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Communication Matters

Improving Communication in Additional Support Needs



Foreword by Muriel Gray

Well known broadcaster and journalist Muriel Gray is the first Patron for Scotland's Additional Support Needs (ASN) mediation, which helps resolve disputes between children or their parents/carers and education staff.

Parents and teachers are central to the universe of most children. No one knows their child better than a parent: no one knows how to teach better than a teacher. When there is good communication and trust between these adults it opens the door to managing the best possible ways for our children and young people to flourish and learn throughout their years at school.



Muriel Gray said:

"Raising a child with additional support needs has its own set of challenges which can not only exhaust and demoralize a parent, but make their goals and ambitions highly charged with emotion. Similarly, many teachers have passionate views on the education of special needs children.

Speaking as the mother of a daughter with complex special needs, I couldn't be more supportive of a scheme that intends to empower all parties concerned in any conflict of opinion. To provide an independent, calm and empathic environment in which both parties can fully express their views can only be a very welcome move forward. This is a wonderful initiative which I wholeheartedly support."

This publication was funded by the ESRC as part of the follow-on funding project entitled Dispute resolution in additional support needs: working together to improve children's and families' experiences (RES: 189-25-0225). We are very grateful to the ESRC for this support. We would also like to thank all those who contributed to and participated in our ESRC-funded think tanks (see www.creid.ed.ac.uk for further details). May 2012.



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Introduction

This guide for parents and practitioners is based on a two year ESRC-funded project on avoiding and resolving disputes in the field of additional support needs, which was carried out by researchers at the Universities of Edinburgh and Manchester between 2008 and 2010. Drawing on the insights of parents and practitioners, different research methods were used to develop an understanding of what causes disputes in the first place and, when disputes arise, how they may be dealt with most effectively with a view to providing the best possible outcomes for children.

We should not be surprised that there are sometimes disagreements about the best way of meeting children's additional support needs. This is because, by definition, a child with additional support needs

requires something which is different from or additional to the type of educational provision which is normally provided. Additional support may take various forms. For example, a classroom assistant or sign language interpreter may be needed to support the inclusion of a child in a mainstream school. Buildings may need to be adapted to allow wheelchair access or additional changing facilities may be required. Although the Scottish Government wants to include as many children as possible in mainstream schools, some children may flourish in a special school which may be independent, grant aided or run by the local authority. Additional services and different types of education can be expensive, and it is obvious that local authorities have to ensure fairness in their allocation of resources. Particularly at a time of reductions in public spending, local authorities and schools may not always be able to afford the type of provision which parents believe best meets their child's needs.



Frequently, responding to children with additional support needs does not involve great expense, but rather thinking in a creative way about doing things slightly differently. It is essential for parents and practitioners to work together to ensure that the child with additional support needs gets the best possible education.

Successful communication between parents and practitioners is always based on positive engagement and mutual respect. Creating an atmosphere where positive engagement is the norm will benefit all parents and children, producing the type of nurturing environment where learning flourishes.

This publication:

- Summarises key aspects of the legislation, including ways of resolving disagreements;
- Sets the ASN legislation within the wider educational and child welfare framework;
- Describes the key principles of parents' and children's rights which are reflected in the policy and legislation;
- Explores the underlying principles of good communication between parents and practitioners;
- Discusses parents' and practitioners' experiences of different dispute resolution routes (mediation, adjudication, tribunal), and explores how these can be used to resolve difficulties;
- Uses case studies to illustrate what happens when children and young people, parents and practitioners communicate effectively, and what happens when things go wrong;
- Suggests changes which are needed to ensure that the rights of children and young people with additional support needs and their parents are realised in practice.



The legal and policy framework



Education and equality legislation

The UK has signed up to a number of international agreements which underline the rights of children with additional support needs to be educated in inclusive environments and to have their views taken into account in all decision-making. These agreements include the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. These conventions acknowledge that parents are very often the strongest advocates of their children's rights, and therefore support parents' as well as children's rights.

The Education (Additional Support for Learning) (Scotland) Act 2004 (amended by the Education (Additional Support for Learning) (Scotland) Act

2009) provides the legal framework for the education of children with additional support needs. This legislation replaced the concept of special educational needs with that of additional support needs. The aim of the legislation was to target additional resources on children requiring something extra from the system in order to flourish. In addition to meeting the needs of children with learning difficulties and disabilities, there were concerns that schools needed to do more to support children growing up in poverty, looked after by the local authority, experiencing disrupted education or whose parents were drug or alcohol abusers. The legislation put in place staged levels of support, ranging from some additional help in the classroom through to multi-agency input.

Different levels of support were underpinned by different types of plan, with Co-ordinated Support Plans available for children with significant and



complex needs requiring significant support from agencies outwith education such as health and social work (see illustration of staged intervention levels on page 8). The legislation is explained more fully in the *Code of Practice: Supporting Children's Learning* <http://www.scotland.gov.uk/Publications/2011/04/04/090720/0> published by the Scottish Government and the *Parents' Guide to Additional Support for Learning* published by Enquire <http://enquire.org.uk/publications/parents-guide>.



In addition to education legislation, the rights of disabled children and their parents are underpinned by equality legislation. The Equality Act 2010 makes it unlawful to discriminate against a disabled person in education. Discrimination in education may occur if:

- the local authority or the school provides less favourable treatment to a disabled child compared with provision to non-disabled children (e.g. refusing to allow a disabled child to attend a club or school trip).
- The local authority or the school fails to make reasonable adjustments (e.g. providing additional aids and services to enable a disabled child to be included in or to benefit from education).

