Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 14 Mehefin 2011 o dan adran 24(4) o Fesur Addysg (Cymru) 2009, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U S T A T U D O L
C Y M R U D R A F F T

2011 Rhif (Cy.)

ADDYSG, CYDRADDOLDEB, CYMRU

Gorchymyn Hawl Plentyn i Wneud Hawliad Gwahaniaethu ar sail Anabledd (Ysgolion) (Cymru) 2011

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Roedd Mesur Addysg (Cymru) 2009 ("y Mesur") yn diwygio Rhan 4 o Ddeddf Gwahaniaethu ar sail Anabledd 1995, a oedd yn ymwneud â gwahaniaethu mewn ysgolion, er mwyn galluogi plant eu hunain i wneud hawliad gwahaniaethu ar sail anabledd, i Dribiwnlys Anghenion Addysgol Arbennig Cymru ("y Tribiwnlys"). Diddymwyd Deddf Gwahaniaethu ar sail Anabledd 1995 gan Ddeddf Cydraddoldeb 2010.

Mae'r Gorchymyn hwn, a wnaed o dan adran 20 o'r Mesur, yn diwygio'r Mesur drwy dynnu ymaith y darpariaethau a oedd yn diwygio Deddf Gwahaniaethu ar sail Anabledd 1995, a gosod darpariaethau cyfatebol a darpariaethau priodol eraill yn eu lle, sy'n diwygio Deddf Cydraddoldeb 2010.

Mae erthygl 3 o'r Gorchymyn yn mewnosod adran 9 newydd yn y Mesur, sy'n diwygio Deddf Cydraddoldeb 2010 er mwyn rhoi i blentyn yr hawl i wneud hawliad i'r Tribiwnlys.

Mae erthygl 4 o'r Gorchymyn yn mewnosod adran 10 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 ynghylch terfynau amser ar gyfer dwyn achos.

Mae erthygl 5 o'r Gorchymyn yn mewnosod adran 11 newydd yn y Mesur, sy'n mewnosod darpariaethau

yn Neddf Cydraddoldeb 2010 ynghylch gweithdrefn y Tribiwnlys.

Mae erthygl 6 o'r Gorchymyn yn mewnosod adran 12 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 a fydd yn caniatáu i blentyn gael person (a adwaenir fel "cyfaill achos"), i gyflwyno sylwadau ar ran y plentyn, er mwyn osgoi neu ddatrys anghydfodau â'r corff sy'n gyfrifol am ysgol, neu arfer hawl y plentyn i wneud hawliad i'r Tribiwnlys, ar ran y plentyn.

Mae erthygl 7 o'r Gorchymyn yn mewnosod adran 13 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 ynghylch trefniadau i ddarparu cyngor a gwybodaeth i blentyn.

Mae erthygl 8 o'r Gorchymyn yn mewnosod adran 14 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 ynghylch datrys anghydfodau.

Mae erthygl 9 o'r Gorchymyn yn mewnosod adran 15 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 ynghylch gwasanaethau eirioli annibynnol.

Mae erthygl 10 o'r Gorchymyn yn mewnosod adran 16 newydd yn y Mesur, sy'n mewnosod darpariaethau yn Neddf Cydraddoldeb 2010 ynghylch pŵer Gweinidogion Cymru i gyfarwyddo pan fo awdurdod lleol yn gweithredu, neu'n bwriadu gweithredu, yn afresymol wrth gyflawni dyletswydd, neu wedi methu â chyflawni dyletswydd.

Mae erthygl 11 o'r Gorchymyn yn diwygio adran 17 o'r Mesur, er mwyn sicrhau y gall rheoliadau ynglŷn â threialu weithredu drwy gyfeirio at y darpariaethau a fewnosodir yn Neddf Cydraddoldeb 2010 gan y darpariaethau o'r Mesur a ddiwygir gan y Gorchymyn hwn.

Mae erthygl 12 o'r Gorchymyn yn diwygio adran 18 o'r Mesur, i ganiatáu i Weinidogion Cymru wneud darpariaeth drwy orchymyn o dan yr adran honno ynglŷn â hawl person i wneud hawliad i'r Tribiwnlys ynghylch materion y mae hawl gan riant y person hwnnw i wneud hawliad yn eu cylch o dan adran 3 o Atodlen17 i Ddeddf Cydraddoldeb 2010. Mae hyn yn cynnwys pŵer i ddiwygio neu ddiddymu darpariaethau o Bennod 1 o Ran 6 o Ddeddf Cydraddoldeb 2010 ac Atodlen 17 i'r Ddeddf honno.

