



Additional Support Needs Mediation

**Setting up and delivering mediation services
in the Scottish education system**

EXECUTIVE SUMMARY

- The Education (Additional Support for Learning) (Scotland) Bill as introduced places a duty on education authorities to make arrangements for the provision of independent additional support needs (ASN) mediation services.
- The Govan Law Centre Education Law Unit was funded by the Scottish Executive Special Educational Needs Innovation Grants Programme to produce a written resource for mediators and for local authorities considering setting up an ASN mediation process.
- This report includes information on the concepts and principles of mediation, as well as practical advice and good practice guidelines.
- The report makes ten recommendations (see Section 5). The key recommendation is that a national ASN Mediation Service should be developed.
- The report also recommends the introduction of national minimum standards in ASN mediation.
- The focus of ASN mediation is the interests of the child/young person with additional support needs.

FOREWORD

Govan Law Centre is an independent community controlled organisation which exists to tackle unmet legal need. Children and young people with additional support needs are in an especially vulnerable situation and the variety and complexity of legal needs which may arise require particular care from the agency which seeks to assist them.

The guiding light for all law centre work is contained within the aims and objectives of the Govan Law Centre Charitable Trust. We are committed to using the law and legal skills to tackle inequality and to support vulnerable people in our society; and where possible, to empower people to help themselves. It is therefore highly appropriate that our Education Law Unit has piloted a mediation service in several local authority areas with a view to resolving disputes around special educational needs.

I would like to take this opportunity to thank all of our trustees and staff for their hard work in making this pilot mediation scheme a reality. Our thanks must also go to our funding partners, the Scottish Executive Education Department, without whose support we could not deliver this service; and to Glasgow City Council, without whose core support Govan Law Centre could not develop projects like the Education Law Unit (ELU).

Finally, a particular note of thanks to Iain Nisbet, the ELU's Co-ordinator, Morag Steven, our Meditation Consultant, and to our sessional mediators. They are all highly experienced professionals and we are fortunate to have their input and expertise in developing this mediation service. This guide to additional support needs mediation is the fruit of their considerable labours.

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Section 1 Introduction

This guide aims to cover a range of issues related to the setting up of additional support needs or ASN mediation services. These include the background to ASN mediation, concepts and principles of mediation, practical advice and good practice guidelines, and recommendations for further development.

Section 1 introduces the ASN Mediation Service set up by Govan Law Centre's Education Law Unit and other mediation initiatives in this area; and considers the Education (Additional Support for Learning) (Scotland) Bill.

Section 2 considers mediation concepts, principles and models and how to develop a system of mediation specifically tailored to ASN.

Section 3 compares models of service delivery and considers systems and procedures.

Section 4 examines some of the barriers to ASN mediation and proposes ways to overcome these barriers.

Section 5 comprises recommendations from this report.

1.1 Govan Law Centre Education Law Unit

Govan Law Centre's Education Law Unit received funding through the Scottish Executive Special Educational Needs Innovation Grants Programme 2002 – 2004 for a number of initiatives. One of these was to set up and develop a Special Educational Needs Mediation Pilot in Scottish local authority areas where SEN mediation had not been previously trialled, and using a mediation model in some ways different to those already in operation.

Towards the end of 2002, Govan Law Centre undertook a consultation exercise on special educational needs (SEN) mediation, including an event in November 2002 to share information and consider best practice in SEN mediation. A considerable number of organisations (a mixture of education authorities, mediators, parent support groups and other voluntary organisations) responded to the consultation questionnaire.¹

More recently, Govan Law Centre's Education Law Unit has received further funding until 2007 through the Scottish Executive Direct Funding for the Voluntary Sector Children, Young People & Families Scheme to allow it to further develop its activities in education. This funding allows the Education Law Unit to continue the consolidation and expansion of its activities in the area of mediation in Scottish education with particular focus on additional support needs. In addition to providing mediation services in cases of dispute between parents or pupils and education authorities or schools, GLC Mediation provides free training in mediation skills to the voluntary sector, and mediation awareness training and advice to education authorities. It also continues to promote the use of mediation as a useful tool for dispute resolution within Scottish education.

1.2 SEN Pilot Mediation Projects



As well as the Govan Law Centre Education Law Unit, a number of other voluntary organisations were funded by the Scottish Executive to develop SEN mediation.

Enquire, the national advice service for special educational needs in Scotland, received funding from 1999 to 2004, and provided a free mediation service to five local authorities: South Lanarkshire, Stirling, East Dunbartonshire, Argyll & Bute and Glasgow City. Volunteer mediators were recruited and trained in 2001, and a further group of more experienced mediators were recruited and trained in 2002. The funding for Enquire's mediation service comes to an end in March 2004, but Children in Scotland, the voluntary organisation which manages Enquire, will be offering a new ASN mediation service from April 2004. An intensive training programme covering basic mediation skills and the SEN framework is delivered by Govan Law Centre's Education Law Unit to Enquire's mediators.

¹ Appendix 1, Summary of responses to consultation questionnaire, GLC

In Perth & Kinross, Angus and Dundee City Council areas, the local parent support group, **Parent-to-Parent**, was also funded by the Scottish Executive to develop SEN mediation. In spring 2003, a 3-day intensive training programme covering basic mediation skills and the SEN framework was delivered by Govan Law Centre's Education Law Unit to a small group of staff and volunteers.



In Highland, **CHES (Children in the Highlands Education Support Service)** was also successful in a funding application to the Scottish Executive for a number of initiatives, including developing SEN mediation in the local authority area. Govan Law Centre's Education Law Unit provided a 3-day intensive training programme covering basic mediation skills and the SEN framework to a small group of Education Support Advisors. From April 2004, when CHES's funding comes to an end, the

larger part of its current operations will be picked up by CHIP+, a local consortium of service users and voluntary organisations, who are currently seeking Community Fund funding to develop a mediation arm.

1.3 Education (Additional Support for Learning) (Scotland) Bill

The Bill was introduced to the Scottish Parliament in October 2003 and contains a number of important proposed changes in the law which will affect pupils' education. Not least of these is the introduction of the new term "additional support needs" (hence, ASN mediation).

"What are additional support needs?"

It will be the duty of education authorities to give some extra help in school to all children and young people with additional support needs. Children and young people may need this help because they have a difficulty with reading or writing; they may be disabled; or they may have difficult family or other circumstances, which are holding them back at school. