What to do if your child is having difficulties**.

Information about the 'Statutory Assessment' process and the 'After Assessment' support that can be provided is in **Part 3 – The Statutory Assessment Process**.

Part 2 – What to do if your child is having difficulties

As noted in Part 1, a child can experience learning difficulties as a result of problems with their physical, emotional, intellectual or social development. Many children experience difficulties with their learning at some time during their education, and school census data suggests that, in Wales, around one child in five will experience special educational needs (see **StatsWales - Education and Skills**).

If you are concerned that your child has a learning difficulty, which may mean that they require special educational provision, then the action you should take will depend on whether your child is in education or not. Part 2 of the toolkit sets out the different processes that apply for:

- **Children who are not yet in education**
- **Children who are in an early education setting** which includes information about:
 - *What does Early Years Action involve?*
 - *What does Early Years Action Plus involve?*
- **Children who are in school**

Children who are not yet in education

If your child is not yet going to an early education setting or to school, then there are range of different sources of information and support available.

First, you could talk to your health visitor or your doctor about the concerns that you have. If they agree that there may be a problem, a health professional can make a referral to the local authority for an assessment to be carried out.

Second, s332A Education Act 1996 requires local authorities in Wales to provide advice and information about special educational needs to parents and children living in their area. Paragraph 2.16 of the Code of Practice states that the advice and information should be provided through ‘parent partnership services’.



Key Information and Resources: Accessing Parent Partnership Services

Although all local authorities in Wales must provide a parent partnership service, they have discretion regarding how to deliver the service. This means that some local authorities will provide the service ‘in house’, whilst others may buy in the service from an external organisation.

If you want to find out how the parent partnership service is delivered in your area, you should contact your local authority and ask for the details. If you are unsure which local authority covers the area where you live you can use the Welsh Government’s **Find your local authority** search engine to check.

If you live in West Wales, the local authorities covering Powys, Pembrokeshire, Ceredigion, Carmarthenshire, Swansea and Neath Port Talbot have combined to provide an online guide to their **Local Support in West Wales**.

Third, a number of third sector organisations provide support to parents and children. In Wales, **SNAP Cymru** specialises in providing information, advice and guidance in relation to special educational needs. Details of other organisations that may be able to provide support are contained in the **Additional Resources** section.

The support provided for very young children will depend on their needs. For example, information may be provided regarding appropriate family centres or play opportunities in the local area. Where a child has significant needs, which mean that the child or their parents require care and support, a referral could be made to the local authority requesting an assessment under the Social Services and Well-being (Wales) Act 2014 (for further information about care and support assessments see the separate toolkit on **Accessing social care and health care services in Wales**).

Children who are in an early education setting

Early education settings provide pre-school education (for 3 to 5 year olds), and include playgroups, nurseries and reception classes. Early years education is a vital stage in a child's development and often provides a child with their first experience of learning with a peer group.

Generally, all providers of early education must have regard to the Special Educational Needs Code of Practice for Wales. In particular, this means that the provider must have:

- a written special educational needs policy (Code of Practice para. 1:32); and
- a special educational needs co-ordinator, known as a SENCO (Code of Practice para. 4:15).

The SENCO is a key source of information and support, and is specifically responsible for:

- ensuring good communication between parents and professionals;
- ensuring that parents are aware of local partnership services;
- advising and supporting other staff at the provider;
- ensuring that relevant background information about the child is collected recorded and updated.

If an education provider is concerned that a child may have special educational needs, then the staff must inform the child's parents. Similarly, if you are concerned about your child's development then you should speak to a member of staff or the SENCO about your concerns.

Under the Code of Practice (para. 4:12), the key test is whether the child is making *adequate progress*. If the child's progress is inadequate, then they may have special educational needs that require additional help. The Code of Practice (para. 4:21) sets out some examples of situations where progress may be regarded as inadequate, including where the child:

- makes little or no progress even when teaching approaches are particularly targeted to improve the child's identified area of weakness;
- continues working at levels significantly below those expected for children of a similar age in certain areas;
- presents persistent emotional and/or behavioural difficulties, which are not ameliorated by the behaviour management techniques usually employed in the setting;
- has sensory or physical problems, and continues to make little or no progress despite the provision of personal aids and equipment;
- has communication and/or interaction difficulties, and requires specific individual interventions in order to access learning.

Where it is decided that a child needs additional help in order to progress, **The Graduated Response** requires that the SENCO and the child's parents should discuss the action needed, and for children in an early education setting this is known as *Early Years Action*.

What does Early Years Action involve?

If Early Years Action (EYA) is required, the SENCO will:

- consult with the child's parents;
- gather information to help assess the child's particular strengths and difficulties;
- plan and co-ordinate the appropriate support that will be provided;
- monitor progress and review the action being taken.

It is important that the SENCO gathers all of the relevant information. Therefore, if your child has had support from other professionals (such as health, social services or educational psychology) you should make the SENCO aware of this.

EYA can take a number of different forms, but the focus of the support will be to ensure that the child is able to learn and progress to their maximum potential.

Examples of EYA include:

- the use of different learning materials/special equipment;

- staff development/training;
- deployment of extra staff (e.g. one-to-one support).

The EYA agreed must be recorded in an *Individual Education Plan* (IEP), which will be prepared by the SENCO. The IEP should include:

- an assessment of the child's particular strengths and difficulties;
- the additional help that will be provided;
- who will provide the help and how often it will be given;
- what short-term targets have been agreed for the child's progress;
- how and when progress will be reviewed;
- what help can be given to the child at home.

The Code of Practice (para 4:28) requires that IEPs “*should be reviewed regularly and at least three times a year*” and must include the parents' views on the child's progress.

The Code also notes (para 1:7) that parity of language provision, between Welsh and English applies. This means that:

- parents should have the opportunity to communicate in the language of their choice (i.e. Welsh or English); and
- children who speak Welsh at home, or who are educated through the medium of Welsh, should receive their support through the medium of Welsh.

Where the additional help that the child requires cannot all be provided by the early education provider, and external input is needed, the support provided is known as *Early Years Action Plus*.

What does Early Years Action Plus involve?

Usually, Early Years Action Plus (EYA+) will be required if either the early years action has not enabled the child to make adequate progress and external support is required, or it is obvious from the start that the child requires input from an external agency. Examples of external support that might be provide include:

- a specialist teacher;
- an educational psychologist;
- a speech and language therapist.

As with early years action, before EYA+ support is implemented the SENCO must liaise with the child's parents and discuss the proposed help and support. The SENCO must also ensure that an IEP is in place and that it is kept under review.

If the support provided under EYA+ does not enable the child to make adequate progress then a statutory assessment is likely to be required, and the statutory assessment process is discussed in **Part 3 – The Statutory Assessment Process**.

Children who are in school

All schools, whether primary or secondary, need to be alert to the possibility that a child may have special educational needs as early identification is key. The earlier that action is taken the more responsive the child is likely to be.

Like early education providers, schools must have regard to the Special Educational Needs Code of Practice for Wales, and must have both a written special educational needs policy and a SENCO.