Equality legislation also makes it unlawful to discriminate against or harass a person who is associated with a disabled person, such as a parent or carer. Finally, local authorities and schools in Scotland are bound by the public sector equality duty which requires them to make year-on-year improvements in provision for disabled people and other protected groups.

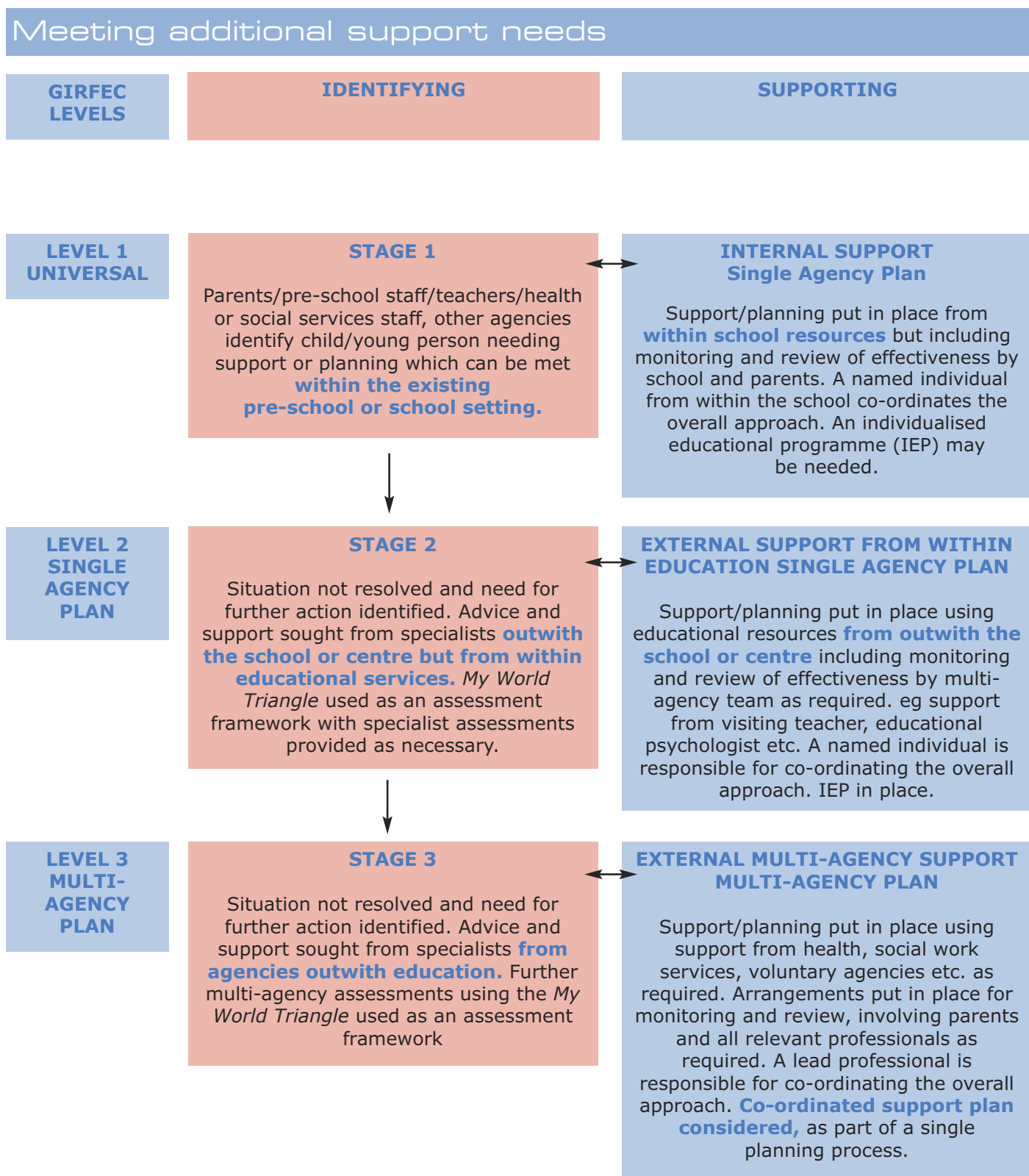
Overall, it is evident that there is no shortage of legislation aimed at supporting children with additional support needs and their parents. The challenge lies in translating policy into practice.

The wider educational context

Curriculum for Excellence is a curriculum for all children and provides a framework for school education across Scotland. A key principle is that children are entitled to personal support which will enable them to benefit from available learning opportunities.

Curriculum for Excellence is supported by the Getting it Right for Every Child (GIRFEC) programme, which aims to improve the learning outcomes and life chances of all children, by ensuring they are safe, healthy, achieving, nurtured, active, respected, responsible and included. Further details are provided in the Scottish Government's *Code of Practice: Supporting Children's Learning*.

GIRFEC levels of assessment



The principles of good communication: working together as a team

The values, principles and practice of the Getting It Right For Every Child approach place great emphasis on the 'team around the child' working together to 'get it right'. Families and children should be consulted and involved at every step because they too are part of the team.

Every team brings together different and diverse perspectives, and a team that is working well makes positive use of different ways of thinking to increase the likelihood of more creative solutions. When team members respond effectively to the presence of tensions that arise and work through the issues, this can lead to improved understanding, stronger relationships and more effective problem solving. It is vitally important, therefore, that the team around the child sharpens up their communication skills in order to avoid unnecessary conflict.

