

Equality and Inclusion of Disabled Children and the Additional Learning Needs and Education Tribunal (Wales) Act 2018

Aim of session:

To understand the legislative framework for providing Inclusive Services, which will include the Equality Act 2010 and the Additional Learning Needs and Education Tribunal (Wales) Act.

Legislative Context

- UNCRC 1989
- Children Act 1989
- The Disability Discrimination Act 1995 and 2005
- Human Rights Act 1998
- The SEN and Disability Act 2001
- The Equality Act 2010
- Social Services and Wellbeing Act (Wales) 2014
- The Additional Learning Needs and Education Tribunal (Wales) Act 2018

UNCRC

The convention was adopted by the UN in 1989 and ratified by the UK in 1991. It set out the rights that must be realised for all children **to develop their full potential.**

Article 23 states 'All disabled children should have special care and support so they can lead full and independent lives.'

Children Act 1989

Allocated duties to local authorities, courts, parents, and other agencies in the United Kingdom, to ensure children are safeguarded and their welfare is promoted. Also, determined that disabled children are classed as children in need.

Disability Discrimination Act 1995 and 2005

The Disability Discrimination Act (DDA) was introduced in 1995 to end discrimination against people with disabilities. It did not cover at Education at this point, but it has been continually expanded and revised over the years.

In 2001 **The Special Educational Needs and Disability Act 2001** established legal rights for disabled students in pre- and post-16 education. It also prompted the amending of the DDA to include education (2005).

Human Rights Act 1998

Outlined that human rights of people with learning disabilities are inseparable from fellow citizens.

Court proceedings can be brought against public authorities if these rights are breached.

The Equality Act 2010

The two main purposes of the Act are to harmonise discrimination law and strengthen the law to support progress on equality.

The Act also introduced protected characteristics- this outlaws discrimination based on disability, sex, race, age, religion or belief and sexual orientation.

Definition of Disability

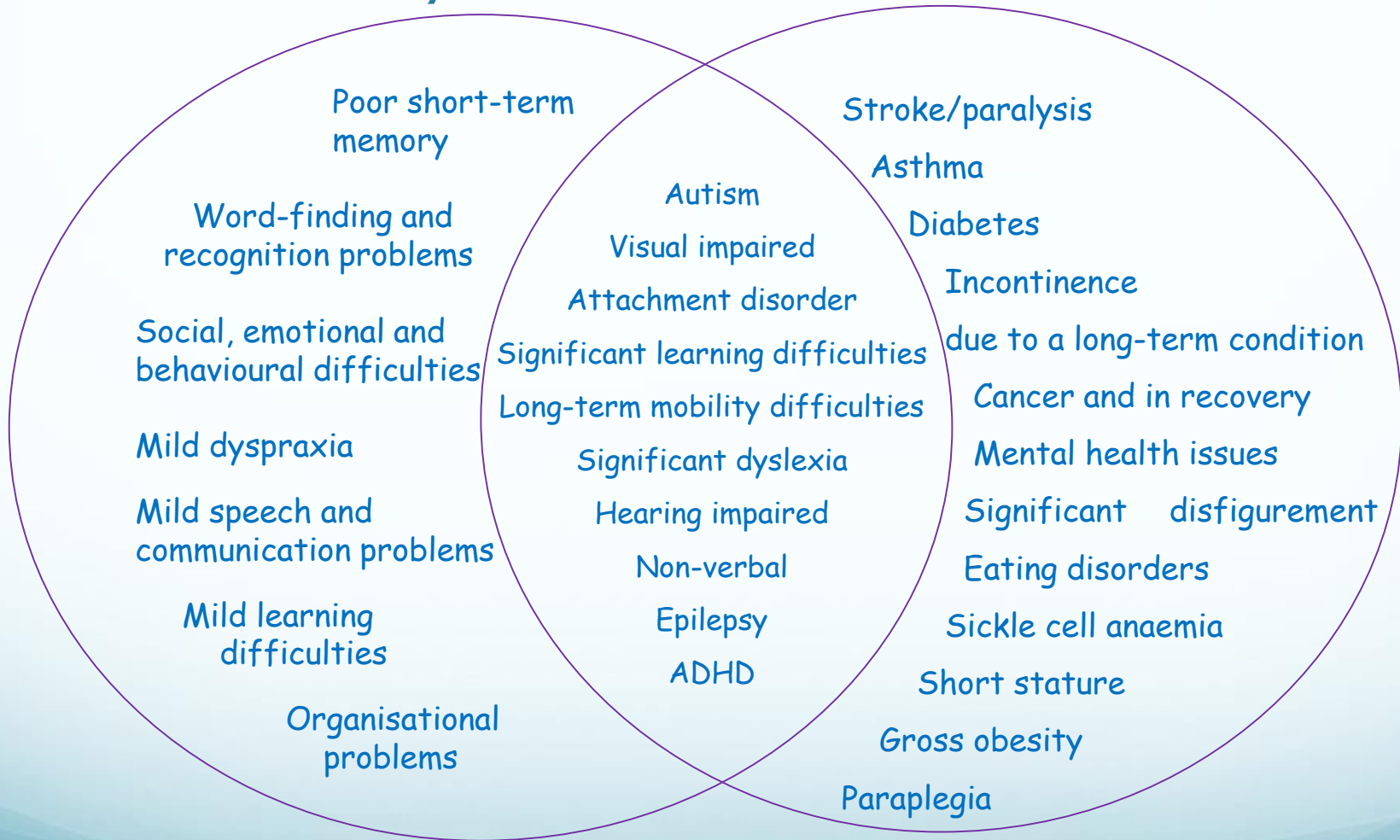
In the Equality Act 2010, a person has a disability if:-