Mae erthygl 13 o'r Gorchymyn yn gwneud mân ddiwygiadau a diwygiadau canlyniadol i'r Mesur, drwy osod cyfeiriadau at Ddeddf Cydraddoldeb 2010 yn lle cyfeiriadau at Ddeddf Gwahaniaethu ar sail Anabledd 1995, a gwneud yn eglur bod pŵer Gweinidogion Cymru, o dan adran 26(3) o'r Mesur, i gychwyn darpariaethau yn ymestyn, yn achos

darpariaethau a ddiwygir gan y Gorchymyn hwn, i’r darpariaethau hynny fel y’u diwygiwyd.

Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru ar 14 Mehefin 2011 o dan adran 24(4) o Fesur Addysg (Cymru) 2009, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

O F F E R Y N N A U   S T A T U D O L
C Y M R U   D R A F F T

2011 Rhif (Cy.)

ADDYSG, CYDRADDOLDEB, CYMRU

Gorchymyn Hawl Plentyn i Wneud Hawliad Gwahaniaethu ar sail Anabledd (Ysgolion) (Cymru) 2011

Gwnaed	*2011*
Yn dod i rym	*6 Gorffennaf 2011*

Mae Gweinidogion Cymru yn gwneud y Gorchymyn canlynol drwy arfer y pwerau a roddwyd iddynt gan adran 20(3) o Fesur Addysg (Cymru) 2009(**1**).

Mae drafft o'r Gorchymyn hwn, wedi ei osod gerbron Cynulliad Cenedlaethol Cymru cyn gwneud y Gorchymyn, yn unol ag adran 24(4) o Fesur Addysg (Cymru) 2009 ac wedi ei gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.

Enwi a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Hawl Plentyn i Wneud Hawliad Gwahaniaethu ar sail Anabledd (Ysgolion) (Cymru) 2011.

(2) Daw'r Gorchymyn hwn i rym ar 6 Gorffennaf 2011.

Diwygio Mesur Addysg (Cymru) 2009

2. Diwygir Mesur Addysg (Cymru) 2009 ("y Mesur") yn unol ag erthyglau 3 i 13 o'r Gorchymyn hwn.

(**1**) 2009 mccc 5.

Hawl plentyn i wneud hawliad anabledd

3. Yn lle adran 9 o'r Mesur (hawl plentyn i wneud hawliad gwahaniaethu ar sail anabledd), rhodder—

"**9 Hawl plentyn i wneud hawliad gwahaniaethu ar sail anabledd**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010(**1**) yn unol â'r adran hon.

(2) Yn y pennawd i baragraff 3 (awdurdodaeth), ar ôl "*Jurisdiction*" mewnosoder "- *England and Wales*".

(3) Ar ôl paragraff 3 mewnosoder—

"*3A Jurisdiction - Wales*

(1) A claim that a responsible body for a school in Wales has contravened Chapter 1 of Part 6 in relation to a person because of disability may be made to the Tribunal by that person ("the relevant person").

(2) But this paragraph does not apply to a claim to which paragraph 13 or 14 applies.

(3) The relevant person's right to claim is exercisable concurrently with the right of the relevant person's parent under paragraph 3.

(4) The exercise of rights under this paragraph is subject to provision made by regulations under paragraphs 6 and 6A".".

Amser ar gyfer dwyn achos

4. Yn lle adran 10 o'r Mesur (cyfeillion achos), rhodder—

"**10 Amser ar gyfer dwyn achos**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â'r adran hon.

(2) Ym mharagraff 4 (amser ar gyfer dwyn achos), ar ôl is-baragraff (2), rhodder—

"(2A) If, in relation to proceedings or prospective proceedings on a claim under paragraph 3 or 3A, the dispute is referred for

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(**1**) p. 15.

resolution in pursuance of arrangements under paragraph 6C or for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006(**1**) before the end of the period of 6 months mentioned in sub-paragraph (1), that period is extended by 3 months.”.”.

Gweithdrefn y Tribiwnlys

5. Yn lle adran 11 o’r Mesur (cyngor a gwybodaeth), rhodder —

“**11 Gweithdrefn y Tribiwnlys**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â’r adran hon.

(2) Ym mharagraff 6 (gweithdrefn)—

(a) yn is-baragraff (2)(a), ar ôl “paragraph 3” mewnosoder “or 3A”;

(b) ar ôl is-baragraff (3)(c), mewnosoder “(ca) for adding and substituting parties;”.”.

Cyfeillion achos

6. Yn lle adran 12 o’r Mesur (datrys anghydfodau), rhodder—

“**12 Cyfeillion achos**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â’r adran hon..