Again, the key test is whether the child is making *adequate progress* (Code of Practice para. 5:41 and para. 6:48). The Code notes (para 5:44 and para. 6:51) that progress may be regarded as inadequate where the child:

- makes little or no progress even when teaching approaches are targeted particularly in a child's identified area of weakness;
- shows signs of difficulty in developing literacy or mathematics skills which result in poor attainment in some curriculum areas;
- presents persistent emotional or behavioural difficulties which are not ameliorated by the behaviour management techniques usually employed in the school;
- has sensory or physical problems, and continues to make little or no progress despite the provision of specialist equipment;

- has communication and/or interaction difficulties, and continues to make little or no progress despite the provision of a differentiated curriculum.

Where it is decided that a child needs additional help in order to progress, **The Graduated Response** applies to schools in the same way that it applies to early education providers. This means that the processes followed by early education providers will also be followed by primary and secondary schools. Therefore, the SENCO must liaise with the child's parents to discuss the additional support required and must also prepare an IEP (which must be reviewed at least twice per year in a school setting). The only significant difference between the way in which the graduated response applies to early education providers and to schools is that different terminology is used, as in schools:

- Early Years Action is known as *School Action*; and
- Early Years Action Plus is known as *School Action Plus*.

If the child's progress continues to be inadequate despite *School Action Plus* support having been provided, then a statutory assessment is likely to be required (see **Part 3 – The Statutory Assessment Process**).

Part 3 – The Statutory Assessment Process

For some children the help provided through early years/school action plus will not be sufficient to enable them to make adequate progress. In these circumstances a statutory assessment is likely to be required. The regulations regarding statutory assessment are set out in Section 7 of the **Special Educational Needs Code of Practice for Wales**. However, the assessment process can seem daunting, and so Part 3 of the toolkit will look at:

- **How do I obtain a statutory assessment?**
- **What does a statutory assessment involve?**
- **What are the possible outcomes of a statutory assessment?** which includes information about:
 - *Note in lieu*
 - *Statement of special educational needs*
- **Choosing a placement**
- **Speech and language therapy**
- **Transport**
- **Statements of special educational needs for very young children**
- **Requesting a further statutory assessment**
- **Transition planning**

How do I obtain a statutory assessment?

A statutory assessment is usually requested by the child's early education provider/school, or by the child's parents. Statutory assessments are carried out by the local authority.

Before requesting a statutory assessment an early education provider/school should consult with the child's parents. If a parent wants to request a statutory assessment, they should contact the local authority and explain why they think the assessment is required.



Key Information and Resources:
Obtaining a statutory assessment

If you are a parent who wants to obtain a statutory assessment for your child then SNAP Cymru produces a guide to **Applying for a statutory assessment**.

The guide includes a sample letter that you can send to your local authority to request an assessment.

When any application for a statutory assessment is received, the local authority must write to the child's parents:

- informing them that the local authority is considering whether to carry out an assessment;
- explaining the procedures to be followed;
- providing the name of a local education officer who can answer any questions;
- explaining that the parents have the right to agree or disagree with the proposal and to send in their written views within 29 days;
- providing information about the local parent partnership service.

In addition, the local authority must inform the head teacher of the child's education provider, the children's services department and the local health board that an assessment has been requested.

Section 323 Education Act 1996 states that a statutory assessment should only be carried out where the local authority is satisfied that:

- the child has special educational needs; and
- the assessment is necessary for the local authority to decide what support the child requires as a result of those needs.

The local authority must decide whether it is going to carry out an assessment **within 6 weeks** of receiving the referral. Before making a decision, the local authority will take into account any information received from the child's parents and will also consider the child's current educational attainment.

It is possible that the local authority may conclude that a statutory assessment is unnecessary (e.g. because the early years/school action plus support that the child is receiving is sufficient to meet their needs). If the local authority decides that an assessment is not necessary, then it must provide written reasons for its decision. A parent who wishes to challenge the local authority's refusal to conduct a statutory assessment can appeal to the Special Educational Needs Tribunal for Wales (see **Part 5 – Special Educational Needs Tribunal for Wales**).

What does a statutory assessment involve?

Once the local authority has agreed to undertake a statutory assessment, then it must obtain information about the child from a range of different sources:

- parental advice (from the child's parents and, if appropriate, from the child);
- educational advice (where the child is attending an early education provider/school);
- medical advice (from the community paediatrician);
- psychological advice (from an educational psychologist);
- social services advice (who will only provide information if the child is known to social services); and
- any other relevant advice.

To obtain the information required, the local authority will usually send out questionnaires and request that they are completed within 6 weeks. It is essential that the child's parents provide all of the information they can, as they will know most about the child's needs. Parents who need help to complete their questionnaire should contact either their nominated education officer or the local parent partnership service. It is important to note that the Code of Practice (para. 7:85) states that the local authority should “*seek to ascertain the views of children*

and young people as part of the assessment”. Therefore, the child’s views about their needs and aspirations should, wherever possible, form part of the assessment process.

Once the local authority has received all of the information requested, it must make a decision about how the child’s special educational needs should be met. That decision must be issued **within 10 weeks** of the decision to undertake the assessment.

What are the possible outcomes of a statutory assessment?

Once the statutory assessment is concluded, the local authority will notify the parents of the outcome and explain how the child’s special educational needs will be met. Usually, the outcome will be either:

- a note in lieu; or
- a statement of special educational needs.

Note in lieu

Where the local authority decides that the child does not require a statement of special educational needs, the Code of Practice (para. 7:88) states that the local authority should usually issue a note in lieu. This means that the local authority is satisfied that the child’s early education provider/school can meet the child’s needs, but that the local authority wishes to give guidance on how best to support the child based on the information obtained during the statutory assessment.

Although the note in lieu is not a legally binding document, it does not mean that nothing has changed as a result of the assessment as new information may have been gathered as part of the assessment process (e.g. from an educational psychologist), which improves the support provided by the child’s early education provider/school.

Statement of special educational needs

A statement of special educational needs is legally binding. It sets out the child’s needs and the support that the child must receive to meet those needs. Where the local authority decides that the child requires a statement of special educational

needs, it should send a draft statement to the parents **within 2 weeks** of deciding that a statement is required. As well as sending the draft to the parents, the local authority should usually also send it to any person whose advice has been relied on when preparing the statement so that they can check that their advice has been properly understood and implemented. All the advice received by the local authority should also be attached to the draft statement.



Key Information and Resources:

What does a statement of special educational needs look like?

Usually a statement of special educational needs will be divided into six Parts:

Part 1 – Introduction

Includes background information about the child (e.g. name and address, date of birth, home language and religion).

Part 2 – Special educational needs*

Sets out details of all of the child's special educational needs that have been identified in the statutory assessment.

Part 3 – Special educational provision*

Sets out the additional help that the local authority thinks that the child requires to meet the needs identified in Part 2. In addition, Part 3 will also explain what the long-term goals of the statement are, and how the child's progress toward those goals will be reviewed.

Part 4 – Placement*

Details the early education provider/school the child will attend and any arrangements for support outside of school hours.

Part 5 – Non-educational needs

Sets out any non-educational needs the child has, as agreed between the local authority, health board or other agencies.

Part 6 – Non-educational provision

Details how the non-educational needs described in Part 5 will be met.