- They have a physical or mental impairment
- The impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

Task

In pairs or in a group discuss and decide which category these difficulties belong to: ALN, disabled or both ?

ALN, disabled or both?



Duties under the Equality Act 2010

Not to treat disabled people less favourably for a reason related to their disability.

- Direct discrimination- treat less favourably because of a protected characteristic.
- Discrimination arising from disability- treat someone less favourably because of something arising as a consequence of their disability and you cannot show that the treatment is a proportionate means of meeting a legitimate aim. Is there a more reasonable action you could have taken? Can you justify your actions and provide evidence?
- Indirect discrimination- A way of doing something (**policy** or **practice**), which puts pupils with a protected characteristic at a part disadvantage, when compared with pupils who do not have that characteristic.
- A duty to make reasonable adjustments.

What do you understand by
the term reasonable
adjustments?

- Where a provision, criterion, practice, policy or physical feature of an environment puts a disabled person at a substantial disadvantage, there is a duty to do what's needed to avoid the disadvantage.
- In addition, if having an auxiliary aid would remove a disadvantage, then there is a duty to provide it.
- The duty to make 'reasonable adjustments' should be anticipatory. Education providers should foresee the potential barriers that disabled pupils may face and act to remove or minimise such barriers before a disabled pupil is placed at a substantial disadvantage.

What is meant by 'substantial disadvantage?'

You will need to take into account a number of factors when considering whether or not the disadvantage is substantial such as:

- the time and effort that might need to be expended by a disabled child
- the inconvenience, indignity or discomfort a disabled child might suffer
- the loss of opportunity, or the diminished progress a disabled child might make in comparison with his or her peers who are not disabled.

This is obvious in most cases. For example if a visually impaired child cannot access the school reading scheme, it is a reasonable adjustment to modify and enlarge copies for them.

Some examples of reasonable adjustments

- Positioning of a deaf child to ensure they can see the teacher to lip read.
- Positioning of a visually impaired child with their back to a window.
- Use of matt laminating patches for wall displays to avoid the effects of sheen and glare.
- Use of additional time/rest breaks for test and examination conditions.
- Providing a personal copy of board work/ allowing pupils to take a photo using an iPad.