When team members respond ineffectively or not at all to tensions that arise, this can lead to anger, hurt feelings and resentment. If these feelings are allowed to grow, conflict will escalate, viewpoints will become entrenched, and verbal personal attacks may occur. Without effective conflict management techniques, sometimes involving the intervention of a skilled practitioner, relationships will be damaged and the team becomes dysfunctional. 'Getting it right' for the child becomes more and more difficult.

Destructive conflict can be characterised as a two-way interaction, spiralling through:¹



Clearly, it is preferable if problems or tensions can be resolved as soon as they arise so that they do not escalate into full-blown grievances or disputes. Effective communication and negotiation lie at the heart of conflict resolution.

Hedeen and colleagues (2011)² suggest that greater partnership between teachers and parents occurs in stages as represented below, not as a single event.



Informing involves a one-way, rather than two-way, flow of communication from schools to students and parents. **Involving** represents an invitation to parents to support an agenda specified by school staff, whereas **engaging** involves teachers, parents, students and community members working together to set the agenda for discussion and action. Finally, **leading** involves parents, teachers and community members taking the initiative in particular areas, requiring teachers to step back from the sometimes automatic assumption that they will always set the agenda to which others respond. Hedeen and colleagues suggest that parent/teacher partnerships work best when a win-win, rather than a win-lose, relationship is established. Rather than competing with each other, and believing that the success of one demands the defeat of the other, parents and teachers attempt to negotiate a solution to a problem which will work for everyone. In order to achieve this type of co-operation, everyone needs to

have an open, friendly, and helpful attitude, sensitivity to common interests and a desire to enhance mutual power rather than power differences. Shared respect must underpin all interactions.



Schools are generally good at allocating parents traditional roles such as running fund-raising events, assisting with homework and attending parent teacher meetings to hear about their children's progress. However, they are far less good at involving parents as more equal partners. In Scotland, for example, parents are not routinely involved in developing and reviewing short term and long term targets within IEPs. Engaging parents in such tasks clearly involves a commitment of time, as well as a willingness to recognise parents' unique knowledge of their child's abilities and their commitment to the child's future.

There is a great deal of evidence to suggest that parents value regular communication with schools and the opportunity to speak to teachers before problems become entrenched, in addition to scheduled parent/teacher meetings.

Our research suggests that disputes between

parents and schools may be to do with disagreements over the type and frequency of support, but may also arise because parents feel that their concerns are being dismissed or fobbed off with a partial explanation. Hedeem and colleagues suggest that there is a need to educate teachers about effective communication with adults, as well as children. To help teachers understand these dynamics, pre-service and in-service teacher education is needed on preventing and resolving conflicts.

There is also a need to educate parents about the best way of communicating with professionals. Some parents are able to use their social and cultural capital - that is, connections to others and access to information - to advocate effectively for their children. Other parents may lack these resources and may therefore behave in ways which teachers interpret as aggressive or defensive. Teachers need to develop an understanding of the circumstances which shape the ways in which parents communicate with the school, helping parents to express themselves in ways which promote co-operation rather than conflict. Many parents, particularly those struggling with economic disadvantage, have stressful lives, and teachers need to have an awareness of these difficulties.



It is important to remember that many parents of children with ASN are satisfied with the support their children receive from education and other agencies. By way of illustration, parents who responded to one of our recent questionnaires commented:

The learning support base teacher is very good and has helped Kathryn enormously. The classroom assistant is also very good, but she has a huge amount of children to support. I think more classroom assistants should be available to support children with ASN (Parent of child with dyslexic type difficulties)

They fully understand his needs and are well motivated to help him. Most importantly they listen to him and to us at meetings and act on anything we ask or suggest. (Parent of child with Asperger's Syndrome)

We feel very fortunate that Jamie is so well supported. Good communication between all parties (Parent of child with autistic spectrum disorder)

Both the school and speech and language therapist have provided a high level of support and kept in close contact with me (Parent of child with Asperger's Syndrome)

However, a significant minority of parents are very dissatisfied with the support on offer, and poor communication often underlies their negative perceptions.

The case studies presented below illustrate some of the causes of poor communication and show what can be done to help parents and teachers work together more productively.

Case Study 1

Mrs W was very concerned about Billy, her P2 son who had been labelled as having 'autistic tendencies' but no clear diagnosis, because she noticed him falling further behind his peers. Because of poor communication between home and school, there was no forum for regular meetings to discuss Billy's educational needs and plan for next steps. The relationship between the parent and the head teacher had broken down, with the head teacher describing Mrs W. as 'aggressive', who in turn described him as not approachable and 'a bit of a bully'. She had submitted a complaint about him to the local authority.

A mediation meeting allowed Mrs W and the head teacher to have a calm productive conversation without 'winding each other up'. They agreed to put the past behind them and to try to develop a better working relationship for Billy's sake. The head teacher explained the system of regular six-weekly meetings with input from appropriate people, such as the educational psychologist, speech and language therapist etc. They agreed a mutually convenient time and date for the first of these meetings. They also agreed a route for Mrs W to raise any future concerns in a way that would not re-escalate any bad feelings between the two adults.