** Parts 2, 3 and 4 are the sections of the statement that are legally binding on the local authority (see Code of Practice para. 8:47), and are the only Parts of the statement that can be subject of an appeal to the Special Educational Needs Tribunal for Wales.*

When you are sent the draft statement, you will be asked to provide your comments to the local authority. The usual timescales for responding are:

- you have 15 days to provide any comments that you wish to make;
- if you would prefer to have a face-to-face meeting with the local authority to discuss your views, then you must ask for a meeting within the initial 15-day period;
- if, after the meeting, there are additional comments that you wish to make, you will have 15 days from the meeting to submit them;
- if a second meeting is required you will have a final period of 15 days after that meeting during which to submit any further written observations.

It is usually expected that the final version of the statement will be produced by the local authority **within 8 weeks** of the draft being sent to the parents, although this can be extended if requests are made for meetings to discuss the recommendations in the draft statement. This means that the process of obtaining a statement of special educational needs usually takes up to **26 weeks**, and the following Table summarises the process:

	Actions required	Time allowed
Stage 1	Considering a request for a statutory assessment.	The local authority must confirm whether it is going to carry out the assessment within 6 weeks .
Stage 2	Carrying out the statutory assessment and deciding whether a statement of special educational needs is required.	The local authority must obtain all of the necessary information and issue a written decision confirming whether or not a statement is required within 10 weeks .
Stage 3	Issuing the draft statement or note in lieu.	<p>If the local authority has decided that a statement is required a draft should be sent to the parents within 2 weeks.</p> <p>If no statement is required, but the local authority decides that a note in lieu should be issued, the note should be sent out within 2 weeks.</p>
Stage 4	Issuing the statement of special educational needs.	All parties will be given an opportunity to comment on the draft statement, and a final version will be issued by the local authority after the comments have been reviewed and within 8 weeks .

Choosing a placement

When the local authority sends out a draft statement of special educational needs, Part 4 will usually be left blank. This is because deciding which early education provider/school the child is going to attend is usually a key issue on which the parents have the right to express a preference.

The different types of school available are discussed earlier in the toolkit (see **The provision of schools and other education for children in Wales**). Provided you want your child to attend a maintained school, the local authority must accept your choice of school unless:

- the school you choose is unsuitable for your child's age, ability, skills and special educational needs;
- your child's presence will affect the education of other children at the school;

- placing your child at the school would not be an efficient use of local authority resources.

In addition, the starting point is that your child should be educated in a mainstream school, unless your child's presence will affect the education of other children at the school or your preference is for a special school.

If you wish your child to attend an independent school, which you wish the local authority to fund, then you can express a preference for an independent school but the local authority is only likely to consider independent provision if the provision available in the maintained sector cannot meet your child's needs. If you are proposing funding a place at an independent school yourself, then the local authority will usually agree to this provided the placement is able to fully meet your child's needs.

Where a child has very complex needs, which cannot be met by a day school, then it is likely that a **residential placement** will be considered. This is a much more complex process and will require additional input from the children's services department and the health board, and the planning will also need to address issues such as how contact between the child and their family will be maintained.

Speech and language therapy

Speech and language therapy can be regarded as either educational or non-educational support. This means that it could appear in either Part 3 or Part 6 of the statement of special education needs. It is important to remember that only Parts 2, 3 and 4 of the statement are legally binding on the local authority. Therefore, if your child requires speech and language therapy, you should ask for it to be included in Part 3 of the statement.

If the local authority wants to include speech and language therapy in Part 6, you should stress that the Code of Practice (para. 8:49) states that communication is so fundamental to a child's development that speech and language therapy "*should normally be recorded as educational provision unless there are exceptional reasons for not doing so*". Therefore, the starting point under the Code of Practice is that speech and language therapy should be included in Part 3.

Transport

The **Learner Travel (Wales) Measure 2008** sets out the duties that local authorities have in relation to school transport. Local authorities must provide free school transport to pupils up to the age of 16 where it is ‘necessary’ to get them to the nearest suitable school.

It will always be necessary for local authorities to provide transport where the child lives further away from the school than the statutory walking distance of:

- two miles for primary school pupils; and
- three miles for pupils in secondary school.

However, where a child has special educational needs, whether the local authority has to provide transport will depend on how far the child lives from the nearest suitable school not from the school the child is attending. Therefore, if your child is attending your preferred school, and that school is further away than the statutory walking distance, the local authority will not have to provide transport if there is another school that could meet your child’s needs, and which is within the statutory walking distance.

In addition to the statutory walking distance, there are other situations in which it will be deemed necessary for the local authority to provide free transport. For example, where a child cannot walk to school for medical reasons or where a child could not reasonably be expected to get to school without free transport. Every local authority must publish their ‘home to school’ transport policy. Therefore, if you believe that your child needs free transport as a result of their special educational needs you should ask for a copy of the home to school policy, and then raise your concerns about transport when you receive the draft statement of special educational needs.

Statements of special educational needs for very young children

It is possible to request a statutory assessment for any child under 16. However, if the child is very young (under 2 years) it is very unlikely that a statement of special educational needs will be issued. Where the local authority decides that a very young child may require additional support, it is likely to enter into a voluntary

agreement with the parents to provide appropriate support services such as portage (home based educational support for pre-school children).

Requesting a further statutory assessment

Sometimes parents will want to make a second request for a statutory assessment. The main circumstances when this is likely to occur are:

- if you have previously requested a statutory assessment that did not lead to a statement of special educational needs being issued; or
- your child has a statement of special educational needs, but you think that their needs have changed.

If a local authority receives a request for a further assessment in relation to the same child, it must consider the request unless:

- an assessment of the child was carried out within the previous six months; and
- the local authority is satisfied that it is not necessary to conduct a further assessment.

Therefore, if you are asking for a further assessment it is essential that you clearly explain why the new assessment is required (e.g. providing full details about how your child's needs have changed).

Transition planning

A statement of special education needs will only apply whilst the child is of compulsory school age. The law relating to meeting educational needs where the young person is over the compulsory school age is different, and is dealt with in the separate toolkit on **Applying for specialist further education provision**.

Part 4 – Challenging Decisions

It is not uncommon for parents to disagree with decisions made by professionals regarding their child's needs and how best to support those needs. There are several ways in which decisions by professionals can be challenged, and Part 4 of the toolkit will provide information about:

- **Where to obtain support**
- **Raising concerns informally**
- **Annual review process**
- **Disagreement resolution**
- **Making a formal complaint**
- **Public Services Ombudsman for Wales** which includes information about:
 - *What can the Ombudsman review?*
 - *What can the Ombudsman do?*
 - *How to make a complaint to the Ombudsman*

Where to obtain support

Raising concerns or making a complaint can be a difficult process for parents, as it can feel intimidating to have to challenge the views and opinions of professionals. If you need advice and support then **SNAP Cymru** provides a range of services, including:

- an information and advice line;
- a parent partnership service; and
- an advocacy service to enable children and young people to articulate their views.

Raising concerns informally

Issues can often arise from misunderstandings. Therefore, it is usually a good idea to raise any issues informally with your child's form teacher or the SENCO. It is advisable to make an appointment beforehand to ensure that there is enough time available to go through your concerns.

