

Enquire within

THE NEWSLETTER BULLETIN OF ENQUIRE, THE NATIONAL ADVICE SERVICE FOR SPECIAL EDUCATIONAL NEEDS IN SCOTLAND

Mediation Matters!

The recent Scottish Executive response to the consultation on assessment and recording for children with additional support needs in Scotland, *Assessing our children's educational needs: The Way Forward*, makes clear that forthcoming legislation will require Education Authorities 'to have in place arrangements for mediation – involving independent mediators – to aim to resolve disputes between parents, the education authority and/or schools'.

This is an important development for families offering an additional, non-adversarial option for dealing with disputes. In this issue of Enquire Within we look at mediation, with reference to experiences south of the border. It is important such experience is drawn on to inform the development of local, regional or national dispute resolution services in Scotland.

When developing such services consideration must be given to the independence and neutrality of the service as the perception of fairness by the participants is almost as important as the actual fairness of the process. Both are needed to ensure that all participants fully trust the mediation process.

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What is mediation?

Mediation is a process in which a mediator, an impartial third party, facilitates the resolution of disputes by promoting the participants' voluntary agreement. The mediator assists communication, encourages understanding and focuses the parties on their individual and common interests. He or she works to enable the participants to explore options, make decisions and reach their own agreements. Fundamental to mediation is the principle that the resolutions are not imposed on the parties, but are arrived at by the parties themselves.

How might mediation help resolve conflict in education?

The mediation process focuses on mutual problem solving and promotes a positive relationship among the parents, the school and the local authority education department. The mediators will help parents and education personnel understand each others point of view and develop a plan of action that everyone is comfortable with and can implement together. Improving the quality of the relationships between professionals and families and building the trust necessary to resolve any future disputes are important components of the mediation process.

What takes place during mediation?

An impartial mediator(s) will meet with the parties to discuss the issues involved. Each person will have the opportunity to express his/her concerns and talk about the needs of the child. Past, current and future plans will be

discussed but the goal will be to reach agreement on the most appropriate plan for the child.

Who are mediators?

Mediators may come from many different backgrounds, but the guiding principle must be their independence and neutrality in the dispute. They will be experienced in dispute resolution and be knowledgeable about issues affecting the education of children with additional support needs.

What do parties need to do to take part in mediation?

Parties need to be able to openly discuss the issues concerning the child's education by bringing any information that is felt to be important.

Who will participate in the mediation process?

Someone from the child's school and/or the local authority area, the parent or carer of the child concerned, and where appropriate the child or young person themselves. It may also be beneficial to include key personnel who can provide a health input where this is deemed appropriate. A supporter for the parent should be encouraged. However, parties should be advised about the participants in the process prior to the mediation date.

What happens if no agreement is reached?

Mediation, while not appropriate in every case, can still be a valuable option as it can bring clear benefits to all involved by:

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- increasing the involvement of participants in the decision making process;
- promoting the best interests of the child; and
- reducing the economic and emotional costs associated with the resolution of disputes.

Requesting and participating in mediation may soon become a statutory right, but this will not prevent parties from continuing with other forms of due process such as appeal or judicial review.

Mediations have the potential to succeed on three attainable levels. They can manage or reduce a conflict by dampening or removing frustration and anger. They can resolve a conflict by

arranging trade-offs among its immediate causes and issues. And they can provide mechanisms for handling future outbreaks of conflict or dispute among still-suspicious and troubled parties.

Following mediation each party needs to take responsibility for their future actions, as long-lasting agreement or major change in policy or prejudice must come from the parties themselves.

The mediator can facilitate effective communication, s/he can try to mend relationships which have broken down and can help parties to clear up misunderstandings and misconceptions. But once the mediator takes a step back, the strength of the agreement and relationship depends on the will of those involved.

The Enquire Pilot Mediation Project

In 1999 Enquire – the national advice and information service for special educational needs (SEN) – established a pilot mediation project as part of the funding remit. Invitations to participate in this innovative project were distributed to all 32 local authorities in Scotland and resulted in the self-selection of five local authorities: Argyll and Bute, South Lanarkshire, East Dunbartonshire, Stirling and Glasgow City.

To support and advise the development of the project a mediation advisory group was established with SEN officers and educational psychologists representing each of the five authorities. Referrals are received directly from parents or via the local authorities contacts.

The parties involved in mediation were asked to comment on the process and independent evaluation of the project found that while agreements were not

always reached by the parties, the attitudes to the involvement of mediators in negotiations between parents and local authorities were almost always positive. Most stated that they were willing or very willing to participate again in mediation in the future, suggesting that when they focused on the process rather than the particular subject of dispute, the view about the value of mediation was consistent and positive.