Case Study 2

Becky attended the Autistic Spectrum Disorder (ASD) base at her local school. Aged 13, she lived with her mum who has mental health issues. Staff at the ASD base were encouraging Becky to be independent and to attend as many mainstream classes as she could, but Becky was finding this difficult and wanted to spend more time in the Base. When the mediation service got involved, Becky was refusing to go to school and Mrs L was finding the situation very stressful. She was phoning the base regularly and shouting at the staff, who in turn found that very difficult.

At mediation it became clear that Becky was giving staff at the base and her mum very different messages. At home she was complaining, crying and refusing to go back to school, but in the base

she told staff everything was OK. The mediator helped Becky understand that she had a role in causing the difficulties between the adults and that her mum might get into trouble if she continued to be absent from school. Strategies were agreed to help Becky feel reassured and more confident at school, and better channels of communication were agreed for Mrs L to raise any concerns. Becky returned to school.

In their dealings with each other, it is very important for parents and practitioners to model good communication practices, since children are close observers of adult interaction. Aggression and hostility on either side may have a negative effect on children's future educational experiences and social relationships.



Ways of dealing with disagreements

Even when every effort is made to communicate effectively, there are likely to be some occasions when parents and practitioners disagree about the way forward. For example, parents may want their child to be placed in an independent special school, whilst the local authority may believe that an equally good education is available in a local authority school



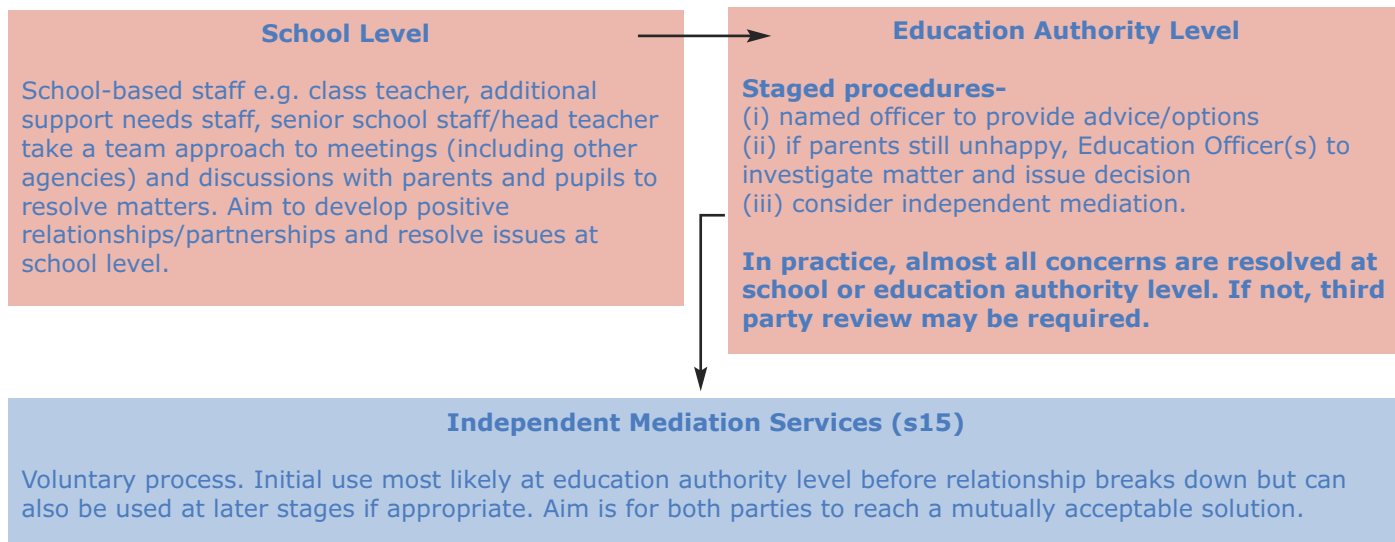
which does not involve significant additional expenditure. These may both be valid and defensible positions because the parent and the local authority are viewing the situation from different standpoints. The input of an external independent body may be very helpful in such circumstances to bring some degree of objectivity to the decision-making process. Recognising the need to tackle disagreements as quickly as possible, the additional support for learning legislation established three different dispute resolution routes involving independent bodies, namely the tribunal, adjudication and formal mediation. The figure below illustrates the way in which these different types of dispute resolution relate to each other. In the following section, we provide a brief description of each type of dispute resolution and some case studies to show how this route has been used in practice. The case studies illustrate upsides and downsides of each approach.