Consider

- Is the child at a substantial disadvantage?
- Could the disadvantage be avoided?
- Is it reasonable for the school to take these steps?

Case Study

A disabled pupil requires assistance with personal care needs such as toileting, washing and dressing. This is provided during the school day by his LSA via his statement of SEN. The school arranges a residential trip for his year group. The pupil wishes to attend but is not able to do so unless his personal care needs are met.

Is the child at a substantial disadvantage?

Yes, he is unable to attend the trip with his peers.

Could the disadvantage be avoided?

The following could avoid the disadvantage and enable the pupil to attend:

- Ask his LSA to go on the trip and provide support beyond the normal day.
- Liaise with social services to see if any support can be provided by them.
- Discuss with the pupil and his parents the ways they think the support could be provided, such as a family member going on the trip to provide overnight support.

Is it reasonable for the school to take these steps?

These steps are all potentially reasonable depending on the circumstances. If it is not possible for the school to find a reasonable means of enabling the pupil to attend then it should consider whether there is an alternative equivalent trip that could be organised for that year group that the disabled pupil would be able to participate in.

Additional Learning Needs Education and Tribunal Act (Wales) 2018

Concluding observations of the UN Committee 2016- Children with disabilities

- Many children with disabilities do not see that their views are given due weight in making personal decisions in their life, including choice of support and future.
- Many children with disabilities are still placed in special schools or special units in mainstream schools.
- Provision of the support for transition to adulthood is often neither sufficient, timely nor well coordinated, and does not ensure fully-informed decision making by children with disabilities.

Recommendations from the Committee to the State Party

- Ensure full respect of the rights of the children with disabilities to express their views and to have their views given due weight in all decision making that affects them, including on access to and choice of personal support and education.
- Set up comprehensive measures to further develop inclusive education, ensuring that inclusive education is give priority over the placement of children in special institutions and classes, and make mainstream schools fully accessible to children with disabilities.

- Provide children with disabilities a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decision making by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.

The ALN Transformation Programme and The Additional Learning Needs and Education Tribunal (Wales) Act

Setting the Scene:

The current SEN system based on a model introduced more than 30 years ago.

The Additional Learning Needs and Education Tribunal (Wales) Bill was passed by the National Assembly for Wales on 12 December 2017 and became an Act on 24 January 2018 after receiving Royal Assent.

This provides a new statutory framework for supporting children and young people with ALN from birth, in school and while they are in further education (0-25).

Purpose and Intended Effect

Three overarching objectives:

- A unified legislative framework
- An integrated collaborative process of assessment which facilitates early, timely and effective interventions
- A fair and transparent system for providing information and advice

To fulfil these objectives the Act contains the following elements:

Replacing the term SEN with ALN for use in relation to children or young people with a learning difficulty or disability which calls for 'Additional Learning Provision' (ALP).

Two step definition:

Does the child or young person have a learning difficulty or disability?

Does the learning difficulty or disability require additional learning provision (ALP)?

A child or young person has a learning difficulty or disability if they:

- Have a significantly greater difficulty in learning than the majority of others of the same age
- Have a disability for the purposes of the Equality Act 2010

Individual Development Plans

- Same type of plan for all learners with ALN regardless of severity.
- The introduction of statutory Individual Development Plans (IDPs) for all children and young people with ALN. The IDP will describe the child's or young person's ALN and the Additional Learning Provision (ALP) that is required to meet these needs.
- The IDPs will normally be prepared, maintained and reviewed by school or institution in the FE sector, and the ALP set out in the IDP will normally be delivered by the school or FEI.
- GB may refer case to LA if it is 'beyond its capability to assess or provide for.'
- LA can direct a school to implement and maintain an IDP.
- Families can ask LA to intervene and LA must comply.
- Expected balance between SA, SA+ and statement expected to remain.

Draft timescales:

School have 2 weeks to refer case on to LA or 7 weeks to assess and produce IDP.