Before attending your appointment you will probably find it useful to make a note of:

- what you think is being done incorrectly;
- what impact you think the problem is having on your child (emotionally, physically, socially and/or educationally);
- what you would like to be done to rectify the problem;
- what you want the outcome of the meeting to be.

Annual review process

If your child has a statement of special educational needs, then the statement must be reviewed at least annually. This means that you should be invited to attend a review meeting with your child's education provider at least once a year.

Prior to the meeting you should be asked to provide your views about the progress that your child is making under their statement, and you should also receive an update from any professionals involved setting out what progress they think has been made since the last review. The review meeting will provide you with a formal opportunity to raise any issues or concerns that you have about your child's statement.

No later than 10 days after the review meeting your child's head teacher must provide a report to the local authority explaining whether the statement of special education needs should be amended in any way. Once it receives the report, the local authority must indicate whether the support provided in the statement is going to:

- remain unchanged;
- be amended; or
- be brought to an end.

If you disagree with the local authority's decision you can challenge it by asking for **Disagreement resolution** to be arranged, or by appealing to the Special Educational Needs Tribunal for Wales (see **Part 5 – Special Educational Needs Tribunal for Wales**).

However, if you have asked the local authority to amend the statement (e.g. because your child's needs have changed) and the local authority decides to leave the statement unchanged, you cannot challenge the decision but you can usually ask the local authority to undertake a new assessment (see **Requesting a further statutory assessment**).

Disagreement resolution

Disagreement resolution is another way in which disputes can be settled informally. It involves using an independent third party to resolve issues between you, your child's education provider and/or the local authority.

All local authorities must provide a disagreement resolution service, and so you should ask for the details of the local service.

Using a disagreement resolution does not affect your right to make a formal complaint or to appeal to the Special Educational Needs Tribunal for Wales. However, appeals to the Tribunal need to be made within two months of the decision and so you must be careful not to miss this time limit if you do decide to attempt disagreement resolution.

Making a formal complaint

If you cannot resolve your complaint using the various informal channels that are available, you may have no option but to make a formal complaint. Your complaint may be about your child's education provider (e.g. if you are unhappy about something that the school is/is not doing), or it may be about the local authority (e.g. if you believe that the local authority has failed to take into account relevant information when assessing your child's needs).

Education providers and local authorities must have formal complaints procedures. Therefore, if you wish to make a formal complaint you should ask for a copy of the complaints procedure (or obtain it from the relevant website) and follow the required steps.

Complaints about an education provider are dealt with by the governing body. Whilst the governing body has discretion regarding the complaints procedure it

adopts, the Welsh Government's guidance on **Complaints Procedures for school governing bodies** recommends that a three stage approach is followed:

- **Stage A:** Informal stage where the complaint can be raised and resolved. A complaint will not usually move to Stage B until it has first been considered under Stage A.
- **Stage B:** Formal stage.
- **Stage C:** The matter is referred to the complaints committee of the governing body.

If the complaint is about the local authority, it will follow the local authority's complaints procedure, which usually has two stages:

- **Stage 1 (local resolution)** - requires the local authority to arrange a discussion with the complainant within 10 days in order to try and resolve the matter as quickly and efficiently as possible.
- **Stage 2 (formal investigation)** - if the complainant is not happy with the outcome of Stage 1, they can request that an independent investigator be appointed who will prepare a report and make any appropriate recommendations. The local authority will then produce a formal response to the complaint, taking into account the outcome of the independent investigation, and this response should be issued within 25 days of the Stage 2 process being commenced.

If you do decide to make a formal complaint, it is important to keep written records to help you remember key information accurately. This could include records of phone calls or meetings, copies of letters or other documents, and details of specific incidents that have affected your child.

Sometimes asking a local councillor, Assembly Member or Member of Parliament to raise or support a complaint can bring effective pressure to bear. In addition, asking the media to become involved can also be effective. However, the media will obviously be looking for a story, and involving the media is likely to mean that personal details about the complainant's life will be reported in the press.

Public Services Ombudsman for Wales

If informal and formal complaints procedures have failed to resolve a dispute with your child's education provider and/or the local authority, it may be possible to submit a complaint to the **Public Services Ombudsman for Wales**. The Ombudsman is an independent person who has a legal power to review decisions made by public bodies in Wales.

What can the Ombudsman review?

The Ombudsman has limited powers in respect of education, and generally cannot review decisions made by education providers in relation to curriculum matters.

There is more scope to review decisions made by local authorities, but the focus of the Ombudsman's work is usually whether the local authority has followed the correct procedure. The Ombudsman cannot make his own assessment of a child's special educational needs. The types of issue that the Ombudsman may be able to review are:

- whether the local authority has followed the rules regarding the assessment of a child's needs and the issuing of a statement (e.g. was all the correct advice obtained);
- whether there has been any delay in carrying out an assessment of a child's special educational needs, or in providing a statement.

The Ombudsman produces an **Education fact sheet**, which explains what he can/cannot investigate and so it is worth checking the fact sheet to see if your complaint is one that the Ombudsman can investigate.

It is also important to note that, before the Ombudsman can investigate a complaint, the issue must have been brought to the attention of the local authority and a formal complaint pursued.

What can the Ombudsman do?

If the Ombudsman decides that the service provided by the local authority has been inadequate, he will usually issue a report and recommendations. Whilst the recommendations are not binding, the local authority will usually comply with any

recommendations made. The recommendations could include that the local authority should re-make the decision complained about and/or pay compensation. However, the Ombudsman cannot force the local authority to provide a statement of special education to a child.

The Ombudsman provides an online Casebook, which summarises cases that he has investigated and explains the outcomes.

How to make a complaint to the Ombudsman

The Ombudsman provides an online guide explaining How to complain, and also provides an enquiry service to help you decide if your complaint is about an issue that the Ombudsman can investigate.

There are also a number of advice and advocacy agencies that can provide you with information and support about making complaint to the Ombudsman.

Part 5 – Special Educational Needs Tribunal for Wales

As well as the options explained in **Part 4 – Challenging Decisions**, parents who disagree with decisions made by professionals regarding their child's special educational needs can also appeal to the Special Educational Needs Tribunal for Wales (SENTW). To help you navigate the appeals process, Part 5 of the toolkit will focus on:

- **Getting legal advice and other help to make an appeal**
- **Appealing to the Special Educational Needs Tribunal for Wales (SENTW)** which includes information about:
 - *Making an application to the SENTW*
 - *Preparing a case statement*
 - *The Tribunal Hearing*
 - *The Tribunal's decision*
- **Making a claim for disability discrimination** which includes information about:
 - *What the law says*
 - *Types of discrimination*
 - *How to make a claim*
 - *What remedies can the Tribunal provide?*

Getting legal advice and other help to make an appeal

Legal Aid is available to assist with an appeal to SENTW. However, there are restrictions as:

- it is limited to 'Legal Help', which means that legal aid is only available to help you prepare your appeal and so will not cover the costs of a lawyer representing you at the SENTW hearing;
- it is 'means tested', which means that you can only receive free legal help if your income is below the financial limits set by the Legal Aid Agency.