Independent mediation

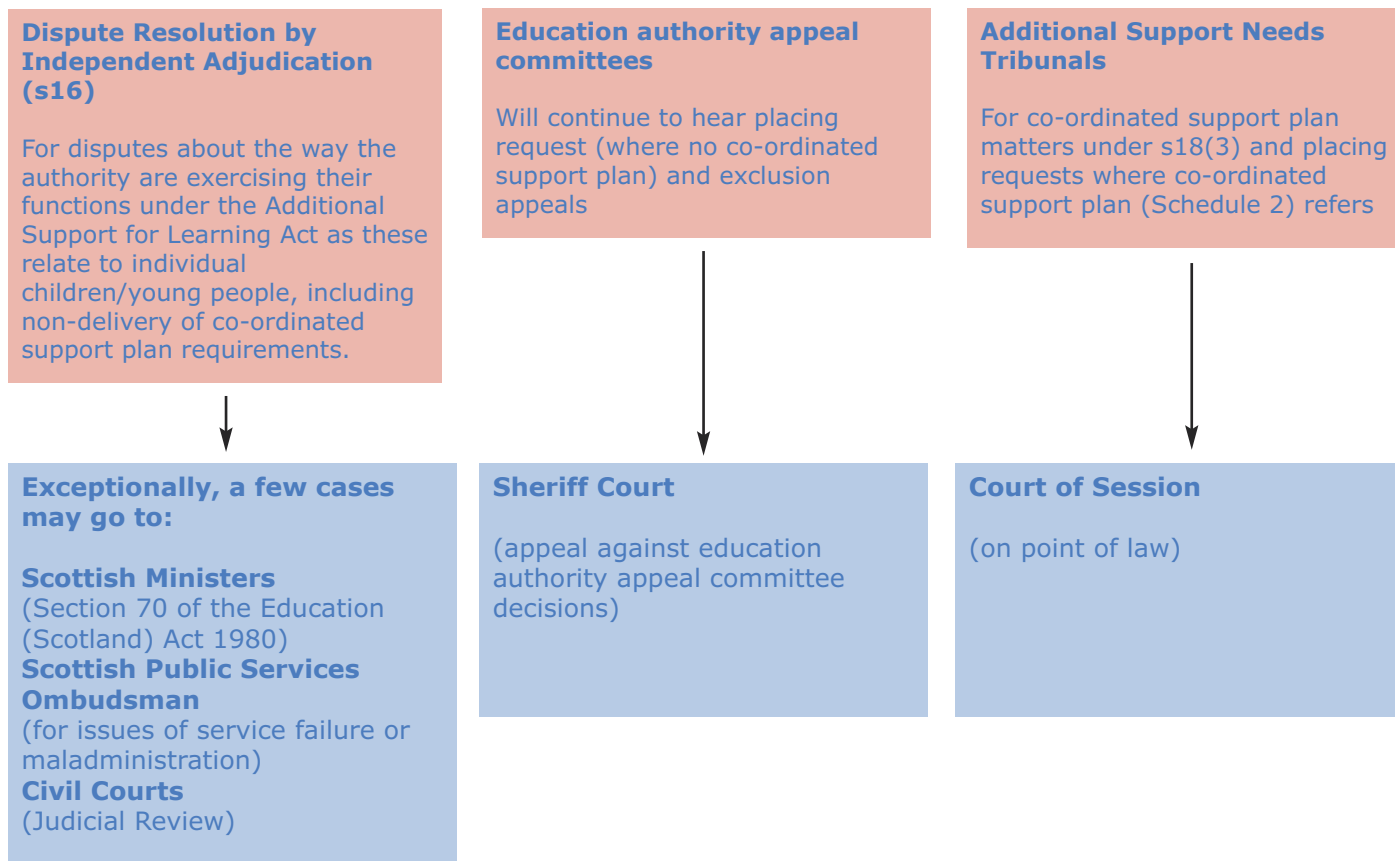
Mediation is a means of conflict resolution aimed at helping people involved in a disagreement to find a mutually acceptable solution, with the help of an independent third party. The Education (Additional Support for Learning) (Scotland) Act 2004 requires that every local authority has in place arrangements for mediation, involving independent mediators, to try and resolve disputes between parents and the local authority and/or school regarding a child with additional support needs. A key principle of mediation is that it is voluntary for both parties and the process is confidential. The cost of mediation is born by the local authority and referring a matter to mediation does not affect a parent or young person's right of appeal. As is clear from the case studies presented below, mediation is not a panacea but can be a very powerful approach to conflict resolution. The Act requires education authorities to publish information on the independent mediation arrangements they have in place within their area. This information should be kept up-to-date and under review and be widely available for authority staff and parents and young people.



Framework for resolving disagreements



Third party review and recommendation



Case Study 3

The parents of 8 year old David were worried that he was being bullied by another boy, Jimmy. David's mum was frequently contacting the primary school and the education department demanding that action should be taken. She had tried to talk to Jimmy's mum in the playground but that had gone badly wrong, ending with both women being asked to leave the school grounds. The head teacher was feeling stressed about the situation too.

The mediator explained that the school couldn't take action about incidents that happen outside school but teachers would watch the children's behaviour

closely in school and ensure that they were treating each other well. Improving their relationship in school should help to deal with the problems out of school. The mediator also passed on information from David's mum to the head teacher, reassuring her that the family didn't really blame the school. David's mum wanted the head teacher to know that she was happy with the school and that her children were settled there. The mediator organised a meeting for the two mothers to get a better understanding of each other's views, and they resolved their differences for the sake of the children.



Case Study 4

Some local authorities use ASN mediation services to help resolve disputes that don't involve additional support needs. One such case concerned an accident involving a child that had happened on school grounds at an evening concert. The child's father had complained through the correct channels and the local authority had thoroughly investigated his complaint and taken action to ensure that this kind of accident would not happen again. However, the father remained unhappy, particularly with the way that his initial complaint to the head teacher had been dealt with. Despite the local authority's best efforts, the father still felt that he hadn't been listened to.

A mediation meeting was set up with the father and two representatives from the local authority. The issues were fully discussed, and although the father still remained somewhat dissatisfied, he acknowledged that he had been listened to and his concerns taken seriously. His feedback about the mediation process was positive, and he reconsidered his plan to take the complaint to the Public Ombudsman.