LA have 2 weeks to decide if case is within school's capability and direct them to produce an IDP or 10 weeks to produce an IDP (school has 5 weeks if directed by LA).

Families should have maximum wait of 12 weeks for outcome of their request for an assessment and IDP. (Currently 26 weeks).

An Integrated, Collaborative Process

- There is a strengthened role for Health. Where asked by a local authority, a health body 'must consider whether there is a relevant treatment or service that is likely to benefit in addressing the child's or young person's ALN'.
- If the health body identifies such a relevant treatment or service, it 'must secure' it for the child or young person.
- IDPs will contain an action plan clearly identifying which agency is responsible for delivering provision.

High Aspirations and Improved Outcomes

- Role of the ALNCO

The ALNCO will be the individual who at a strategic level will ensure the needs of all learners with ALN within the education setting are met. The role ought to be seen as a strategic one within the education setting, as significant as roles such as head teachers, principals, deputy head teachers. ALNCos should therefore, form part of the senior leadership team or have a clear line of communication to the senior leadership team.

Roles and responsibilities of all teaching staff

- ALNCOs are not expected to be directly involved in the day to day process of supporting every learner with ALN. This remains the responsibility of the class teacher.
- ALNCOs are not required to develop every IDP – any teacher can do so.
- A skilled workforce is central to the Transformation programme. All teaching practitioners have responsibility for their own professional learning and development and all should undertake regular professional learning in relation to ALN.

Increased Participation of Children and Young People

The Act requires we must have regard to:

- The views, wishes and feelings of the child and the child's parents or the young person
- The child, young person and parent participate as fully as possible in decision making
- The importance of the child, young person and parent being provided with the information and support necessary to participate in decisions.
- Duty to have regard to the United Nations Convention on the Rights of the Child.

Draft ALN Code

10.6 To ensure the child, their parent or young person is actively involved in planning the support for their ALN, the school, FEI or local authority responsible for preparing an IDP should:

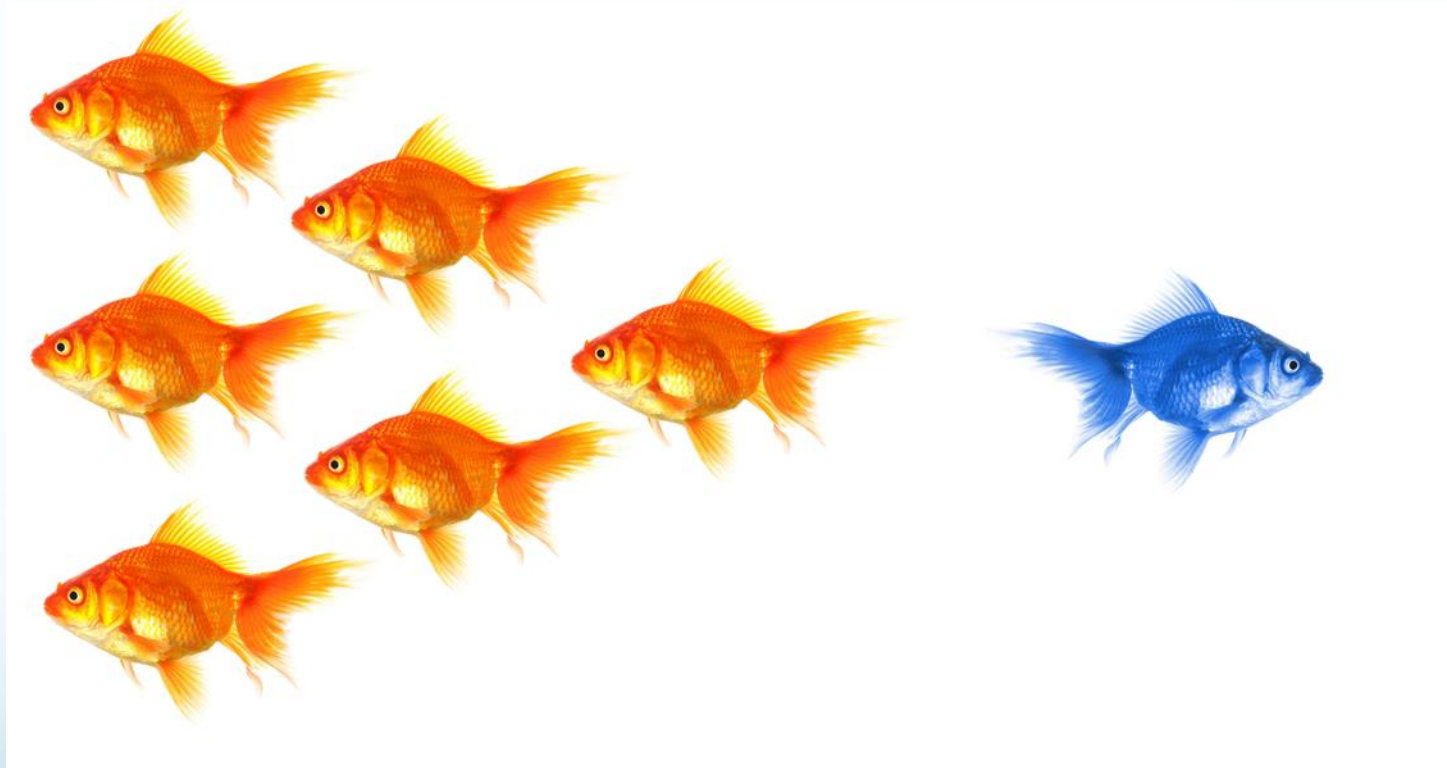
- take a person-centred approach to the gathering and presentation of information; and
- both develop and revise an IDP at an IDP meeting run using a person-centred approach.