A Local Authority Perspective - East Dunbartonshire Council

East Dunbartonshire Council agreed to participate in the Enquire Pilot Mediation Project as it presented an opportunity to explore an alternative approach to resolving difficulties, which can arise where a family has a child with additional support needs.

It is important to stress that the notion of mediation between a family and the local authority is not new. Head Teachers, Educational Psychologists, Council Officers can and do all engage in mediation. The pilot therefore was viewed as extending the range of options available to resolve conflict situations as it would introduce a level of independence to the mediation process and possibly an alternative to the more formal and legalistic processes of appeal or complaint. It was not, however, seen in any way as diminishing the rights of parents or children.

To manage this pilot at a local level, an authority Steering Group was established which comprised of the Principal Educational Psychologist, Social Work

Service Manager, the Head Teacher of a special school and myself, at that time the Principal Officer Special Educational Needs. This group dealt largely with matters relating to circulating information about the pilot and supporting the implementation of the pilot at a local level.

The involvement of Social Work was a recognition that when conflict arises between individual families and the local authority it may involve a range of services.

The experience of being involved in the mediation process was found to be positive and helpful. The two skilled mediators from Enquire guided the process across a number of meetings to a written agreement, which continues to be in place.

The mediators established details of meetings such as dates, times and venues. The 'lead' mediator at the beginning of each meeting set the ground rules and, with the second mediator taking notes, the 'lead' was able to focus on the

discussion, stop the meeting at appropriate points to summarise the discussion and ensure the meeting ended at the agreed time. At the conclusion of meetings the points which had been agreed were noted and where necessary clarified.

Each meeting was followed up with a draft written statement of the outcomes of the meeting. This statement was then circulated to everyone involved in the meeting for comment. Any suggested amendments were brought back to the next meeting for discussion and hopefully final agreement.

Although mediation can be time consuming the experience to date is that the process has the potential to bring benefits in the form of improved communication through very structured discussion and the creation of opportunities to reach mutually acceptable agreements.

John Johnston, Education Officer (Support to Schools)

Experiences south of the border

Under the terms of the Special Educational Needs and Disability Act 2001 it is a statutory duty for all local education authorities (LEAs) in England and Wales to provide and fund Parent Partnership Services (PPS). These services have the specific remit for encouraging partnership between parents, LEAs, schools and voluntary organisations in the work of identifying, assessing and making provision for pupils with additional support needs. This duty is further outlined in the most recent Special Educational Needs Code of Practice of 2001 which came into force in England and Wales in January.

The theme of 'partnership' is very strong in the Code of Practice, and chapter two states that LEAs must aim towards ensuring that parents have access to an Independent Parental Supporter (IPS) through the parent partnership service. The IPS is independent of decision-making professionals, and therefore has

no conflict of interest that could influence their capacity to advise the parent.

The SEN and Disability Act 2001 has also placed a duty on all LEAs in England and Wales to secure arrangements for 'avoiding and resolving disagreements' between parents of children with additional support needs and the LEA, and between parents and schools. As such arrangements must include people who are independent of the LEA, government funding till March 2003 was made available to LEAs to implement this requirement.

Before the Act came into force many parent partnership co-ordinators were already undertaking conflict resolution on an informal basis and more importantly assisting their LEA in considering the best way to develop these services. However, because of this it appears that many LEAs have assumed

that their existing parent partnership service would already be in a position to provide the conflict resolution arrangements when these became a statutory requirement.

There emerged a growing concern among many parent partnership co-ordinators about who is best placed to provide conflict resolution, particularly in light of DfES expectations that such services should be seen by all parties to be independent of the LEA.

The issue of independence has continued to vex many parent partnership co-ordinators. Many feel there is an obvious conflict of interest. Where a parent partnership co-ordinator may have been supporting a parent it would be difficult to take on the role of a neutral third party as a mediator or conciliator. Many parent partnership co-ordinators expressed concern at taking on the formal role of mediator/conciliator given that their primary role is to support parents. The confusion surrounding the implementation of this new duty resulted in a patchwork approach to the provision of SEN mediation which in effect compromised both the LEAs and Parent Partnership Services as none could claim either independence or impartiality. These arrangements varied from:

- LEAs appointing their own independent mediation/conciliation officer with an understanding of additional support needs (e.g. Buckinghamshire);
- mediation/conciliation and conflict resolution services offered as an extension of Parent Partnership Services (e.g. Bradford);
- reciprocal cross-border arrangements between two or more local authorities undertaken by the Parent Partnership Service (e.g. Lincolnshire);
- bought-in mediation/conciliation and conflict resolution services as and when required from an outside party, either as an individual LEA or as a joint consortia approach between two or more authorities (e.g. West Midlands and East London);

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Current provision of SEN Mediation in Scotland

As all Education Authorities in Scotland will soon be required to have in place arrangements for mediation (involving independent mediators) the Scottish Executive is currently funding a number of pilot mediation projects in conjunction with existing local authority dispute resolution services, in preparation for the forthcoming legislation.

