

**Children and Young People Committee
School Standards and Organisation (Wales) Bill
SSO4 – Response from ASCL and NAHT Cymru**



ASCL and NAHT submission

to the

Children and Young People Committee

on

The School Standards and Organisation (Wales) Bill

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Introduction

1. Thank you for inviting us to present evidence regarding the School Standards and Organisation (Wales) Bill.
2. ASCL and NAHT represent the majority of school leaders in Wales.
3. In submitting evidence it is our intention to identify issues that we think need detailed consideration in terms of the provisions of the Bill, and to raise some questions about the strength of the structures that will be given considerably more focussed powers under the Bill. We hope that these will be taken into account by Assembly Members.
4. Our response on these issues has been informed by comments from our respective legal specialists.

General comments

5. It is clear from the provisions of this Bill that Welsh Ministers believe that it is essential that power over the structure and content of our education system be centralised. The Bill provides for Welsh Ministers, should they so determine, to take powers over everything from the organisation of SEN; intervening in schools; what and how to teach; whether to shut or open sixth forms; and whether to open, close or restructure school places,
6. The rationale for the Bill is based on:
 - i. The Welsh Government's assessment that the education system in Wales is at best 'fair' and that action is needed to enable it to become 'good' – that it is essentially at a stage where it would benefit from a centralise and standardise model.
 - ii. The Welsh Government's conviction that the current arrangements are opaque and not well understood. This, it is argued, has led to a damaging failure by Local Authorities to intervene in a timely fashion in schools causing concern.
7. We would ask Assembly Members to consider the following:
 - I i. The centralisation of power in England which took place post 1997 and involved mandatory national literacy and numeracy strategies for example, led to an apparent but short term rise in standards but also led to the unintended consequences identified by Professor Alison Wolf in her report on Vocational Qualifications.

- ii. Paragraph 7.17 of the Explanatory Memorandum claims that:

International benchmarking evidence suggests that education systems with poor and fair performance can achieve improvement through a centre that increases and scripts instructional practice for schools and teachers.

iii. In contrast, the executive summary of a McKinsey Report entitled “How The World’s Most Improved School Systems Keep Getting Better” (2010) states:

Systems further along the journey sustain improvement by balancing school autonomy with consistent teaching practice. While our study shows that systems in poor and fair performance achieve improvement through a center that increases and scripts instructional practice for schools and teachers, such an approach does not work for systems in ‘good’ performance onwards. Rather, these systems achieve improvement by the center increasing the responsibilities and flexibilities of schools and teachers to shape instructional practice – one-third of the systems in the ‘good to great’ journey and just less than two-thirds of the systems in the ‘great to excellent’ journey decentralize pedagogical rights to the middle layer (e.g. districts) or schools.

7. Assembly Members’ evaluation of where Wales is on its school improvement journey is therefore fundamentally important in considering whether the provisions of this Bill are appropriate.
8. Equally, the effectiveness of the provisions detailed in the Bill are dependent on the capacity of Local Authorities and officials directed by Welsh Ministers to assume this level of responsibility and deliver the intended change in a systematic, effective and expert fashion.
9. We think that recognising and coming to a judgement on this issue of capacity is important in considering this Bill.
10. A key feature of the Bill is the provision for further regulation and guidance to be issued by the Minister. As stated in paragraph 3.35 of the Explanatory Memorandum:

The powers to issue statutory school improvement guidance have been

purposely drafted to be broad based. They will enable the Welsh Ministers to issue guidance targeted at a number of levels namely, local authority; governing bodies of maintained schools and head teachers. Guidance may be directed at a specific school or schools in a particular group or individual local authorities working in a Consortia. Different guidance may be issued on specific topics i.e. education at a particular key stage; guidance will affect consortia regions; local authorities; schools; governing bodies; head teachers; practitioners; learners.