10.7 Person-centred practice puts the child, child's parent (in particular, but not exclusively, where the child is very young) or young person at the centre of decisions and ensures their views, wishes and feelings are the focus of the meetings.

Focus on the child or young person as an individual

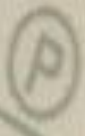


Tailor support to the needs of the individual



F I GB USA MEX

**ONE SIZE
DOES NOT
FIT ALL**



Von links bügeln/ iron inside out/
repasser sur l' envers / 凡翻面反面

A Fair and Transparent System

The new system focuses on earlier disagreement resolution. The aim is to ensure that where disagreements occur about an IDP or the provision it contains, the matter is considered and resolved at the most local level possible.

Introduces clear and consistent rights of appeal- all children, their parents and young people will have a right to appeal to Tribunal where disagreements cannot be resolved at a local level.

Children who lack capacity are supported to exercise their rights- role of the case friend.

What else is new?

Best interests of the child added as a consideration in context of the duty to favour mainstream provision.

Greater focus on Welsh language – all reasonable steps must be taken to secure the provision in Welsh.

Inclusion of non-maintained early years providers.

Holistic framework for supporting children who are looked after.

Timescales

- Draft Code on WG website, with a view to lay final Code for national Assembly approval in 2020.
- Statutory roles created by Act (EY ALNLO, DECLO, ALNCo) to commence in January 2021.
- 3 year implementation period, starting September 2021. Old system entirely phased out by 2024. Awaiting updated implementation guidance.
- Professional Learning Offer for ALNCos in development.

How do we get ready?

Assist the LA in the delivery of its Local Implementation Plan by:

- evaluating your school's readiness for reform under the priority areas (see below); and
- devising an implementation plan to meet the needs of your setting.

The priority areas are:

- Awareness Raising
- Workforce Development
- PCP and IDP
- Early Years
- Post 16
- Pupil and Parent Partnership

Other themes to consider:

- School Improvement
- Effective Practice
- Health
- Bilingualism

TASK

- Look at the readiness survey and highlight the statements that accurately reflect your school.
- Use the template provided to begin to draft an implementation plan according to the new timescales provided by WG.