Independent adjudication

The second type of dispute resolution is known as adjudication. In cases where there is no CSP and the dispute is not over CSP entitlement, the parent or young person does not have rights of appeal to the tribunal (see below). In place of that right of appeal, the parent or young person may make an application to 'independent adjudication' in relation to a dispute concerning whether a child has additional support needs and the type of needs which are identified; a refusal by the local authority to determine whether a child has additional support needs; a decision by the local authority as to how, or

by whom, an assessment or examination should be carried out; a failure by the local authority to provide the additional support required by the child or young person; a failure by the local authority to make a statutory request for help from another agency (e.g. the Health Board) in relation to a child's additional support needs. There is no formal time limit to making a referral to the local authority, but the local authority need only accept a referral if it is reasonable.

The amended Act of 2009 states that all requests for dispute resolution by parents or young people are to be made to the Scottish Ministers. An advocate, supporter or member of a voluntary organisation may help the parent or young person to complete the application. Within 5 working days of receipt of the referral, Scottish Ministers will refer the application to the relevant education authority for consideration. Within a period of 10 working days from the date of receipt of such an application, the authority must either accept the application and write to Scottish Ministers for nomination by them of an individual to act as an independent adjudicator or send the applicant notice of their decision not to proceed with the application and their reasons for that decision. Where the request relates to a matter covered by the Dispute Resolution Regulations, the



Scottish Ministers will nominate an external adjudicator to consider the case and will advise the education authority and parent or young person accordingly.

The education authority should review the case with a view to establishing that all appropriate steps have



been taken to resolve the disagreement. They should prepare all appropriate papers for forwarding to the adjudicator and the applicant. In addition, they should inform parents about how they can present their case to the adjudicator and what support is available to help them do this.

The role of the external independent adjudicator is to review, objectively and independently, all the information relating to the case, and make recommendations for both parties on the best way forward to ensure that the child's or young person's learning is supported with reference to the terms of the Act. The adjudication process is a paper exercise. However, the independent adjudicator will be able to ask for further information or clarification if required. Exceptionally, the adjudicator may arrange to meet the parties, for example, if the adjudicator is concerned that one party, or both parties, may have been disadvantaged by the way

the case has been presented. There is a statutory 60 day timescale for carrying out the process of dispute resolution.

The expectation is that both parties will accept the outcome of the process. Education authorities do not have a legal duty to implement the recommendations of the adjudicator. However, it is expected that generally the authority will do so provided these recommendations are not incompatible with their statutory or other duties or would unduly prejudice the discharge by the education authority of any of its functions. Recommendations, therefore, should be accepted in all but exceptional circumstances. The education authority should give reasons for their decision to accept or reject the adjudicator's recommendations. Where recommendations are not accepted, parents or the young person may refer the matter to the Scottish Ministers under section 70 of the 1980 Education Act if they believe that the education authority has failed to carry out a statutory duty imposed on them by education legislation.

The case study presented below illustrates how adjudication worked in one particular instance. Like mediation, adjudication can be very effective partly because a senior officer from the local authority reviews the case. However, good will is required from all parties to ensure that the recommendations are communicated to parents and put into practice.

Case Study 5

Graham M was identified as having autistic spectrum disorder at three years of age. His primary education was relatively successful but problems arose at secondary school where the demands of the curriculum were much greater. Mrs M requested an Individualised Educational Programme, but did not feel that the document was sufficiently detailed. She

also felt that the support base was not meeting Graham's needs, since despite his social difficulties he was academically able. Having unsuccessfully attempted informal negotiation at school level, on the advice of the educational psychologist she requested independent mediation. The meeting took some time to arrange, but, according to Mrs M, it did not move things forward because the council officials who attended were not budget holders and could not authorise any additional support.

Mrs M subsequently requested adjudication, which largely supported her request for additional support. Recommendations were made to the council with regard to assessment, planning and provision. However, she was very dissatisfied with a subsequent meeting with the school which she felt had no intention of implementing the recommendations. Mrs M was aware that making a reference to the tribunal was a possible option, but feared victimisation so decided not to pursue the dispute any further. Ultimately, Mrs M believed people's intentions were good, but there were simply not enough additional resources in the system to meet needs.

The tribunal

The Additional Support Needs Tribunals for Scotland (ASNTS) (often referred to as the tribunal) were established under the 2004 Act. Parents or (unless they lack capacity) young persons may make a reference to the tribunal over a range of matters concerned with CSPs, including whether a CSP is required; whether a time limit for preparing it was breached; the content of a CSP; whether a CSP should be reviewed; and where a placing request, relating to the school where the child or young person with a CSP is to be placed, has been refused. The tribunal also deals with all placing request

appeals relating to special schools, regardless of whether the child has a CSP. The amending Act (the Education (Additional Support for Learning) (Scotland) Act 2009) extends the powers of the tribunal to include references concerning failures to obtain information or elicit parents'/children's/ young people's views regarding post-school transitions.

Under the terms of the Disability Discrimination Act 1995, cases of disability discrimination involving schools were dealt with by the Sheriff Court in Scotland. Following the implementation of the Equality Act 2010, responsibility for dealing with such cases shifted to the Additional Support Needs Tribunals for Scotland. A disability discrimination claim may be made to the tribunal by either the parent or the young person, where they have capacity. Either party may appeal on a point of law to the Court of Session.

Local authorities and parents are discouraged from using legal representation at the tribunal, and parents generally use lay representation. The 2009 Act placed a duty on Scottish Ministers to provide advocacy services to be available on request and free of charge to a parent or young person using the tribunal. A contract to provide advocacy services (known as Take Note) was awarded in 2010 to the Scottish Child Law Centre and Barnardos, two



organisations who specialise in supporting children and their families.

