

# **Applying for specialist further education provision**

## **Mencap WISE Student Advice Project**

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# Applying for specialist further education provision: Young People aged 16-25

This guide is for the families and carers of young people in Wales, aged between 16-25, who have learning difficulties, which cannot be met by their local college, and who want to attend a specialist further education college.

**The following sections will tell you about:**

- 1. What the law says**
- 2. How to apply for a place at a specialist further education college**
- 3. How your application will be dealt with**
- 4. What to do if you disagree with the decision**
- 5. Transport costs**
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## Future Changes

The Welsh Government plans to reform the system for meeting the additional learning needs of children and young people in Wales, and the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#) was enacted in January 2018.

Some of the key changes introduced by the new legislation include:

- Introducing a focus on ‘additional learning needs’ rather than ‘learning disability’.
- Placing an additional obligation on Welsh Ministers to ensure that education and training provision is available through the medium of Welsh (amending sections 31 and 32 Learning and Skills Act 2000).
- Repealing section 41(6) Learning and Skills Act 2000, which may create scope to argue that a young person who is taught in a different language from the language used at home has additional learning needs.
- Repealing section 140 Learning and Skills Act 2000, and replacing ‘Learning and Skills Plans’ with ‘Individual Development Plans’.

Although the new Act came into force in January 2018, the majority of the changes require additional legislation. The Welsh Government has indicated that it plans to begin the roll-out of the new system from September 2020: [Written Statement - Implementing the new additional learning needs system in Wales](#).

Until the new legislation is implemented, the system outlined in this toolkit will continue to operate.

## 1. What the law says

In Wales, the relevant law is set out in the Learning and Skills Act 2000 (LSA 2000). According to sections 31 and 32 LSA 2000 the Welsh Ministers must make sure that young people aged 16-25 are provided with:

- Suitable education (other than higher education).
- Suitable training.
- Organised leisure-time occupation connected with education.
- Organised leisure-time occupation connected with training.

This general duty requires the Welsh Ministers to provide “*proper provision*” for the education and training of learners aged 16-19, and “*reasonable facilities*” for those over the age of 19 but under 25.

If the young person has a learning difficulty additional requirements apply. Section 41 LSA 2000 says that, when making suitable education and training provision for young people with learning difficulties, the Welsh Ministers must take into account:

- the needs of the young person; and
- the content of any assessment carried out by Careers Wales.

Section 41(5) of the LSA 2000 defines learning difficulty as:

- having significantly greater difficulty in learning than the majority of persons of the same age; or
- having a disability which prevents or interferes with the ability to use the facilities provided by education institutions.

However, section 41(6) states that a person does not have a learning difficulty just because the language in which he is or will be taught is different from the language he uses at home.

In addition, the Welsh Ministers must ensure that a residential placement is obtained if:

- the young person is aged 16-19 and has a learning difficulty, and facilities which are “*sufficient in quantity and quality*” cannot otherwise be provided; or
- the young person is aged 19-25 and has a learning difficulty, and “*reasonable*” facilities cannot otherwise be provided.

Usually this means that, if the needs of a young person (aged 16-25), who has a learning difficulty, cannot be met unless the young person attends a residential placement, then the Welsh Ministers must ensure that a residential placement is obtained.

## 2. How to apply for a place at a specialist further education college

For young people with a statement of special education needs (SEN statement), the planning process should have started at the Year 9 Annual Review (when the young person was aged 13/14).

In the last year of school any young person with a SEN statement must have a learning difficulty assessment. The assessment is carried out by Careers Wales, on behalf of the Welsh Ministers. The assessment is sometimes referred to as a 'section 140 assessment' (as it is carried out under section 140 LSA 2000) or a 'learning and skills plan'. You may also hear it referred to as a 'moving on assessment'. When the young person leaves school, the learning and skills plan will set out the young person's educational and training needs. If a young person with a learning difficulty does not have a SEN statement, then a request for a section 140 assessment can still be made. (If you need to request an assessment, you may find the [Letter Templates](#) produced by SNAP Cymru to be helpful.)

