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Children's rights to appeal and make a claim to the Special Educational Needs Tribunal for Wales

Statutory guidance for local authorities



Guidance

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Children's rights to appeal and make a claim to the Special Educational Needs Tribunal for Wales

Audience	Local authorities as well as governing bodies and headteachers of maintained schools.
Overview	This document provides statutory guidance for local authorities on duties introduced under Part 1 of the Education (Wales) Measure 2009 regarding the right of a child to make a special educational needs appeal or a claim of disability discrimination in school to the Special Educational Needs Tribunal for Wales (SENTW) themselves.
Action required	Local authorities must have regard to this statutory guidance.
Further information	Enquiries about this document should be directed to: Additional Learning Needs Policy Team Support for Learners Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ e-mail: Additionallearningneedsbranch@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/educationandskills
Related documents	Education (Wales) Measure 2009 www.legislation.gov.uk/mwa/2009/5/contents Education (Wales) Measure 2009 (Pilot) Regulations 2012 www.legislation.gov.uk/wsi/2012/321/introduction/made Special Educational Needs Tribunal for Wales Regulations 2012 www.legislation.gov.uk/wsi/2012/322/contents/made <i>Evaluation of a Pilot of Young People's Rights to Appeal and Claim to the Special Educational Needs Tribunal for Wales: Final report</i> www.wales.gov.uk/statistics-and-research/evaluation-pilot-young-peoples-rights-appeal-claim-sen-tribunal/?skip=1&lang=en

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Introduction

The Education (Wales) Measure 2009 (“Measure”) is a pioneering piece of legislation that gives children and young persons in Wales the right to initiate legal proceedings in the Special Educational Needs Tribunal for Wales (SENTW) themselves. This means that children and young persons may make an appeal in relation to their special educational needs to the SENTW themselves. They can also make a claim about disability discrimination in school.

A number of new duties are placed upon local authorities to ensure that children are made aware of their rights and have appropriate access to support services when required. Case studies have been highlighted within this guidance to reflect good practice¹.

Commitment to the principles of the UNCRC

The Welsh Government is committed to the United Nations Convention on the Rights of the Child (UNCRC) as the underpinning basis for its policies concerning children and young people, as encapsulated in the Rights of Children and Young Persons (Wales) Measure 2011. The UNCRC is an international agreement that promotes the human rights of children under the age of 18.

The Rights of Children and Young Persons (Wales) Measure 2011 strengthened and built on the rights based approach of the Welsh Government to making policy for children and young people in Wales. It places a duty on all Welsh Ministers to have due regard to the substantive rights and obligations within the UNCRC and its optional protocols.

This approach outlined in this guidance is consistent with the basic principles of the UNCRC that a child is entitled to care, an education, involvement in decision making and an upbringing that is free from violence and degrading treatment. This guidance is based on the core principles of the UNCRC which centres on:

- respect for children’s best interests and rights (Articles 2 and 3)
- a right to have a say in matters affecting them and to have their opinions listened to (Article 12)
- the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (Article 12)
- freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice (Article 13)

¹ These case studies highlighted are simply to reflect the approaches undertaken, however they are not a comparison of approaches undertaken by the pilot authorities.

recognising a mentally or physically disabled child's right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23)

recognise the rights of every child to an education, on the basis of equal opportunity, which develops a child's personality, talents and mental and physical abilities to their fullest potential (Articles 28 & 29)

The Welsh Government is clear in its continuing commitment to participation of all children and young people in Wales in decisions which affect them including those most vulnerable and harder to reach.

Status of guidance

This guidance is issued under section 332AA, 332BA, 332BB of the Education Act 1996² and paragraphs 6B, 6C, 6D of Schedule 17 to the Equality Act 2010³ which provides that local authorities must have regard to it. This means that local authorities must take account of the guidance and, if they decide to depart from it, have clear and justifiable reasons for doing so.

The statutory framework for special educational needs

The Welsh Government is proposing to reform the statutory framework for SEN. Detailed proposals regarding these changes are set out in the White Paper 'Legislative Proposals for Additional Learning Needs'⁴. Further consideration will be given to this statutory guidance following the outcome of the legislative proposals for reform.

² Inserted by section 4 to 6 of the Measure.

³ Inserted by sections 13 to 15 of the Measure as substituted by SI 2011/1651.

⁴ <http://wales.gov.uk/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>

The Education (Wales) Measure 2009

Currently, parents whose children have special educational needs (SEN) can appeal to the SENTW against decisions made by Welsh local authorities about their children's education. Parents can also make a claim of disability discrimination in schools to SENTW.