There is an [online eligibility checker](#) that you can use to see if you are likely to qualify for legal aid. Solicitors who deal with education law cases will also be able to advise you whether you are likely to qualify for legal aid, and how much you would have to pay for legal advice if you do not qualify. The Law Society has an

online [Find a Solicitor](#) search facility, which allows you to search for a solicitor specialising in education law in your local area. The **Additional Resources** section also has some links to online advice guides, which you may find useful.

In addition, a number of charitable organisations provide free advice and support about SENTW appeals, and [SNAP Cymru](#) provides a range of services, including:

- an information and advice line;
- a parent partnership service; and
- an advocacy service to enable children and young people to articulate their views.

Appealing to the Special Educational Needs Tribunal for Wales (SENTW)

If you are unhappy with a decision made by the local authority, you may be able to appeal to SENTW. Although SENTW is funded by the Welsh Government, its members and decisions are independent. Detailed information about the tribunal is available on the [SENTW website](#). In particular, SENTW produces a guide for parents on [How to make an appeal](#).

SENTW can only deal with appeals about decisions by local authorities that relate to:

- refusing to carry out a statutory assessment (or reassessment) of your child's special educational needs;
- refusing to make a statement of special educational needs after a statutory assessment;
- refusing to change your child's statement after a reassessment;
- deciding to stop your child's statement;
- refusing to change the school named on your child's statement, provided the statement is at least one year old and a previous request has not been made in the last 12 months (and you are requesting a change to a maintained school);
- where you disagree with one or more of the following aspects of your child's statement:

- the description of the child's special educational needs;
- the special educational provision that the child is to receive;
- the school, or type of school, which the child is to attend, or the fact that the local authority has failed to name a school.

In addition, SENTW can also deal with disability discrimination claims brought against schools/local authorities (see **Making a claim for disability discrimination**).

Making an application to the SENTW

An appeal can be brought by any of the following people:

- a child's birth parent;
- anyone with parental responsibility for the child; and
- anyone caring for the child.

A child can also bring an appeal themselves, but they will usually be encouraged to have a 'case friend' to help them with the appeal. The case friend will need to be a person who knows the child well (e.g. a family member or a teacher or social worker).

It is essential to remember that any appeal to SENTW must be made **within 2 months** of the date of the local authority's final decision.

If you are trying to resolve your dispute with the local authority by other means (e.g. disagreement resolution) you can apply to extend the two-month time limit, but you must apply to SENTW for an extension **before** the initial two months expires.

To start an appeal, you must complete the Appeal Application (**Form SENTW 2**) and send it to the SENTW office (the contact details for SENTW can be found in the **Additional Resources** section).



Key Information and Resources:

Completing the Appeal Application (Form SENTW 2)

Whilst the information required to complete most sections of the Form SENTW 2 is self-explanatory, you may find the following suggestions helpful when completing some of the more complicated sections:

Section 5

This asks for details about who you want to receive information about the appeal.

SENTW will only send information to one person. Therefore, if you have a representative (e.g. a solicitor) and you state that you wish information about the appeal to be sent to that person, then you will not receive any correspondence from SENTW, apart from the final decision.

Section 8

This asks for information about what you are appealing against.

Here you should explain which decision(s), taken by the local authority, you are unhappy with. You should ensure that you have included all of the decisions about which you wish to appeal.

Section 11

This asks you to set out the reasons why you are unhappy with the local authority's decision(s). You will have the opportunity to expand on the information provided in this section in the 'case statement', which you will be asked to send to SENTW later in the process. Nevertheless, you should try to include in section 11 all of the key reasons why you disagree with the local authority.

Section 13

If you currently have a separate claim for disability discrimination relating to your child (or plan to start one), this section allows you to choose to have that claim and your appeal heard together by the tribunal at the same time.

Section 15

This asks you to confirm whether or not you are happy for the appeal to be decided by SENTW without a hearing. It is often helpful for a tribunal to hear from the person bringing the appeal, so that they can explain why they disagree with a particular decision. Therefore, if you want to attend the appeal hearing in order to put across your point of view in person, you should not tick the box in section 15.

Along with the Form SENTW 2, you must also send **a letter** confirming either that you have told everyone who shares parental responsibility for the child that you are bringing the appeal or explaining why you have not done so. (If you have not provided (in section 3 of the Form SENTW 2) the names and addresses of everyone who shares parental responsibility for the child, your letter needs to explain the reasons for this.)

You must also send SENTW **all of the documents** that you wish to rely upon to support your appeal, such as:

- the local authority's final decision letter;
- any relevant correspondence (e.g. letters or emails);
- medical evidence or a specialist's report;
- statements from witnesses;
- school prospectus;
- examples of your child's school work;
- OFSTED report.

If your appeal relates to changing the school named in your child's statement of special educational needs, you must also enclose a copy of the letters you have sent to both the school and the local authority informing them that you want a particular school named in the child's statement. If the school that you want to be named in the statement is an independent school, then you must enclose a letter from the school's head teacher confirming that a place is available for your child.

You only need to send SENTW photocopies of your documents, and so you should keep the originals yourself as you will need to refer to them if you decide to have a hearing.

If you want to withdraw your appeal (e.g. because you have reached an agreement with the local authority using the disagreement resolution process), you need to complete **Form SENTW 14** and send it to SENTW.

Preparing a case statement

Once SENTW has received your Form SENTW 2, it will register your appeal within 10 working days and send a copy to the local authority. SENTW will inform you (or your representative) once the appeal has been registered.

You will then need to send a 'case statement' to SENTW. You will be informed of the date by which your case statement must be received by SENTW, which will usually be no more than 30 working days after the appeal was registered.

Before you prepare your case statement you will probably find it helpful to read SENTW's guide **How do I prepare a case statement?**.

Your case statement must include either the views of the child or, if those views are not being provided, detailed reasons explaining why they cannot be provided. As SENTW is required to take the child's views into account, it will require very good reasons for a child's views not being included in a case statement.

The case statement is your opportunity to provide a more detailed explanation of your reasons for bringing the appeal, plus any additional information and evidence that you wish to rely on. For example, if documents (such as a specialist's report) were not available when you sent in your Form SENTW 2, you can provide them now. It is important to make sure that you send your case statement to SENTW by the deadline, and that you include all of the documents that you want to rely on, as SENTW may not allow you to submit further evidence at a later date. You should try to ensure that your case statement is logically structured to make it as easy as possible for the Tribunal members to follow your argument. Using structured headings and sub-headings can help to achieve this.

The local authority is also entitled to provide a case statement in response to your appeal, and you will be sent a copy of any documentation provided by the local authority. If the local authority does not provide a case statement, SENTW will decide what action to take, which could include not allowing the local authority to take any further part in the appeal.

The Tribunal Hearing

The hearing will take place before a panel of three people. The chair will be legally qualified, and the other two panel members will have experience of special educational needs provision.

SENTW will write to you (or your representative) to inform you of the date, time and place where the hearing will take place. You will also be sent an attendance form that you will have to complete confirming who will be attending the hearing (e.g. whether you are bringing any witnesses with you).

The hearing will usually take place in a public venue, such as a hotel, although it will always be held in a private room. The hearing will normally start at 10 a.m. and finish by 5 p.m. (although it is possible that the hearing might go on beyond this), and you will be asked to attend the hearing venue at least 30 minutes before the scheduled start time.