As with independent mediation and adjudication, the tribunal may be a very useful means of resolving disputes, but does not offer a magic wand solution.



Case Study 6

For Shona, mother of 9-year-old Calum, attendance at a tribunal was the last resort in a succession of attempts at resolution that had begun when Calum started mainstream school at the age of 5. She had expected that the primary school would be ready for his arrival, but this turned out not to be the case. Calum had spina bifida and was paralysed from the waist down. The main requirement initially had been the installation of a lift, but the school offered a Stannah chair instead which was not suitable. As a result, Calum had to go up and down stairs using crutches, coming home from school exhausted and grumpy. Attempts to resolve matters led to a succession of meetings with staff over several years. Eventually Shona involved an advocate, feeling the meetings were being inaccurately minuted. She felt that she was getting one account from her son and a completely different account from the school. The whole experience was very stressful.

Finally the family requested a tribunal, feeling the authority's focus had shifted from supporting Calum as an individual child to criticising Shona's parenting skills. The legal aspects of the process came as a surprise, and could be confusing. However, as far as Shona was concerned, by this stage she was thinking about her child and nothing else, and welcomed the opportunity to put her case across. Calum expressed a wish to give his own evidence, and with the cooperation of the Convener and other witnesses, a child-friendly environment was agreed so that he could speak freely and without pressure. Shona commented: 'I'd been accused of manipulating him, but at the tribunal he was able to tell them exactly what was happening'.

The tribunal decided a Coordinated Support Plan was appropriate in this case, but the school still refused to agree the content, leaving Shona and Calum's father visiting the class several times a day to attend to his personal care. Finally they took the decision to withdraw him from school, returning six months later when a new head teacher was appointed. Shona described the new head as much more communicative, and a CSP was put in place, resulting in excellent support for Calum and peace of mind for the family.



Case Study 7

Isabella Smith was a 12 year old girl who was profoundly deaf. She received a cochlear implant at the age of four, but speech had not developed and she was reported as having a speech and language disorder in addition to a number of medical issues. She used British Sign Language to communicate although her vocabulary was not extensive. Isabella was in P7 and attended a local authority primary



school with a support unit for children with hearing impairment. Because of their concerns about the lack of a peer group of BSL users for Isabella, her parents requested a place in an independent special school for deaf children and/or those with severe speech impairment. Due to the distance of the school from Isabella's home, it would be necessary for her to board for four nights each week.

The local authority refused the placing request on the grounds that Isabella could be supported in a mainstream school closer to home and that a special school placement was at variance with the duty to educate children in mainstream schools wherever possible. The parents felt that the school proposed by the local authority was unsuitable because Isabella would be the first non-oral deaf child to attend. They were concerned that the teacher of the deaf at the proposed school was not yet qualified

and only three staff had any signing skills. The Smiths were strongly of the view that this school would not help their daughter to progress either academically or socially.

The child's view was that she would like to attend the residential school as everyone there would be able to sign, enabling her to communicate more effectively. She believed that she would feel more included in the special school rather than an exception in a mainstream setting. She realised that a residential placement would separate her from her family for four nights each week, but she was aware of the technology available to her in the residential unit to keep in touch with family and friends (webcam, email, mobile phone text). She also realised that she would be home with her family from Friday afternoon to Monday morning.

Having considered the cases put forward by the family and the local authority, the tribunal finally decided that Isabella was likely to do significantly better in the special school. The local authority amended the child's CSP and supported the residential special school placement.

Another relevant change to the legislation as a result of the 2009 amendments is that local authorities



now have to publish information on where parents and carers can find help, information and advice, including contact details for Enquire, the Scottish Advice Service for Additional Support for Learning. Local authorities have to make sure that a summary of this information, including details of dispute

resolution and mediation services, is available from all schools and other sites that provide education. They also need to make sure this information is included in school handbooks and on their website. More information about Enquire can be found at enquire.org.uk



Involving children and young people with additional support needs in decisions about their education

Until relatively recently, it was assumed that decisions about children's education should be made by teachers and parents. Over the past decade, there has been a growing focus on children's rights and it is now accepted that children's views should be taken into account in all significant decisions in relation to their education. In theory, children have



greater access to legal protection than ever before. For example, children under the age of 16 who are considered legally competent can appeal against their exclusion from school - before, only those with parental responsibilities and rights could do so on their children's behalf. Despite these changes, in the field of additional support needs, children continue to have weaker rights than their parents. Whilst young people between the ages of 16 and 18 who are competent have the same rights as their parents to make a reference to the tribunal or request adjudication or mediation, children still do not have independent rights of appeal. *The Supporting Children's Learning: Code of Practice* (Scottish Government, 2010) emphasises the duty on local authorities and schools to take account of children's and young people's views, but children and young people still appear to play a very small role in the more formal aspects of dispute resolution. In addition, even though young people may make a

reference to the tribunal, this right has not been used in practice, suggesting that much more support is needed to make this right a reality. The ability to make an independent reference to the tribunal may be particularly important for young people who are looked after by the local authority, since their parents are very unlikely to make a reference on their behalf.

The case studies below illustrate the possibilities of involving young people with additional support needs in decisions on their education, but also the difficulties which may arise.