Part 1 of the Measure extends to children and young people the right to make a SEN appeal and a claim of Disability Discrimination in school to the SENTW themselves i.e. provides parity of rights for parents and their children. This gives practical expression to the United Nations Convention on the Rights of the Child. This provides an additional safeguard to ensure that the needs of disabled children and young people and those with SEN can be met by reducing the prospect that their needs might not be fully addressed where their parents do not themselves pursue an appeal or claim. A summary of the specific provisions within the Measure is set out in Annex A.

These new rights are not restricted on the basis of the child's age or competence, but an appeal or claim may be brought on a child's behalf by a "case friend"⁵, which might be, for example, if the child does not feel sufficiently confident to initiate or participate in the process. Also, the President or tribunal panel may decide that a child bringing proceedings does not have sufficient understanding to participate without a case friend, in which case one may be appointed.

A number of new duties are placed upon local authorities to ensure that children are made aware of their rights and have appropriate access to support services when required.

These rights and duties have been piloted in the local authority areas of Carmarthenshire and Wrexham since March 2012⁶. The pilot will end at the start of 5 January 2015 and the rights and duties will automatically apply to the whole of Wales on 5 January 2015.

An evaluation on the pilots in Carmarthenshire and Wrexham has been undertaken and a report published in June 2014. This report can be accessed via the Welsh Government website at:

<http://wales.gov.uk/statistics-and-research/evaluation-pilot-young-peoples-rights-appeal-claim-sen-tribunal/?skip=1&lang=en>.

The evaluation report was generally positive but indicated that local authority awareness of the rights and the duties the Measure imposed on them was

⁵ The role of case friends is set out in section 332ZC of the Education Act 1996 and paragraph 6A of Schedule 17 to the Equality Act 2010. Part C of [The Special Educational Needs Tribunal for Wales Regulations 2012](#) (S.I. 2012/322) makes further provision about case friends including who may be one and the circumstances in which one must be appointed..

⁶ [The Education \(Wales\) Measure 2009 \(Commencement No.3 and Transitional Provisions\) Order 2012](#) (S.I. 2012/320 (W.51) (C.10)) and [the Education \(Wales\) Measure 2009 \(Pilot\) Regulations 2012 \(S.I. 2012/321 \(W.52\)\)](#) ('the pilot regulations') which came into force on 6 March 2012. The effect of this legislation when taken together was to bring into force the majority of the provisions in Part 1 of the Measure 2009 for the purposes of piloting only.

generally higher than their level of preparedness. This guidance is intended to assist local authorities understand and comply with their new responsibilities⁷.

⁷ This guidance summarises those duties, the full details of which are set out in the statutory provisions

Local authority statutory responsibilities and good practice approaches

Parents currently have the right to appeal in respect of SEN and the right to make a claim in respect of disability discrimination in schools, to the SENTW. From 5 January 2015, all children in Wales will themselves have a right to appeal in respect of SEN and the right to make a claim in respect of disability discrimination in schools, to the SENTW. From this date, all local authorities throughout Wales must comply with their statutory responsibilities.

Special Educational Needs appeals

Children with SEN have the right to appeal to the SENTW themselves in respect of:

- (i) the local authority's decision not to:
 - a. make a statement
 - b. carry out a review of educational needs
 - c. assess educational needs at the request of the child's parent
 - d. change the school named in the statement
- (ii) the local authority's decision to cease to maintain a statement
- (iii) the contents of a statement.

Children will be able to make a claim of disability discrimination in schools to the SENTW themselves.

The Special Educational Needs Tribunal for Wales Regulations 2012⁸ set out the process for making an appeal or claim to the SENTW⁹.

Appeals and claims

Notice and service of documents

If a local authority in Wales is required to give notice to or serve a document on a parent of a child with SEN, the local authority must also give notice to or serve the document on the child. Any provision applicable to notices given to or documents served on a parent applies equally to notices given to or documents served on a child¹⁰.

As a matter of good practice, the local authority should ensure that if it is required to give notice to or serve a document on a child with SEN, that the communication method used is in a manner appropriate for that child.

⁸ S.I. 2012/322.

⁹ <http://sentw.gov.uk/?lang=en>

¹⁰ Section 332ZB of the Education Act 1996.

Case study example:

Wrexham's targeted approach focussed upon new requests for statutory assessments and developing child and young person friendly letters and leaflets. These mirrored the paperwork and processes for informing adults of their rights. Once a request for a statutory assessment is made, the paperwork is provided to parents or careers and also the child or young person. To support this, Wrexham use their own case friend¹¹ (key worker) to go through the letter and explain it to children and young people and remind them that advocacy services are available throughout the process.

Advice and information

All local authorities in Wales must arrange for any child in their area with SEN, for a parent of any such child and for a case friend for any such child, to be provided with advice and information about matters relating to those needs¹².