You do not need to attend the hearing if you do not wish to. However, if possible, you should attend because this will give you the opportunity to explain why you disagree with the local authority. It will also give the Tribunal members a chance to ask you questions to help them understand why you have appealed. If you have a representative acting for you, and you do not wish to attend the hearing, your representative can still attend to represent you at the hearing.

Your child can attend, but they are only likely to be allowed to be present for part of the hearing and so you must make sure that you take someone with you who can look after your child whilst you are in the hearing room. If the child has an advocate of their own, then that person can also attend the hearing to explain to SENTW what the child's views and opinions are.

You are entitled to have up to 2 witnesses attend the hearing to give evidence, and, in addition to this, you can take one person with you for moral support.

Travel expenses for you (and anyone who attends to look after your child at the hearing) and any witnesses can be reclaimed from SENTW. You should use public transport wherever possible, and you must keep all of the tickets/receipts.

SENTW will only pay a fixed mileage rate for any journey by car, and will only pay taxi fares if agreed in advance. Any witnesses can also claim a fixed amount for loss of earnings.

The Tribunal's decision

SENTW will usually send out its decision within 10 working days of the hearing. The decision will be sent to you and your representative (if you have one).

Where the decision relates to carrying out a statutory assessment/reassessment, or a change to a child's statement of special educational needs, the local authority will usually have to comply with the decision within 5 weeks.

Where the decision stipulates the school to be named on a statement of special educational needs, the local authority will usually have to comply with the decision within 2 weeks.

The local authority must immediately comply with any decision to either continue with or cancel a statement of special educational needs.

If the local authority does not comply with the Tribunal's decision within the period of time specified, SENTW does not have power to enforce its decisions. However, you can make a complaint to the **Public Services Ombudsman for Wales** or to the Welsh Government's Department for Education and Skills (see **Additional Resources**). SENTW also produces a parent's guide to Carrying out our order.

Appealing to the Upper Tribunal

If you are unhappy with SENTW's decision, you may be able to appeal further to the Upper Tribunal. However, you will only be able to do this if SENTW has got the law wrong or if there has been a procedural error. The decision cannot be appealed for any other reason (e.g. because you disagree with SENTW).

To appeal to the Upper Tribunal, you must complete an application for permission to appeal (Form SENTW 21) and send this to SENTW within 28 days of the date of the letter informing you of SENTW's decision. SENTW produces a guide to Making an application for permission to appeal to the Upper Tribunal.

Making a claim for disability discrimination

SENTW also deals with claims relating to disability discrimination in an educational setting. Here, rather than complaining about the local authority, you are likely to be raising issues about your child's school. If you think that your child has been discriminated against, you might find it useful to look at SENTW's guide for parents on [How to make a claim](#).

What the law says

The **Equality Act 2010** prohibits discrimination in relation to nine protected characteristics, one of which is disability.

Under s6 Equality Act 2010, disability is defined as *a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities*. A substantial adverse effect is one that is more than minor or trivial, and it will be considered long-term if it is likely to last for at least a year.

The Act prevents schools from discriminating against children on the basis of disability in any part of school life, including during lessons, at break/lunch times, and extracurricular activities and school trips. Under s85 Equality Act 2010, discrimination in the context of schools includes:

- the way education is provided;
- the way that pupils are provided with access to any benefit, facility or service in school;
- not providing education for a pupil;
- not providing a pupil with access to any facility or service in their school;
- subjecting a pupil to any other detriment;
- permanent, fixed term or lunch time exclusions (*although SENTW cannot deal with permanent exclusions are these are dealt with by an exclusions appeals panel*);
- school admissions (*although SENTW cannot deal with admissions decisions made by maintained schools as these are dealt with by an admissions appeals panel*).

Types of discrimination

Under the Equality Act 2010, there are four main types of discrimination:

- *direct discrimination* (treating a child less favourably because they have a disability, or treating a child less favourably because of their association with a disabled child);
- *indirect discrimination* (applying practices or procedures which, although they apply to everyone, put a disabled child at a disadvantage);
- *victimisation* (being put at a disadvantage because you have made a complaint about being discriminated against);
- *harassment* (being subjected to hostile behaviour because you have a disability).

In relation to disability, two additional categories of discrimination apply:

- *failure to make reasonable adjustments* (these are adjustments required in order to avoid or remove substantial disadvantage experienced as a result of disability to ensure that a child can fully participate in education, such as specialised computer equipment or adapted desks);
- *discrimination arising from disability* (unfavourable treatment as a result of the effects of a disability without reasonable justification, and where the school/local authority knew or could reasonably have known that the child had a disability).

How to make a claim

Although disability discrimination claims against schools are dealt with by SENTW, you should always try to use less formal processes to resolve your dispute before you submit a claim to SENTW.

The first step to take if you believe there has been discrimination by the school (or local authority) is to write to them to request information. The **Government Equalities Office** has a standard form for obtaining information and a guidance booklet for parents, which you might want to use. Schools are not obliged to respond to requests for information, but SENTW will take any failure to respond into account when making a decision.

Other options for resolving your dispute without making a claim to SENTW include **Disagreement resolution** and **Making a formal complaint**.

If these options fail, and you decide to make an application to SENTW, the application must be made **within 6 months** of the alleged discrimination. The application process is very similar to the process for appealing against a decision in relation to special educational needs provision (see **Appealing to the Special Educational Needs Tribunal for Wales (SENTW)**), with the key points being:

- A claim can be brought by a birth parent, anyone with parental responsibility for the child or anyone caring for the child; and by the child themselves.
- To make a claim you must complete an Application (**Form SENTW 4**) and send it to the SENTW office.
- Along with the Form SENTW 4, you must also send **a letter** confirming either that you have told everyone who shares parental responsibility for the child that you are bringing the claim or explaining why you have not done so. You must also send **all of the documents** that you wish to rely upon to support your claim.
- You will be required to prepare a case statement.
- You will have the opportunity to attend a hearing to explain your claim.



Key Information and Resources:

Completing a claim for disability discrimination (Form SENTW 4)

Whilst the information required to complete most sections of the SENTW 4 form is self-explanatory, you may find the following suggestions helpful when completing some of the more complicated sections:

Section 5

This asks for details about who you want to receive information about the claim.

SENTW will only send information to one person. Therefore, if you have a representative (e.g. a solicitor) and you state that you wish information about the claim to be sent to that person, then you will not receive any correspondence from SENTW, apart from the final decision.

Section 6

This asks for information about the nature of the discrimination.

Here you should explain the context in which the discrimination has occurred (e.g. admissions or educational support), and provide details of the school involved.

Section 7

This asks you to set out the detail about the discrimination that you say has affected your child. You will have the opportunity to expand on the information provided in this section in the ‘case statement’, which you will be asked to send to SENTW. Nevertheless, you should try to include in section 7 all of the key reasons why you believe that disability discrimination has occurred.

Section 8

This section is where you can inform SENTW what you would like to happen if the tribunal decides that your child has been unlawfully discriminated against.

Section 9

If you currently have a separate appeal about your child’s special educational needs (or plan to start one), this section allows you to choose to have the appeal and your discrimination claim heard together by SENTW at the same time.

What remedies can the Tribunal provide?