(2) Ar ôl paragraff 6 (gweithdrefn) mewnosoder—

“*6A Case friends - Wales*

(1) The Welsh Ministers may by regulations provide for—

(a) a disabled child in a local authority area in Wales to have a person to make representations on behalf of the disabled child with a view to avoiding or

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(**1**) Diwygiwyd ardan 27(1) o Ddeddf Cydraddoldeb 2006 gan erthygl 7 o Orchymyn Deddf Cydraddoldeb 2010 (Awdurdodau Cyhoeddus a Diwygiadau Canlyniadol ac Atodol) 2011 (O.S. 2011/1060).

resolving disagreements about contraventions of Chapter 1 of Part 6; and

(b) a relevant person (within the meaning of paragraph 3A) to have another person to exercise the relevant person's rights under that paragraph on the relevant person's behalf.

(2) A person exercising rights or making representations on behalf of a disabled child or a relevant person under sub-paragraph (1) is referred to in this Schedule as a "case friend".

(3) A case friend must—

(a) make representations and exercise rights fairly and competently;

(b) have no interest adverse to that of the disabled child or relevant person;

(c) ensure that all steps and decisions taken by the case friend are for the benefit of the disabled child or relevant person and take account of the disabled child or relevant person's views.

(4) Regulations made under this paragraph may (among other things)—

(a) confer functions on the Welsh Tribunal;

(b) make provision about procedures in relation to case friends;

(c) make provision about the appointment and removal of case friends;

(d) specify the circumstances in which a person may or may not act as a case friend;

(e) specify the circumstances in which a relevant person (within the meaning of paragraph 3A) must have a case friend;

(f) specify further requirements in respect of the conduct of case friends.

(5) In this paragraph and in paragraphs 6B, 6C, 6D and 6E, "local authority" has the meaning given in section 89(10).

(6) In this paragraph and in paragraphs 6B, 6C and 6D—

"disabled child" means any disabled person who is a pupil (or a prospective pupil) of —

(a) a maintained school or maintained nursery school,

(b) a pupil referral unit,

(c) an independent school, or

(d) a special school not maintained by a local authority;

"proprietor" has the meaning given in section 89(4);

"school" has the meanings given in section 89(5).

(7) In sub-paragraph (6)—

"independent school" has the meaning given in section 89(8);

"maintained school" has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

"maintained nursery school" has the meaning given in section 22(9) of the School Standards and Framework Act 1998;

"pupil" has the meanings given in section 89(3);

"pupil referral unit" has the meaning given in section 19 of the Education Act 1996; and

"special school" has the meaning given in section 89(9). ".".

Cyngor a gwybodaeth

7. Yn lle adran 13 o'r Mesur (gwasanaethau eirioli annibynnol), rhodder—

“**13 Cyngor a gwybodaeth**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â’r adran hon.

(2) Ar ôl paragraff 6A (cyfeillion achos – Cymru) mewnosoder—

“*6B Advice and information - Wales*

(1) A local authority in Wales must arrange for any disabled child in its area and for the case friend of any such child to be provided with advice and information about matters relating to disability discrimination in schools.

(2) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(3) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(4) The local authority must take such steps as it considers appropriate for making the services provided under sub-paragraph (1) known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d) such other persons as it considers appropriate.”.”.

Datrys anghydfodau

8. Yn lle adran 14 o’r Mesur (gweithdrefn y Tribiwnlys), rhodder —

“**14 Datrys anghydfodau**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â’r adran hon.

(2) Ar ôl paragraff 6B (cyngor a gwybodaeth – Cymru) mewnosoder—

“*6C Resolution of disputes - Wales*

(1) A local authority in Wales must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and disabled children in its area about contraventions of Chapter 1 of Part 6.

(2) The arrangements must provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of such disagreements.

(3) In making the arrangements, the local authority must have regard to any guidance given by the Welsh Ministers.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) The local authority must take such steps as it considers appropriate for making the arrangements under sub-paragraph (1) known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d) such other persons as it considers appropriate.

(6) The arrangements cannot affect the entitlement of any person to make a claim to the Tribunal, and the local authority must take such steps as it considers appropriate to make that fact known to disabled children, to parents of disabled children and to case friends for disabled children in its area.”.”.

Gwasanaethau eirioli annibynnol

9. Yn lle adran 15 o'r Mesur (rôl Gweinidogion Cymru), rhodder—

"**15 Gwasanaethau eirioli annibynnol**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â'r adran hon.

(2) Ar ôl paragraff 6C (datrys anghydfodau – Cymru) mewnosoder—

"*6D Independent advocacy services - Wales*

(1) Every local authority in Wales must—

(a) make arrangements for the provision of independent advocacy services in its area;

(b) refer any disabled child in its area who requests independent advocacy services to a service provider;

(c) refer any person who is a case friend for a disabled child in its area and who requests independent advocacy services to a service provider.