To date, 14 out of 32 local authorities in Scotland are either offering SEN mediation now or are involved in consultations with specialist service providers. These are:

Edinburgh Advice and Conciliation Service

Edinburgh City

Govan Law Centre

Angus

East Ayrshire

Falkirk

Fife

Renfrewshire

West Lothian

Enquire Mediation Service

Argyll and Bute

East Dunbartonshire

Glasgow City

South Lanarkshire

Stirling

Parent to Parent (Perth and Kinross SEN Mediation)

Perth and Kinross

Dundee



- mediation/conciliation offered through an already existing service within the local authority (e.g. Nottingham and Hertfordshire);
- key LEA officer (e.g. Education Psychologist) undertaking the role of mediator.

Clear guidance was needed from central government to support LEAs with the implementation of this new responsibility. The production of the good practice guide *The SEN Toolkit* (Section 3: Resolution of Disagreements) was welcomed by LEAs, Parent Partnership Services, organisations working in the field of disagreement resolution, parents and schools. Although the framework for dispute resolution is statutory, the

Toolkit is not intended to be prescriptive, but sets out considerations that LEAs should take into account when establishing or modifying their disagreement resolution arrangements. In particular the Toolkit sets out clear minimum standards for LEAs governing quality and monitoring of services, financial arrangements which include service level agreements, informing parents of the existence of services, ensuring the neutrality of the service and the independence of the mediator.

This good practice guide aims to strike a balance between what is expected of an effective disagreement resolution service and allowing LEAs the flexibility they need to deliver services that meet local

requirements. Working in close collaboration, LEAs and SEN Regional Partnerships (formerly the SEN Co-ordination Projects) have recently established tailored mediation services in line with the SEN and Disability Act 2001. The organisation of these services varies from small partnership arrangements involving as few as two LEAs in the North East region to large scale consortia operating in East and West Midlands (23 LEAs) and London (33 LEAs).

Further information, including a summary of current developments and contact details for each of the Partnerships, can be obtained from the National Parent Partnership Network - www.parentpartnership.org.uk

Reading

Assessing our children's educational needs: The Way Forward. Scottish Executive Response to the Consultation. www.scotland.gov.uk (under publications)

Mediation UK Practice Standards for Mediators and the Management of Mediation Services. Mediation UK 1998. www.mediationuk.org.uk

Mediation: Principles Process Practice. Laurence Boulle and Miryana Nestic. Butterworths. London, Dublin, Edinburgh 2001.

The Mediator's Handbook. Jennifer E Beer and Eileen Stief. Developed by Friends Conflict Resolutions Programs. New Society Publishers 1997.

SEN Toolkit - Section 3: Resolution of Disagreements. DfES Publications. www.dfes.gov.uk/sen/documents/Sect_3.pdf

The London SEN Regional Partnership website: www.londonregionsenproject.org.uk/content/disagreement/index.htm

For more information about any of the mediation projects referred to in this bulletin contact Yvonne Cassidy, Mediation Officer, Enquire - phone 0131 22 22 444 or e-mail ycassidy@childreninscotland.org.uk

ENQUIRE UPDATE

DRC Guide for Parents

A new Scottish Guide for Parents has been produced by the Disability Rights Commission (DRC) explaining Part 4 of the Disability Discrimination Act 1995 as amended by the Special Educational Needs and Disability Act 2001. This free guide is now available from the DRC.

DRC publications can be downloaded from www.drc-gb.org. Alternatively, phone the DRC helpline 08457 622 633 or write to DRC Helpline, FREEPOST, MID 021 64, Stratford upon Avon, CV37 9BR.

TRAINING ON SPECIAL EDUCATIONAL NEEDS

ENQUIRE is planning a series of events on special educational needs issues in Scotland. Training can be tailored to individual requirements and standard programmes will also be available. Trainers with expertise in the relevant area(s) will run these events.

We aim to offer training on a range of topics relating to special educational needs. For instance forthcoming events* will include:

- Involving children and parents in Individualised Educational Programmes
- Resolving disputes in special educational needs
- Working with parent supporters/advocates
- Promoting social inclusion of children in mainstream schools

If you are interested in receiving information on attending or commissioning an event, or wish to be added to the list of trainers, please contact Gina Headden, Enquire, on 0131 222 2424 or e-mail gheadden@childreninscotland.org.uk.

*Events will be held subject to demand.

Calling all trainers!

Enquire is currently compiling a list of trainers with expertise in the field of special educational needs who may be able to assist with our training programme. If you would like to be included on this list, or would like to discuss the matter further, please contact Gina Headden at Enquire with your details and a brief description of your relevant experience and areas of particular interest and expertise.