If SENTW finds that disability discrimination has occurred, it can order education providers to take action to help make up for any opportunities that your child has missed, and to help prevent discrimination in future. Examples include:

- training for school staff;
- writing up new guidance for staff;
- making amendments to policies;
- providing extra tuition to make up for lost learning;
- apologising to a pupil either verbally or in writing;
- providing trips or other opportunities to make up for activities that the child may have missed.

When SENTW issues an order, it will usually specify the time period during which the education provider has to comply. As with appeals in relation to special educational needs, SENTW has no power to enforce its orders. Therefore, if an education provider fails to comply with an order from SENTW you will need to make a complaint to either the **Public Services Ombudsman for Wales** or to the Welsh Government's Department for Education and Skills (see **Additional Resources**).

If you are unhappy with SENTW's decision, you may be able to appeal further to the Upper Tribunal if SENTW has got the law wrong or if there has been a procedural error (see **Appealing to the Upper Tribunal**).

Part 6 – Future Changes

In January 2018, the Welsh Assembly passed a new Act of the Assembly called the **Additional Learning Needs and Educational Tribunal (Wales) Act 2018** (ALNETA 2018), which is due to come into force in September 2020.

ALNETA 2018 will make major changes to special educational needs provision in Wales as the provisions of the Education Act 1996 will generally cease to apply and will be replaced by a new system under ALNETA 2018. The law relating to meeting educational needs where the young person is over the compulsory school age (which is dealt with in the separate toolkit on ‘Applying for specialist further education provision’) will also change.

The Welsh Government has an information page which brings together current information about **ALNETA 2018** as it is published. Although not all of the details regarding how ALNETA 2018 will be implemented have been finalised, Part 6 of the toolkit will provide you with an overview of the key changes including:

- **Key concepts under ALNETA 2018**
- **What are additional learning needs**
- **Key duties**
- **Individual Development Plans**
- **Resolving disagreements**
- **Implementation of the reformed scheme**

Key concepts under ALNETA 2018

ALNETA 2018 establishes a single legislative framework to support children and young people who have educational needs. Therefore, ALNETA 2018 will apply to children of compulsory school age and below, and young people in further education. The key aims of the legislation are to introduce:

- an integrated, collaborative process of assessment, planning and monitoring that facilitates early, timely and effective interventions; and

- a fair and transparent system for providing information and advice, and for resolving concerns and appeals.

ALNETA 2018 will also introduce new concepts and terminology, and some of the main changes are summarised in the following Table:

Current terminology	New terminology
special educational needs	additional learning needs
special educational needs co-ordinator	additional learning needs co-ordinator
statement of special educational needs individual education plan early years/school action early years/school action plus	individual development plan <i>(All children and young people will receive an individual development plan, which will replace all of the statutory and non-statutory plans previously used.)</i>
Special Educational Needs Code of Practice for Wales	Will be replaced by a new Code on additional learning needs.
Special Educational Needs Tribunal for Wales	Education Tribunal for Wales

In addition, ALNETA 2018 will improve collaboration between local authorities and other agencies (such as health), and will strengthen Welsh language provision. The implications of some of these key changes are discussed further in the following sections.

What are additional learning needs

Section 2(1) ALNETA 2018 states that someone has *additional learning needs* if:

- they have a learning difficulty or disability; and
- that learning difficulty or disability calls for additional learning provision.

The learning difficulty or disability may arise as a result of a medical condition or for some other reason.

Under s2(2) ALNETA 2018 a child of compulsory school age or older is treated as having a learning difficulty or disability if they have:

- a *significantly greater difficulty in learning than the majority of others of the same age*; or
- a disability recognised by the Equality Act 2010 that prevents them from using *facilities for education or training of a kind generally provided for others of the same age*. (Information about disability under the Equality Act 2010 is provided in the section dealing with **Making a claim for disability discrimination**.)

A child who is under compulsory school age is treated as having a learning difficulty or disability if they are likely to experience the difficulties set out in s2(2) when they reach compulsory school age (see s2(3) ALNETA 2018).

Section 2(4) ALNETA 2018 states that someone cannot be treated as having a learning difficulty or disability if their difficulties are due to being taught in a different language from the language spoken at home.

Section 3(1) ALNETA 2018 defines *additional learning provision* for anyone over 3 years old, and notes that generally it is any educational training or provision that is additional to, or different from, that which is generally available for children the same age in mainstream, maintained educational provision in Wales. Where the child is aged less than 3 years old, any educational provision will be treated as additional learning provision.

Key duties

ALNETA 2018 imposes a number of key duties on education providers and local authorities, including:

- agencies and professionals must involve children, their parents and young people in decision-making as much as possible (section 6);
- agencies and professionals must have regard to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities (sections 7 & 8);

- local authorities must provide children, their parents and young people with information and advice about additional learning needs (section 9);
- unless an exception applies a child of compulsory school age with additional learning needs should be educated in a mainstream maintained school (section 51).

Individual Development Plans

Section 10 ALNETA 2018 states that an *individual development plan* (IDP) is a document that details:

- a description of a person's additional learning needs; and
- a description of the additional learning provision required to meet those needs.

Depending on the child/young person's circumstances, it will be up to either the governing body of the education provider or the local authority to decide if the child/young person has additional learning needs (sections 11 and 13).

If the child/young person is assessed as having additional learning needs, the governors/local authority must ensure that an IDP is in place (sections 12 and 14). Alternatively, if a decision is made that the child/young person does not have additional learning needs, the governors/local authority must notify the young person, or the child's parents, of the decision and the reasons for that decision.

Under sections 12(6) and 14(5) a governing body or local authority must consider whether additional learning provision should be provided in Welsh and specify that in the IDP.

Section 20 ALNETA 2018 allows a governing body or local authority, which prepares and maintains an IDP for someone, to refer to an NHS body to ascertain whether there is any "*treatment or service*" that is likely to be beneficial in addressing the child/young person's additional learning needs. Under s20(5), if the NHS body identifies a relevant treatment or service, it must:

- secure it for the child/young person;

- consider if it should be provided in Welsh and, if so, take all reasonable steps to provide it in Welsh.

Section 22 ALNETA 2018 requires the governing body or local authority to provide a copy of the IDP to the young person, or to the parents if the person with additional learning needs is a child.

Section 23 ALNETA 2018 states that an IDP is to be reviewed every 12 months. Specific provisions in relation to reviews include:

- s23(7) - an IDP must be reviewed if an NHS body providing additional learning provision asks for a review.
- s23(8) - an IDP must be reviewed if a child, young person or parent asks, unless the governing body or local authority deem it unnecessary.
- s23(9) - a governing body or local authority can review an IDP at any time and subsequently revise it.
- s23(10) - if a decision is made not to revise an IDP, then the young person or child's parents must be notified of the decision, and the reasons for it.
- s23(11) - if an IDP is revised the young person or child's parents must be issued with a copy.

Resolving disagreements

If a young person, or the parents of a child, disagree with the governing body about an assessment of additional learning needs or the content of an IDP, then the local authority can be asked to review the governing body's decision (sections 26 and 27 ALNETA 2018).

Section 68 ALNETA 2018 states that local authorities must make arrangements to avoid and resolve disagreements between education providers and children and their parents.

