

Dispute resolution using independent mediation

Children and young people are more likely to make progress if they feel parties concerned with their education are working together. In the third of our Routes to Resolution series, Sandra Mitchell and Morag Steven explain how the process of independent mediation can support and enhance this

“The main message we want to get across from our mediation experiences is

It is important to acknowledge everyone involved with a child's education will bring different expertise, perceptions, and beliefs. A school or an education authority is accountable for meeting the needs of all children while taking into account the parameters of available resources. Parents want to get what they believe to be the best for their child. This can be the source of most education disputes.

In relation to children and young people with additional support needs, dispute resolution through independent mediation was introduced under the

Education (Additional Support for Learning) Act 2004 as one of three main routes to resolving differences where these arise. While the Additional Support Needs Tribunals system and independent adjudication have been established to address specified matters, mediation can be used in any situations where disagreements arise relating to additional support needs for children and young people.

There is a fundamental difference between independent mediation and the other routes. During mediation the people in dispute decide the outcomes and agreements themselves as opposed to a third party giving decisions or recommendations. A successful mediation process will support and assist people to use their own abilities in addressing the conflict.

Independent mediation has not been accessed as much as was originally anticipated – is this because parents and teachers do not know of its existence? Or do local authorities feel threatened by involving outside agencies in dispute matters that may be questioning their decisions or opinions? Maybe mediation is seen as ‘a soft option’? Or is it simply because

there are very few disputes out there that are unresolved?

Well, we can remove the myth that mediation is ‘the soft option’. It may be emotional, it requires effort, the ability to listen as well as talk, honesty and the ability to compromise where necessary – and this can be hard work. However independent mediation is recognised as a very effective way to allow participants to do this in a safe, controlled and neutral environment.

In our experience the child or young person's needs often become lost as conflict grows and escalates, and as adults challenge each other's expertise, perceptions and beliefs. An entrenched disagreement can need time, effort and hard work to explore solutions.

“I do feel this process has been a vital part of us working better together”

Principal teacher of Additional Support for Learning

The potential benefits associated with pupil participation in additional support needs mediation include the empowerment of the pupil, the fostering of improved relationships among those involved in the mediation and the creation of more durable and comprehensive mediated agreements.

Pupils who attend mediation sessions can learn critical conflict resolution and negotiation skills, develop an appreciation for the value of resolving disputes in an effective manner, and acquire the ability to recognise and respect different

perspectives. The presence of the pupil at a mediation session can help maintain the focus of the mediation on their needs.

Pupil participation can range from being present for the whole session or part of it and listening or participating actively, to having his/her perspective represented by the mediator or an

advocate instead of attending. The flexibility of the mediation process allows for an almost infinite variety of adaptations if inclusion of the pupil is appropriate.

We also have to be aware that mediation sessions can become highly charged, emotional and even heated. The aim would be for parents and education staff in a mediation session to present a united front when they make decisions about a pupil's educational programme and any lack of adult consensus may need to be addressed before a pupil is included.

Mediation allows people to try to understand the other person's opinions and the reasons behind them in a structured way guided by a trained experienced mediator.

The art of managing disagreement is driven by the ability to have the people actively engaged with the mediator and with each other around the table to negotiate a mutually agreeable

solution to the problem. They must trust the mediator and the process. It is important to keep differences constructive and to work for collaborative discovery of outcomes based on commitment, trust and cooperation.

Mediation skills help everyone to navigate difficult situations and issues competently, and to maintain key relationships. Conflict is inevitable in life but it does not need to produce negative results: it is often a positive driver for change.

When people are actively engaged, doors open to allow consideration of options that can result in productive decision making and positive future relationships.

Sandra Mitchell is mediation manager for RESOLVE:ASL and Morag Steven is the director of Common Ground Mediation. For more information on the issues raised, contact the Scottish Government's helpline Enquire on 0845 123 2303.

How do I access mediation?



Contact the additional support for learning information officer in your local authority. If you do not know who this is you can phone Enquire on 0845 123 2303 to find out, or phone your council and ask to be put through to the relevant person. Education authorities in Scotland will have an additional support for learning (ASL) officer or manager who will be able to give you information regarding the independent mediation service provider in your area. By law, local education authorities must provide mediation services free of charge for parents, carers and young people.

Issues suitable for mediation include:

- Restoring communication
- Repairing broken partnerships between parents and staff
- School placement issues
- Support and resource issues for children with additional support needs
- Exclusion
- Education plans for children with additional support needs
- Bullying issues

Preparing for a mediation session

- Think of possible alternatives or ways of solving the problem(s)
- Think about what you want to get out of the session
- Think about what you want the other party to do
- Think about what you are willing to do
- Be willing to listen and compromise
- Put aside personality conflicts

What happens during mediation?

Mediation is a flexible and informal process. The joint mediation session will include all the relevant people involved in the dispute, plus the mediator.

The mediator will first meet privately with the parent or carer, and the child if appropriate, often at home. The mediator will also meet privately with relevant people at the education authority or school.