Likewise all local authorities in Wales must arrange for any disabled child in their area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools¹³.

All local authorities should ensure that the provision of advice or information is provided in a manner appropriate for that child.

Case study example:

Additional Learning Needs (ALN) family support workers in Carmarthenshire offer support to families and children with concerns about ALN at anytime; liaising with professionals, attending multi-agency meetings and promoting a person centred approach¹⁴ at all times.

The ALN family support worker contacted families at the start of the statutory assessment process, in order to explain the role of the family ALN support worker; the rights of the parents and child; and to provide literature about the rights and sources of support. Where a child or young person is looked after, the ALN family support worker also liaised with the social worker.

For those children and young people who already have statements of SEN Carmarthenshire have focused on the person centred approach in all contact and decision making, as the means to involve the child or young person, and give them a "voice" in the process.

¹¹ Every young person going through the statutory assessment process in Wrexham has a case friend identified and assigned, who can help explain a child or young person's rights to them. This is different to case friend defined under the Education (Wales) Measure 2009.

¹² Section 332AA of the Education Act 1996.

¹³ Paragraph 6B of Schedule 17 to the Equality Act 2010.

¹⁴ Person-centred relates to person centre practice that focuses on the needs of the learner and a commitment to listen continually and act immediately

Case study example:

Wrexham worked with school staff and other professionals involved in the process to ensure they were aware of children's rights to appeal and make a claim and could explain these rights to children if required.

For those children already with a statement, Wrexham adopted a strategy in which children's and young people's rights to appeal were raised at annual review and transitions planning meetings by the SENCOs or teachers coordinating these reviews. Also, the key worker assigned to all children and young people with a statement provides another opportunity to explain the rights.

Local authorities should consider, as a matter of good practice, their approaches to raising awareness and provision of training on children's rights, for example, among professionals.

Resolution of disputes

All local authorities must make arrangements with a view to avoiding or resolving disagreements between:

the local authority or school governing body and children with SEN in their area

the local authority or school governing body and parents of children with SEN in their area

responsible bodies and disabled children in their area¹⁵.

The local authority must also make arrangements with a view to avoiding or resolving, in each school, disagreements between a child with SEN or the parent of that child and the proprietor of the school about the special educational provision made for that child.

Local authorities and school governing bodies must take steps, as considered appropriate, for making arrangements¹⁶ in respect to avoiding or resolving disagreements known to those children and parents of children in their area, head teachers and proprietors of schools in their area and any other persons as considered appropriate.

Local authorities and school governing bodies must ensure that any arrangements with a view to avoiding or resolving disagreement do not affect a child's entitlement to appeal or to make a claim to the SENTW.

¹⁵ Section 332BA of the Education Act 1996 and paragraph 6C of Schedule 17 to the Equality Act 2010.

¹⁶ These arrangements cannot affect the entitlement of a child or a parent of a child to appeal to the SENTW or to make a claim to the SENTW. Local authorities must take such steps as they consider appropriate to make this known to children, parents and case friends.

As a matter of good practice, schools and local authorities should review their resolution of disputes requirements and complaints processes to ensure compatibility with their statutory responsibilities.

Case study examples:

Carmarthenshire commissioned SNAP Cymru, which provides the Authority's Dispute Resolution Service for parents and carers, to extend its service to children and young people. The ALN family support workers have also taken on a key role in relation to dispute resolution.

The existing dispute resolution service for parents and carers, the North Wales SEN Disagreement Resolution Service, provided by SNAP (Cymru), was extended to cover children and young people.

Independent advocacy services

Every local authority in Wales must make arrangements for the provision of independent advocacy services in their area and in doing so refer any child with SEN or a disability or a case friend of that child in their area, who requests independent advocacy services, to a relevant service provider¹⁷. It is however recommended as good practice that these services are actively offered to children with SEN or a disability as a matter of course to help enable them to decide whether or not they wish to take forward an appeal or claim.

In making arrangements for independent advocacy services, local authorities should have regard to the principle that this service must be independent of any person who is the subject of an appeal or a claim, involved in investigating or adjudicating on an appeal or a claim and ensure that the service provides advice and assistance (by way of representation) to any child:

making or intending to make an appeal or a claim to the SENTW
considering whether to appeal or make a claim to the SENTW
taking part in or intending to take part in dispute resolution
arrangements

Local authorities must take steps, as considered appropriate, for making arrangements in respect of independent advocacy services known to those children and parents of children in their area, head teachers and proprietors of schools in their area and any other persons as considered appropriate.

¹⁷ Section 332BB of the Education Act 1996 and paragraph 6D of Schedule 17 to the Equality Act 2010.