Section 69(1) ALNETA 2018 requires local authorities to make arrangements for the provision of independent advocacy services for children and young people who are involved in disputes about additional learning provision and/or an appeal to the Education Tribunal for Wales.

Sections 70 and 71 ALNETA 2018 detail the jurisdiction and powers of the Educational Tribunal for Wales.

Implementation of the reformed scheme

Currently, the new scheme under the ALNETA 2018 is expected to begin in September 2020. The Welsh Government has issued a guide to **Implementing ALNETA 2018**.

From September 2020, new IDPs will gradually replace the support currently being provided to children with special educational needs. If a child is identified as having additional learning needs, and is not already receiving support under the existing special educational needs system, they will automatically be provided with any relevant support under an IDP.

Children who currently have a statement of special educational needs will have their existing statements converted into IDPs over 2 academic years: 2020–21 and 2021–22.

Children who are currently supported by the Early Years Action, Early Years Action Plus, School Action and School Action Plus schemes will have their existing support converted to IDPs over 3 academic years: 2020-21, 2021–22 and 2022-23.

Until a child has converted to the new system, the existing special educational needs system will continue to apply, and education providers and local authorities will still have to comply with the law as stated in Parts 1 to 5 of the toolkit until conversion has taken place.

Additional Resources

The following websites contain useful information (*Ctrl + click to follow each link*):

Organisation	Website
Cerebra (Provides support for children with neurological conditions and their families/carers, including information guides for parents)	Home Page: https://www.cerebra.org.uk/ Education In Wales: A Guide for Parents: https://www.cerebra.org.uk/help-and-information/guides-for-parents/education-in-wales-a-guide-for-parents/
Citizens Advice (Provides information and online resources relating to the law in Wales)	Education (information about education law and discrimination in education): https://www.citizensadvice.org.uk/wales/family/education/ Flintshire parent partnership service (CAB provides the parent partnership service in Flintshire): http://flintshirecab.org.uk/about-us/projects/parent-partnership-service/
Contact (Provides guidance and information for families with disabled children)	Home Page: https://contact.org.uk/ Wales-specific resources: https://contact.org.uk/wales Guide to Special Educational Needs – Wales: https://contact.org.uk/media/380068/senwales.pdf
Equality Advisory & Support Service (Provides advice and assistance to individuals on issues relating to equality and human rights, including disability discrimination, across England, Scotland and Wales)	www.equalityadvisoryservice.com/
Law Society (Will help you find a solicitor in your area)	Home Page: https://www.lawsociety.org.uk/
Law Wales (Welsh Government website that provides information about the law applicable in Wales)	Home Page: https://law.gov.wales/?lang=en Education (provides specialist information and guidance regarding education law in Wales): https://law.gov.wales/publicservices/education/?lang=en#/publicservices/education/?tab=overview&lang=en

<p>National Autistic Society (Provides a range of information relating to education issues including accessing help and support)</p>	<p>In education: https://www.autism.org.uk/about/in-education.aspx</p>
<p>National Portage Association (Provides information on portage services available in England & Wales)</p>	<p>Home Page: https://www.portage.org.uk/</p>
<p>Public Services Ombudsman (Investigates complaints about public bodies in Wales)</p>	<p>Home Page: https://www.ombudsman.wales/</p>
<p>SNAP Cymru (Provides a range of guidance and services in relation to the Special Educational Needs)</p>	<p>Home Page: http://www.snapcymru.org/help-for-families/</p> <p>Parent Partnership Service (free service offering impartial information, advice and support for families across Wales): http://www.snapcymru.org/help-for-families/parent-partnership-service/</p>
<p>Special Educational Needs Tribunal for Wales (SENTW) (There are a range of different sources of information and advice available relating to SENTW appeals)</p> <p>Address: SENTW Government Buildings Spa Road East Llandrindod Wells Powys LD1 5HA</p> <p>Email: tribunalenquires@wales.gsi.gov.uk</p>	<p>Home Page: http://sentw.gov.wales/?skip=1&lang=en</p> <p>Forms and Guides: SENTW 1 (Guide on how to appeal): https://gweddill.gov.wales/docs/sentw/publications/sentw-1-guidance-en.pdf</p> <p>SENTW 2 (Appeal Application): https://gweddill.gov.wales/docs/sentw/publications/sentw-2-application-form-en.pdf</p> <p>SENTW 3 (Guide on how to make a claim for disability discrimination): https://gweddill.gov.wales/docs/sentw/publications/sentw-3-guidance-en.pdf</p> <p>SENTW 4 (Claim for disability discrimination): https://gweddill.gov.wales/docs/sentw/publications/sentw-4-application-form-en.pdf</p> <p>SENTW 5 (Guide on how to prepare a case statement): https://gweddill.gov.wales/docs/sentw/publications/sentw-5-guidance-en.pdf</p> <p>SENTW 14 (Notice to withdraw appeal): https://gweddill.gov.wales/docs/sentw/publications/sentw-14-application-form-en.pdf</p>

	<p>SENTW 15 (<i>Guide for parents regarding what happens after a Tribunal makes an order</i>): https://gweddill.gov.wales/docs/sentw/publications/sentw-15-guidance-en.pdf</p> <p>SENTW 20 (<i>Guide on appealing to the Upper Tribunal</i>): https://gweddill.gov.wales/docs/sentw/publications/sentw-20-guidance-en.pdf</p> <p>SENTW 22 (<i>Guide for children and young people</i>): https://gweddill.gov.wales/docs/sentw/publications/sentw-22-cyp-guidance-and-form-en.pdf</p> <p>Legal Advice: SENlegal (<i>national legal practice specialising in special educational needs</i>): https://www.senlegal.co.uk/</p> <p>Sinclairslaw (<i>legal practice specialising in special educational needs with offices in England and Wales</i>): https://www.sinclairslaw.co.uk/</p>
<p>Welsh Government <i>(The Welsh Government publishes a range of information relating to special educational needs)</i></p> <p>Address: Department for Education & Skills Welsh Government Crown Buildings Cathays Park Cardiff CF10 3NQ</p>	<p>Information for Parents and Carers of Children and Young People who may have Special Educational Needs: https://gov.wales/sites/default/files/publications/2018-03/information-for-parents-and-carers-of-children-and-young-people-who-may-have-special-educational-needs.pdf</p> <p>Information bank on law and policy relating to special educational needs in Wales: https://gov.wales/special-educational-needs</p> <p>Guidance on the role of the SENCO: https://gov.wales/role-special-educational-needs-coordinator-senco</p> <p>A parent's guide to the Learner Travel (Wales) Measure 2008 : https://gov.wales/sites/default/files/publications/2018-03/a-parent%E2%80%99s-guide-to-the-learner-travel-wales-measure-2008.pdf</p> <p>School complaints procedures: guidance (<i>guidance regarding how schools should deal with complaints received from parents</i>): https://gov.wales/school-complaints-procedures-guidance</p>

	Information bank on Additional Learning Needs and Education Tribunal (Wales) Act 2018: <u>https://gov.wales/additional-learning-needs-and-education-tribunal-wales-act</u>
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For More Information you can contact Mencap WISE on:

0808 8000 300 (Monday to Friday, 9 a.m. – 5 p.m.)

Or

e-mail: information.wales@mencap.org.uk



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