

Dispute resolution in special educational needs (2009)

This page contains an outline of this research, and a summary of the key findings. Details of how to find the full report can be found at the bottom of the page.

“Dispute Resolution and Avoidance in Education: A Study of Special and Additional Support Needs in England and Scotland”

Who did it?

The research was conducted by a team led by Professor Sheila Riddell from the Centre for Research in Education Inclusion and Diversity (CREID) at the University of Edinburgh, and Professor Neville Harris from the School of Law at Manchester University. The project was funded by the Economic and Social Research Council and was carried out between January 2008 and September 2009.

What is it about?

The research has been carried out in the context of the push by UK and Scottish governments to promote “proportionate dispute resolution” and also in light of the administrative justice reform agenda. As both mediation and tribunals are used in resolving special educational needs (SEN) and additional support needs (ASN) disputes, and as this area has been identified as being particularly well suited to mediation, the researchers were interested to learn why the government’s endorsement of mediation has not led to its greater use in SEN and ASN.

The key questions addressed in the research were how are local authorities attempting to resolve SEN and ASN disputes, and how effective are these approaches?

Key findings

The research – involving surveys, interviews with local authorities, mediation providers and parents and their supporters, and in-depth case studies – demonstrates that mediation is little used in disputes involving SEN and ASN, and indeed its take-up is decreasing. In England, in 2006-07 there were 72 mediations held across 54 local authorities who responded to the survey. In 2007-08, there were only 58 held across 55 local authorities. In Scotland, 100 mediations have been held since 2005. (Wales was not included in the research.)

The number of disputes/disagreements in this area has increased, but not the numbers of mediations or tribunal appeals. The researchers believe more disputes are being resolved informally than before – that local negotiation, direct between parents and local authorities or schools, has become the dominant aspect of SEN/ASN dispute resolution or avoidance.

Among the factors contributing to the low take-up of mediation are:

- There is a general failure by local authorities and schools to publicise or promote mediation, leading to a lack of awareness by parents. This is in spite of the requirement that local authorities inform parents of dispute resolution arrangements when making a decision on statutory assessment or statementing, a requirement that does not apply to schools.
- A particular issue arises with school-based disputes because there is no requirement on schools to issue a standard letter in cases of unresolved complaints notifying parents of their right to access mediation.
- Some parents doubt the independence of the mediator, and others are discouraged from using mediation by advisers and other representatives because it is seen as promoting compromise rather than remedy.
- Negative experience of dealing with local authorities puts some parents off mediation and contributes to a view that tribunal is the best option. For some parents the idea of meeting with professionals from the authority is intimidating.
- Successful low-level, local informal resolution – often involving parent partnership services – minimises the need for mediation.

The research examines the pros and cons of both mediation and the tribunal that were identified by respondents in the study. Where it is used, mediation is valued highly by participants and advisers, particularly for bringing a wider focus to resolution of the dispute. It is seen as less independent and authoritative than tribunals, however. Tribunals are seen as adversarial and thus sometimes stressful for parents, but they are also seen as fair and expert.

The research also found that the participation of children and young people is supported in principle in both processes but rarely delivered.

The researchers consider that mediation has a role to play in resolving SEN/ASN disputes but it should be linked to the right of appeal, perhaps as a stage in the appeal process as a whole.

Key website: [Centre for Research in Education Inclusion and Diversity](#)