(2) In this paragraph "independent advocacy services" are services providing advice and assistance (by way of representation or otherwise) to a disabled child who is—

(a) making, or intending to make a claim that a responsible body has contravened Chapter 1 of Part 6 because of the child's disability; or

(b) considering whether to make such a claim; or

(c) taking part in or intending to take part in dispute resolution arrangements made under paragraph 6C.

(3) In making arrangements under this paragraph, every local authority must have regard to the principle that any services

provided under the arrangements must be independent of any person who is—

(a) the subject of a claim to the Tribunal, or

(b) involved in investigating or adjudicating on such a claim.

(4) The arrangements must comply with any provisions made in regulations by the Welsh Ministers that relate to the arrangements.

(5) Every local authority in Wales must take such steps as it considers appropriate for making the arrangements under this paragraph known to—

(a) disabled children in its area,

(b) parents of disabled children in its area,

(c) head teachers and proprietors of schools in its area, and

(d)such other persons as it considers appropriate.

(6) The arrangements may include provision for payments to be made to, or in relation to, any person carrying out functions in accordance with the arrangements.

(7) A local authority must have regard to any guidance given from time to time by the Welsh Ministers.".".

Rôl Gweinidogion Cymru

10. Yn lle adran 16 o'r Mesur (gweithdrefnau ar gyfer gwneud rheoliadau), rhodder—

"**16 Rôl Gweinidogion Cymru**

(1) Diwygir Atodlen 17 i Ddeddf Cydraddoldeb 2010 yn unol â'r adran hon.

(2) Ar ôl paragraff 6D (gwasanaethau eirioli annibynnol – Cymru) mewnosoder—

"*6E Power of direction - Wales*

(1) If the Welsh Ministers are satisfied (whether on a complaint or otherwise) that a local authority—

(a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under paragraph 6B, 6C or 6D, or

(b) has failed to discharge a duty imposed by or under any of those paragraphs,

they may give that local authority such directions as to the discharge of the duty as appear to them to be expedient.

(2) A direction may be given under sub-paragraph (1) even if the performance of the duty is contingent on the opinion of the local authority.

(3) A direction—

(a) may be varied or revoked by the Welsh Ministers;

(b) may be enforced, on the application of the Welsh Ministers, by a mandatory order obtained in accordance with section 31 of the Senior Courts Act 1981.".".

Treialu hawliau plentyn i apelio neu i wneud hawliad

11. Yn adran 17 o'r Mesur—

(a) yn is-adran (1), yn lle "Deddf Gwahaniaethu ar sail Anabledd 1995 (p. 50)", rhodder "Deddf Cydraddoldeb 2010 (p. 15)";

(b) yn is-adran (2)—

(i) ym mharagraff (c), yn lle "Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "Ddeddf Cydraddoldeb 2010";

(ii) ym mharagraff (d), yn lle "Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "Ddeddf Cydraddoldeb 2010".

Pŵer i wneud darpariaeth ynghylch apelau a hawliadau gan blentyn

12. Yn adran 18 o'r Mesur —

(a) yn is-adran (1), ym mharagraff (b), yn lle "adran 28I o Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "baragraff 3 o Atodlen 17 i Ddeddf Cydraddoldeb 2010";

(b) yn is-adran (2), ym mharagraff (c), yn lle "Rhan 4 o Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "Pennod 1 o Ran 6 o Ddeddf Cydraddoldeb 2010 ac Atodlen 17 i'r Ddeddf honno".

Mân ddiwygiadau a diwygiadau canlyniadol

13.—(1) Yn adran 19 o'r Mesur —

(a) yn is-adran (1), yn y diffiniad o "plentyn anabl", yn lle "yn adran 28I o Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "ym mharagraff 6A o Atodlen 17 i Ddeddf Cydraddoldeb 2010";

(b) yn is-adran (2), yn lle "â pharagraff 1 o Atodlen 4A i Ddeddf Gwahaniaethu ar sail Anabledd 1995", rhodder "ag adran 85(9) o Ddeddf Cydraddoldeb 2010".

(2) Yn adran 26 o'r Mesur, yn is-adran (3), ar ôl "gweddill darpariaethau'r Mesur hwn" mewnosoder "(gan gynnwys, yn achos darpariaethau a ddiwygiwyd gan Gorchymyn Hawl Plentyn i Wneud Hawliad Gwahaniaethu ar sail Anabledd (Ysgolion) (Cymru) 2011, y darpariaethau hynny fel y'u diwygiwyd)".

(3) Yn yr Atodlen i'r Mesur, hepgorer y paragraffau 6 i 9.

Enw

Y Gweinidog Addysg a Sgiliau, un o Weinidogion Cymru

Dyddiad