Case study examples:

Carmarthenshire utilised a number of existing advocacy services for children. These included Action for Children (who support looked after children) and SNAP Cymru (who support families where a child has additional learning needs and professionals working with such families). These advocacy services were complemented by the youth service.

Wrexham commissioned Second Voice to provide advocacy support for children and young people exercising their rights in relation to statutory assessment and statements. This complements the Service Level Agreement that Wrexham has with the Citizen's Advice Bureau to provide a Parent Partnership Service and is in addition to the case friend who provides support to those with a statement of SEN.

Implementing the provisions

In order to meet their statutory responsibilities, each local authority should give consideration to the approaches adopted in the pilot authority areas of Carmarthenshire and Wrexham. These have been evaluated and found to have had a positive impact upon children's and young people's well-being.

To support local authorities in implementing the provisions under the Measure, the materials developed by the pilot authorities and by the SENTW for informing children of their rights under the Measure can be accessed at Annex B.

Annex A: The Education (Wales) Measure provisions – summary

The Measure introduced the following provisions:

Special educational needs appeals

Right of a child to appeal in respect of special educational needs.

This provides children with the right to appeal to the SENTW themselves in respect of a decision not to make a statement; the contents of a statement; reviews of educational needs; assessment of educational needs; change of named school and ceasing to maintain a statement.

Notice and service of documents. Any notice or document required to be given or served by a local authority in respect of a child's SEN must also be provided to the child involved. This includes any documentation related to an appeal against a decision not to make a statement; reviews of educational needs; assessment of educational needs; change of named school and ceasing to maintain a statement.

Case friends. This provides Welsh Ministers with the power to provide by regulations for case friends who can make representations on behalf of a child with a view to avoiding or resolving disagreements. Case friends can also exercise the rights of the child to appeal to the SENTW on the child's behalf.

Advice and information. Any child with special educational needs, a parent and case friend must be provided with advice and information about matters relating to those needs.

Resolution of disputes. Arrangements must be in place with a view to avoiding or resolving disagreements between the child or parent of a child and the relevant school or authority.

Independent advocacy services. Arrangements must be made for the provision of independent advocacy services and any child or case friend should be referred to that service provider if requesting such services.

Tribunal procedure. It made amendments to the provisions about the procedure for SENTW proceedings on appeal on matters relating to SEN.

Disability discrimination claims

Right of a child to make a disability discrimination claim. This is in regards to a claim that a responsible body for a school has discriminated against a person because of disability in a way which is unlawful may be made to the SENTW by that person.

Case friends. This provides Welsh Ministers with the power to provide by regulations for a disabled child to have a person make representations on behalf of the disabled child with a view to avoiding or resolving disagreements about instances of disability discrimination

in school. Case friends can also exercise the rights of the child to make a claim to the SENTW on the child's behalf.

Advice and information. Any disabled child and case friend must be provided with advice and information about matters relating to disability discrimination in schools.

Resolution of disputes. Arrangements must be in place with a view to avoiding or resolving disagreements between responsible bodies and disabled children about instances of unlawful disability discrimination.

Independent advocacy services. Arrangements must be made for the provision of independent advocacy services and any disabled child or case friend should be referred to that service provider if requesting such services.

Tribunal Procedure. It made amendments to the provisions about the procedure for SENTW proceedings on claims of disability discrimination, so that they cover direct claims by children.

Role of the Welsh Ministers. This provides for Welsh Ministers to give directions to a local authority to discharge their duty following a complaint or otherwise of acting or proposing to act unreasonably. Where the SENTW has made an order, Welsh Ministers can also issue direction for compliance to the local authority.

Piloting

Piloting the rights of a child to appeal or make a claim. Welsh Ministers may provide by regulations for the piloting of these provisions for a period of up to 40 months.

Annex B: Pilot materials and contacts

Special Educational Needs Tribunal for Wales

Information for young people, case friends and parents/carers:

<http://sentw.gov.uk/youngpeople/?lang=en>

Aled's Tribunal – a video to help children and young people through the hearing process and to show what happens at a tribunal hearing:

<http://sentw.gov.uk/youngpeople/aledstribunal/?lang=en>

Contact:

SENTW@wales.gsi.gov.uk

Carmarthenshire

SEN process

<http://www.amdro.org.uk/English/Learning/Inclusion/AddLearningNeeds/SENProcess/Pages/default.aspx>

Children's rights resources

<http://www.amdro.org.uk/english/learning/inclusion/childsappeal/resources/pages/default.aspx>

Contact:

ALNSupport@carmarthenshire.gov.uk

Wrexham

Contact:

sen@wrexham.gov.uk