As part of the section 140 assessment, Careers Wales will gather information regarding the young person's needs. This will usually include:

- the SEN statement;
- any Social Services care and support plan;
- a report from the local college regarding whether the college believes that it can meet the young person's needs;
- information from the young person's school, following the Final Annual Review of the SEN Statement (which should take place in November).

The section 140 assessment will set out the young person's education and training needs, and how those needs should be met in the future. Usually, education and training are provided via the mainstream further education sector, with additional support being provided as necessary. However, if the family/carers believe that the local college cannot meet the young person's needs, there are things that can be done to support an argument

for specialist/residential provision. In particular, the family/carers should:

- obtain supporting evidence from any professionals working with the young person (e.g. GP or Consultant);
- decide which college they would like the young person to attend and ask the college to complete an assessment report.

*Some practical things to think about:*

*The section 140 assessment will be completed in the Autumn Term of the young person's final year at school. This means that the family should decide which college they would like the young person to attend and contact that college well before the Autumn Term, so that the college has enough time to complete its assessment report.*

*The family and young person should attend all meetings, particularly the Final Annual Review of the SEN Statement.*

*The family and young person should arrange to visit the local college in the Autumn Term so that the local college has a clear understanding of the young person's needs, and the family and young person know what support the local college can offer.*

*When you visit the local college or attend any meetings you might want to have someone independent with you for support.*

*Make sure that you keep copies of any documents that you give or send to other people as things can get lost!*

### 3. How your application will be dealt with

The Welsh Government produces a Guide - [Securing provision for learners with learning difficulties at specialist further education establishments](#) - which provides information about the decision-making process that will be followed by the Welsh Ministers.

If the section 140 assessment concludes that the young person's needs cannot be met by the local college, an application for funding for a specialist further education college will be sent to the Welsh Ministers.

The application will be submitted by Careers Wales and must be received by the Welsh Ministers by no later than 31<sup>st</sup> January. Once the application has been submitted it will be considered by the Welsh Ministers, and a decision should be made within six weeks, although it may take longer.

As well as taking into account all the available evidence and acting in accordance with their legal obligations under the LSA 2000, the Welsh Ministers must ensure that the young person is treated fairly and equitably by considering:

- the interests of the young person; and
- the young person's views and wishes.

Sometimes there is a dispute about whether the local college can meet the young person's needs. Usually, a dispute will arise where the family believes that the local college cannot meet the young person's needs, but the local college states that it can. If this happens, it is still possible to ask Careers Wales to submit the funding application, but it is very important that the family makes sure that the application sets out their views clearly. In these circumstances the family may want to prepare a letter, setting out everything that they want to say about the need for a specialist placement, and submit it with the funding application.

Whilst the Welsh Government may pay all of the fees for the specialist placement, sometimes it will pay the course costs and another funding agency, such as social services, will be asked to pay the non-educational costs. Where there are identified health and/or medical needs the local health board may be asked to contribute towards the



costs. The negotiations between the Welsh Government and the other agencies can take time and may delay the funding decision. If the Welsh Government cannot reach agreement with other agencies this should not put the young person's placement at risk as, ultimately, it is the responsibility of the Welsh Ministers to ensure that appropriate provision, including residential facilities where required, are available.

However, where the Welsh Government agrees that another agency will contribute towards the costs of the placement, you need to be aware that you could be charged for the services provided by the other agency, if the other agency would normally charge for those services. For example, if a placement involves an element of social care, and the local authority agrees to meet the social care costs, then the young person/family could be asked to contribute towards the local authority's costs if the local authority would normally charge for social care services.

The Welsh Government's Guide notes *that "the Welsh Ministers generally only expect to fund placements lasting up to a maximum of two academic years"*. However, this does not mean that programmes lasting more than two years, or second programmes of study, cannot be funded. If funding lasting more than two years is being sought then "*good reasons*" to award the funding must be set out in the application.

## 4. What to do if you disagree with the decision

If the Welsh Ministers decide that the young person's needs can be met by the local college, it is possible to challenge that decision. In order to challenge the decision you need to be able to demonstrate that the local college cannot meet the young person's needs. The fact that the young person would prefer to go to a specialist college is not likely to be a sufficient reason to challenge the decision.

There are several ways in which the Welsh Ministers' decision can be challenged:

- *Complaints Procedure*: it is possible to make a complaint to the Welsh Government about the decision. The complaint will be investigated by someone other than the person responsible for the decision, and it will usually be dealt with within 20 working days. A complaint will usually look at the way in which a decision was made, rather than the outcome. This means that you will need to show that the way in which the decision was reached was wrong (e.g. because some important information was not considered).
- *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. Before you can ask the Ombudsman to investigate you will usually need to have already made a formal complaint using the Welsh Government's complaints procedure. Unfortunately, it can take many months for the Ombudsman to complete his investigation. This can cause problems as it may mean that the investigation is not completed before the young person is due to start at college. If you make a complaint to the Ombudsman you should point out that the investigation is urgent, and ask if the investigation can be expedited.
- *Judicial Review*: this is a legal process, which allows the court to review a decision by a public body. If the court decides that the way in which the decision was taken was wrong in some way (e.g. because important information was not taken into account), the court can order that the decision-making process is undertaken again. Judicial review is a complex process and must be started within 3 months of the decision you are disputing. It is important to get legal advice from a solicitor

regarding whether you have grounds for judicial review, and whether you can get legal aid to cover the costs involved.

There is a list of useful websites in the **Additional Resources** section of this guide, some of which will help you to pursue any complaint.

## 5. Transport costs

The rules regarding providing free or subsidised transport to schools and colleges in Wales are set out in the Learner Travel (Wales) Measure 2008.

There is no statutory duty on a local authority to provide free transport to a young person with a learning difficulty in post-16 further education or training. However, section 2(4) of the Measure requires local authorities to assess the travel needs of all learners in their areas, up to the age of 19, having particular regard to “*the needs of learners with learning difficulties*”. This means that local authorities have discretion regarding whether they provide transport for learners aged 16-19, so you will need to contact your local authority to find out what their policy is. [Family Point Cymru](#) provides help to identify the relevant local authority, and the school/college student support officer may also be able to help you.

### Student Finance Wales:

The Welsh Government provides financial support to learners who wish to continue their education after compulsory school leaving age, through [Student Finance Wales \(Further Education\)](#).

Learners aged 16-18 may be able to claim an **education maintenance allowance**, and post-19 learners may be entitled to a **Welsh Government learning grant**. However, the funding is means tested, and is likely to be based on parental income, and the funding can only be claimed if the young person is undertaking an eligible course.

### Other sources of funding:

The Welsh Government also provides funding to further education colleges in Wales to operate hardship funds for their students, known as Financial Contingency Funds. A grant or loan may be available to assist with transport costs, although these may be restricted to providing bus or rail passes. Again, the college student support officer will be able to provide you with advice regarding whether a young person may be eligible for relevant funding.

In addition, some charities will provide support to young learners, and the [Turn2us](#) website may help you identify relevant organisations.

## 6. Glossary

Term used	Meaning
learning and skills plan	A written report setting out the young person’s post-16 education and training needs. The assessment should be completed during the young person’s last year of compulsory schooling, and will be undertaken by Careers Wales on behalf of the Welsh Ministers.
learning difficulty	<p>Section 41(5) Learning and Skills Act 2000 defines a person as having a learning difficulty if either:</p> <ul style="list-style-type: none"> <li>• they have significantly greater difficulty in learning than the majority of persons their age; or</li> <li>• they have a disability which prevents or hinders them from making use of facilities generally provided by institutions providing post-16 education or training.</li> </ul> <p>However, difficulties that arise from being taught in a different language cannot constitute learning difficulties under the Act.</p>
ombudsman	An independent person who has a legal power to review decisions made by public bodies, such as local authorities.
organised leisure-time occupation	Under section 2(6) Education Act 1996, this covers a wide range of organised, non-formal learning which does not lead to a qualification. It can include cultural training and recreational activities suited to the requirements of a young person over compulsory school age.
specialist further education provision	A further education college that specialises in providing education or training for students with learning difficulties and disabilities, including residential provision.