Case Study 8

Stephen was an academically gifted 14 year old, and an accelerated learning programme in some subjects had been put in place. He had been excluded twice in one school session for physical aggression towards other pupils, and had difficulties in social interactions with some of his peers. His parents were very angry as they felt Stephen's aggressive behaviour was because of the school's failure to support him and prevent such events from taking place. They complained in writing to the Education Department and independent mediation was suggested between the family and the school, as by this time Stephen was being kept at home by his parents who said they



had lost trust in the school. Stephen's parents and school staff all felt it would be a good idea to involve Stephen in the mediation process, so he was invited to speak to the mediator, and agreed.

The mediation meeting was held to discuss two main issues: Stephen's educational, emotional and



psychological needs, and the lead up to the recent exclusions. During the meeting Stephen explained that working in the support base had not always been a positive experience, and he could get wound up when he was removed from his peers. The learning support teacher said that he would look into alternatives. Stephen and his parents agreed to meet again with the educational psychologist (which they had been resisting for some time) with a view to re-assessment. A number of ideas and action points were agreed by everyone in the room. School staff reassured the family that Stephen was a valued member of the school community, and everyone agreed that communication between home and school needed to be clearer. Stephen was in support of all the agreements reached and expressed his wish to get back to school as soon as possible.

The mediation service agreed to get back in touch with everyone in two months to see how things were

going.

Case Study 9

James was diagnosed as having dyslexia and ADHD at the age of 12. At school he found it difficult to voice his concerns and ideas, and often found himself in trouble, leading to repeated exclusions. James believed that teachers in the school did not engage with him effectively. He explained, 'They said they were willing to listen to me, but it was always, 'What do you want us to do?' – which was pointless because I didn't know what they were allowed to do. They did not give me any options. They didn't say, 'for example...' They expected me to give them the solutions.' As a result of the exclusions, James missed out on years of education and left school with no qualifications. At the age of 20, he was trying to plan a route back into college to make up for the ground he lost earlier. Without qualifications, he recognised that he was very unlikely to get a job, particularly in the current economic climate. James felt that he was let down badly by the school and the local authority and hoped that improvements could be made for the next generation of young people.

Giving feedback to children is hugely important if they have agreed to be involved and been asked for



their views. Adults feel frustrated, let down or angry if they do not hear back from a meeting or situation in which they have participated. Children feel exactly the same way. An independent advocate can be very useful in some situations to allow the child to express their thoughts and views. This option can help avoid allegations of manipulation or bias and it can be easier and less stressful for the child to share their views with a neutral person. However finding information about and accessing a child-focused advocate can be difficult in certain parts of Scotland.

To summarise, we have progressive legislation, examples of good practice and many resources to

facilitate communication between educational practitioners, children and young people with additional support needs and their parents. Different approaches are likely to be needed in different situations. Some children, young people and their parents have no difficulty in expressing their views. In other cases, either advocacy or mediation may be useful in enabling all participants to have a voice in the decision-making process. Above all, adults must keep talking and listening to children and to each other so that everybody is fully engaged in planning, discussing and, where necessary, challenging educational decisions.



References

- ¹ Wilmot, W. & Hocker, J. (2001) *Interpersonal Conflict*. New York: McGraw-Hill, p.49
- ² Hedeem, T., Moses, P. and Marshall, P. (2011) *Encouraging Meaningful Parent/Educator Collaboration: A Review of Recent Literature* Center for Appropriate Dispute Resolution in Special Education. Eugene, Oregon: CADRE.

Recommendations

- Everyone involved in looking after and educating children with additional support needs should strive to improve communication, recognising that getting things right for the individual child should inform every decision and interaction. Mutual respect should inform all communication.
- Education practitioners should recognise the power imbalances which may inform their relationship with parents, particularly those from socially disadvantaged backgrounds, acknowledging parents' unique understanding of and commitment to their children's educational and social development.
- Specific training in communication skills and collaborative approaches should be a priority for trainee teachers, practising teachers, local authority officers and parents.
- Much greater efforts should be made to involve children with additional support needs in important decisions on their education, and to take their views into account if disagreements arise.
- Advocacy support needs to be targeted at children, young people and parents who may have difficulty in getting their voices heard because of disability, learning difficulties or social disadvantage.
- Schools and local authorities should create policies, structures and events which support family/school engagement, including informal opportunities for interaction.
- Teachers and local authority officers should recognise that sometimes the involvement of independent mediation, independent adjudication or the ASN tribunal may be necessary to resolve disagreements.

Evidence used in this document

The case studies used in this guide have been drawn from two sources:

- Research on alternative dispute resolution in additional support needs funded by the ESRC and conducted by the Centre for Research in Education Inclusion and Diversity at Edinburgh University and the School of Law, University of Manchester from 2008 – 2010 <http://www.ed.ac.uk/schools-departments/education/research/centres-groups/creid/projects/dispute-resolution-needs>
- Analysis of mediation in practice conducted by Sandra Mitchell, Resolve, Children in Scotland and Morag Steven, Common Ground Mediation

Communication Matters

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Produced by

Sheila Riddell, Director

Centre for Research in Education
Inclusion and Diversity, University
of Edinburgh

Sandra Mitchell, Mediation Manager

Resolve, Children in Scotland

Morag Steven, Director

Common Ground Mediation

Elisabet Weedon, Deputy Director

Centre for Research in Education
Inclusion and Diversity, University
of Edinburgh

Kevin Wright, Programme Director:

Inclusive & Special Education

University of Edinburgh

Fannie Kong, Academic Coordinator

Centre for Research in Education
Inclusion and Diversity, University
of Edinburgh

Designed by

Tracy MacMillan,

Graphic Designer, Children in Scotland