11. These regulations and guidance are to be subject to the annulment procedure within the Assembly. We would ask Assembly Members to consider whether this represents a sufficiently strong restraint on a Ministers' powers.
12. While Assembly Members may share a widespread view that Local Authorities in Wales have not always had a good track record of effective intervention in schools and will therefore welcome putting Welsh Ministers' powers to intervene on an unequivocal statutory basis, they may wish to consider carefully the way the legislation is framed. The phrase '*to the ministers' satisfaction*', for example, makes the Ministers' intervention almost unchallengeable in the courts even if Ministers act unreasonably. Whether the safeguard of Assembly scrutiny is sufficiently strong is for Assembly Members to decide.
13. We would ask Assembly Members to consider the provisions on school reorganisation. In particular we would draw attention to the provision for three categories of objectors, their objections to be heard by Welsh Ministers or the Local Authority depending on the category. Two categories of objector will be heard by a Local Determination Panel for a judgement on a reorganisation proposed by that same Local Authority. The effectiveness of a 'Chinese wall' between the Educational arm of the Local Authority and the rest of the Local Authority will be a matter of debate,
14. It is doubtful that anyone within the Education Service is going to object to the formal disappearance of the annual parents meeting. It is a matter that has needed resolution for quite some time.

15. The proposals on counselling do not seem to us to raise issues of appropriateness and will in the main be welcomed by the teaching profession.

16. Similarly, the provisions with regard to free school breakfasts seem appropriate.

Detailed Comments

Intervention in schools and/or Local Authorities

1. The Grounds for Intervention:

Ground 1:

- a. We find the phrase *'in all the circumstances'* curious. The courts are well-accustomed to considering the issue of 'reasonableness'. The addition of this phrase can only muddy the waters, particularly when pupils' 'circumstances' seem to be covered by the other two clauses.
- b. While it is an entirely legitimate expectation that a school must maintain a standard, there should be some recognition that normal statistical variation (depending on the size of the school) means that schools can go up as well as down within a range. As it is, the current phrasing - *'the standards previously attained'* could be interpreted to mean that any drop below the previous year's results would invite intervention. This would ignore well-known and understood cohort variation.
- c. What is added by the phrase *'where relevant'*? When would it not be relevant to consider standards previously attained by a pupil? If the intention is to require action in significant circumstances, it would be more helpful to state *'where statistically significant.'*

Ground 3

- d. In relation to the behaviour of parents, we are concerned that this clause comes close to punishing pupils (and staff) for the behaviour of parents. We believe this requires greater clarification.

Ground 6

- e. Whilst acknowledging the intention to ensure clarity of understanding by all parties, is this clause necessary? In administrative law it is assumed that persons given powers by the legislature must act reasonably or risk acting

ultra vires, in which case there would be a duty to intervene by the Local Authority in any event.

2. Power to intervene (Chapter 1, paragraph 4)

- a. In the interests of fairness and acknowledging that intervention has potential consequences for governors and school leaders, should there be an explicit process of appeal within the body of the legislation should the school feel that the Local Authority has acted unreasonably in exercising its powers to intervene? The current provisions imply that the only course of action for a school would be to seek legal redress via the courts which has financial costs and implications. This may be the intention of paragraph 4(*8)(b) which the proposed Statutory Guidance will clarify.

3. Minister's Power to intervene in maintained schools (Chapter1; paragraph 11-15)

- a. The grounds for intervention in maintained schools are essentially summed up in paragraph 11(2)(c)- namely intervention would occur if *the Ministers are satisfied that the local authority has not taken, and is not likely take, adequate action for the purposes of dealing with the grounds for intervention.*
- b. We would suggest that this section include a reference to either the evidence upon which the Ministers' judgement will be based, the appeal process that may be followed by the school, or the form of scrutiny to be undertaken by the Senedd.

4. Intervention in Local Authorities (Chapter 2)

We would suggest greater clarity would also be helpful in Ground 3 for intervention in Local Authorities. Who defines what is '*an adequate standard?*' What degree of objectivity is expected here? Should it not be expanded further?

5. School Improvement Guidance (Chapter 3)

Paragraph 35(2): We do not feel that this paragraph is helpful. The usual legal language used with regard to the application of statutory guidance is that schools must 'have regard to it.' This means that they must apply it unless they (or in this

case also Local Authorities) have good reason not to do so. This legally familiar phrase which is capable of being tested in court seems to us to answer the need here too.