SEN statement	A statement of Special Educational Needs is a legally binding document that sets out the child/young person's needs and how they will be met. If an application is made for a SEN statement, the local authority should inform the family within 6 weeks whether a full assessment is going to be carried out. If an assessment is necessary, the outcome should be available within 12 weeks of the decision to carry out the assessment. The SEN statement should then be reviewed each year.
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## 7. Additional Resources

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

Organisation	Website
Careers Wales <i>(funding advice for disabled students)</i>	<a href="http://www.careerswales.com/en/education-and-courses/how-can-i-fund-my-study/funding-for-students-with-learning-difficulties-and-disabilities/">www.careerswales.com/en/education-and-courses/how-can-i-fund-my-study/funding-for-students-with-learning-difficulties-and-disabilities/</a>
Education Law Association <i>(Association for educationalists, lawyers and advice workers concerned with education law, which provides referral service)</i>	<a href="http://www.educationlawassociation.org.uk/">www.educationlawassociation.org.uk/</a>
Family Point Cymru <i>(advice for parents/carers of children and young people in Wales)</i>	<a href="https://familypoint.cymru/">https://familypoint.cymru/</a>
Law Society <i>(will help you find a solicitor in your area)</i>	<a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>
Learning Disability Wales <i>(charity providing advice and support in relation to learning disability)</i>	<a href="http://www.ldw.org.uk/networks/parents-with-a-learning-disability.aspx#.WHfB62dviUk">www.ldw.org.uk/networks/parents-with-a-learning-disability.aspx#.WHfB62dviUk</a>
National Assembly for Wales <i>(guide to student support available for further education)</i>	<a href="http://www.assembly.wales/research%20documents/faq16-009%20-%20student%20support%20in%20further%20education%20201617/faq16-009-web-english.pdf">www.assembly.wales/research%20documents/faq16-009%20-%20student%20support%20in%20further%20education%20201617/faq16-009-web-english.pdf</a>
Public Services Ombudsman <i>(investigates complaints about public bodies in Wales)</i>	<a href="http://www.ombudsman-wales.org.uk/en.aspx">www.ombudsman-wales.org.uk/en.aspx</a>

SNAP Cymru <i>(provides advice to young people with additional learning needs and their families)</i>	<a href="http://www.snapcymru.org">www.snapcymru.org</a>
Student Finance Wales <i>(information regarding applying for an education maintenance allowance and/or Welsh Government learning grant)</i>	<a href="http://www.studentfinancewales.co.uk/fe.aspx">www.studentfinancewales.co.uk/fe.aspx</a>
Useful People <i>(information regarding Special Educational/Additional Learning Needs Policy in Wales)</i>	<a href="https://usefulpeople.wordpress.com/">https://usefulpeople.wordpress.com/</a>
Turn2Us <i>(national charity that helps people access grants and support services)</i>	<a href="http://www.turn2us.org.uk/">www.turn2us.org.uk/</a>
Welsh Government <i>(complaints procedure)</i>	<a href="https://secure.gov.wales/contact_us/makeacomplaint/complaintspolicy/?lang=en">https://secure.gov.wales/contact_us/makeacomplaint/complaintspolicy/?lang=en</a>



For More Information you can contact:

Mencap WISE on 0808 8000 300 (Monday to Friday, 9am – 5 pm)

Or e-mail [information.wales@mencap.org.uk](mailto:information.wales@mencap.org.uk)



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