



Additional Support Needs: Routes to Resolution

Dispute resolution through independent adjudication

Children and young people are more likely to make progress if they feel parties concerned with their education are working together. In the second of our Routes to Resolution series, Margery Browning explains how the process of independent adjudication can support this

As Jessica Burns stressed in her article on the Tribunal (*Children in Scotland*, Issue 106), national expectations, supported by legislation, are that education authorities should work closely with parents/carers on the best ways to promote the learning of children and young people.

However sometimes parents/carers and education authorities are unable to agree about the best provision and require further external help to resolve their differences. In relation to children and young people with additional support needs, dispute resolution through independent adjudication was introduced under the Education (Additional Support for Learning) Act 2004 as one of three main routes to resolving differences where these arise.

The process allows each party in a dispute to present their case to an independent adjudicator equipped to offer a wholly objective and unbiased view of the dispute and suggest how it should be resolved. Although education authorities are not obliged to accept and implement the recommendations, they must give sound reasons for not doing so. The process is designed to be completed within 60 working days of an application being made.

Independent adjudicators apply for the role and are appointed by Scottish ministers for their objectivity and wide experience in

the education of children and young people with additional support needs: current adjudicators include, for example, officers in education authorities and former educational psychologists, headteachers of special schools, and members of Her Majesty's Inspectorate specialising in additional support for learning. They take part in training twice a year and are required to be up to date with current developments in education and additional support for learning.

The job is twofold: adjudicators must be objective, fair and impartial in reviewing all evidence provided in respect of the dispute, and they must provide the education authority with a report making recommendations on what should be done to resolve the dispute in order to ensure the child or young person's learning needs are met.

The parties to the dispute present their cases in writing. As well as considering views presented by parents/carers and education authority personnel, independent adjudicators take account of the views of the child or young person and will seek these if they are not provided. Young people 16 years of age or over would normally make their own application for dispute resolution.

The kinds of disputes that can be referred are restricted to those laid out in the Dispute Resolution Regulations as 'specified

matters'. Of the 55 cases considered so far for dispute resolution, most have related to failure by an authority "to provide, or make arrangements for the provision of, the additional support (whether relating to education or not) required by the child or young person".

The education authority pays a set fee, currently £355 per adjudication, and parents/carers of a young person are not charged. The paperwork involved can be considered daunting by parents/carers or young people, but there are sources of help, including the national advice service for additional support for learning, Enquire. The authority itself should also provide information and support, a requirement strengthened in recent legislation. The Govan Law Centre website offers detailed practical guidance. Once parents/carers or young people have made their case they are in a position to consider the view of the education authority and respond where they disagree or think further information should be considered. In good practice, education authorities and parents continue to seek ways of resolving differences, even while the independent adjudicator is considering the case.

A major benefit of dispute resolution is that it clarifies the

nature of the dispute. Each party needs to provide evidence to support their position; each has also to decide what could be done to resolve the situation. In a few instances this process itself has led to the withdrawal of applications. Adjudication often results in the conclusion that the additional support needs of a child or young person need to be clarified, and consequently may result in a reappraisal of how to meet them.

In some cases, independent adjudicators conclude relationships between parents and education authority personnel have become so strained they recommend involving a mediator to help take the recommendations forward, and this will be considered in more detail next month. Children and young people are more likely to make progress if they feel all parties concerned with their education are working together, so it is vital that disputes are resolved.

Margery Browning has been a senior adjudicator since her appointment by Scottish ministers in 2005. She has been involved in the education of children and young people since 1971 as an educational psychologist, teacher educator and HM Inspector. She is engaged directly in adjudications and also in supporting other adjudicators.

How the dispute resolution process currently* works

- Parents/carers or young people apply to their education authority to request dispute resolution, specifying the matter under dispute and providing written accounts of their views both of the dispute and how it should be resolved
- The education authority decides if an application is valid. If it is not considered valid, the authority must give reasons in writing for their refusal to accept the application. If the application is considered appropriate, the authority appoints an independent adjudicator nominated by Scottish ministers. The authority also prepares a response to the parents/carers or young person giving its views on the dispute and how it should be resolved



- Parents/carers or the young person may respond to the education authority's views. The authority then sends all papers relating to the dispute to the independent adjudicator
- The independent adjudicator checks all relevant information has been provided and, where this is not the case, requests further documents
- Within 15 days the independent adjudicator must establish the nature of the dispute, review the evidence, make reasoned recommendations on what should be done to resolve the dispute and send a report to the education authority
- The authority must consider the report and send a copy of it to parents/carers or the young person within 10

working days. The authority should also state whether or not they accept each recommendation and must give reasons where recommendations are not accepted

- Where a dispute remains following adjudication, parents/carers or young people may access further mediation or consider a section 70 complaint in terms of the 1980 Education Act

*Under the Education (Additional Support for Learning) (Scotland) Act 2009 parents/carers or young people can apply to a host education authority if the child or young person attends educational provision in that authority as a result of a placing request. Also, following consultation, regulations may be made for a dispute resolution application to be made directly to Scottish ministers, who will refer it to the education authority.