- a. Paragraph 37: We are concerned that this provision allows Welsh Ministers to take on the function of the courts and decide that a school's reasons for departing from statutory guidance are inadequate without any evidence. This clause assumes that there is one right way of doing things and that Welsh Ministers know what it is; it also assumes that Welsh Ministers and their civil servants (who will be responsible for drawing up the statutory guidance, presumably in the confident belief that its universal application will raise standards), will simultaneously be able to judge impartially the decision of some schools to apply a different solution. This seems improbable.

6. School Organisation (Part 3)

We support moves to clarify and simplify the procedures surrounding the complex and at times contentious issues regarding school organisation. We think it reasonable in the interests of efficient use of resources and maintaining full curricular access for all pupils. We would however like to draw Assembly Members;' attention to:

- a. Paragraph 51-53: Most objections to reorganisation proposals will be considered either by the Local Authority or Welsh Ministers, depending on the category of objector. We are concerned that while the concept of a 'Chinese Wall' within Local Authorities or the Department for Education and Skills separating those making the reorganisation proposals from colleagues determining the validity of a case brought by objectors to those proposals might seem valid in theory, it is a system that will be open to suspicion in practice.
- b. Whilst Schedule 3 does define, to some extent, the independence of the Local Determination Panel, the issuing of a statutory code (Chapter 1; Paragraphs 38-39) may assist in allaying these concerns. It may be appropriate for the Bill to require the Code to include clear guidance on to how the independence of the body or person charged with the approval or rejection of a proposed reorganisation is to be established.

- c. Paragraph 41(2) states '*Any person may make proposals to establish a new voluntary school*'. We think this clause requires clarification. Would, for example, enable the establishment of Free Schools in Wales?
 - d. Paragraph 42 allows proposals for the alteration of an existing Foundation School but does not mention the establishment of new Foundation Schools, which are prohibited under the Education Measure (Wales) 2011. However, under Paragraph 45(5 and 6) a local authority or Governing Body may make proposals for a community special school to become a foundation special school. Is this not a contradiction? The rationale for allowing foundation schools in one context but not another is not clear to us.
7. Parent meetings (Paragraph 95)
- a. The proposals to enable parents to call meetings if and when they consider them necessary are sensible.
 - b. We believe that Governing Bodies will welcome them.
 - c. We would however ask Assembly Members to look again at the thresholds that trigger a meeting, especially the 10% threshold for smaller primary schools. In schools with 50 pupils for example, a request by five parents would trigger a meeting.
 - d. We would encourage consideration of a sliding scale, i.e. that a higher percentage of parents would have to request a meeting in smaller schools. Otherwise meetings might be convened by a very small number of parents whose specific issues would be far more efficiently dealt with in a meeting with the headteacher.
 - e. It would also be sensible to consider a clarification of 'parent'. Some children as a result of relationship breakdown, may have three or even more individuals who have registered parental rights. We wonder for example if a father and mother acting separately count as two parents for the purposes of convening a parents' meeting?
8. Code of Practice on LA and School Relationships.(paragraph 97).
- a. We accept the logic of repealing the provisions of Section 127 of the School Standards and Framework Act 1998 in the light of the proposals contained in

the School Standards and Organisation (Wales) Bill 2012. However we believe that the new legislation must stipulate that regulations or guidance initiated by Welsh Ministers must include statements regarding the appropriate protocols to be observed by both Local Authorities and Schools in managing relationships.

Concluding Comments.

9. We appreciate that the provisions contained in this Bill stem from a conviction that Local Authorities have not always intervened effectively in schools in the past; and that there is a need to direct the work of schools and Local Authorities more exactly than has been the case previously..
10. As stated in our evidence above, we would ask that Assembly Members consider carefully both the assessment of state of the Welsh education system and the capacity of our current structures to operate the centralised model described in the new legislation effectively.
11. Significant powers are enshrined in this Bill. We would also like Assembly Members to consider that even if they are persuaded that current Welsh Ministers and Local Authorities will intervene appropriately and effectively, whether sufficient safeguards exist in the legislation and the scrutiny processes of the National Assembly to guard against excessive or misguided intervention in the future.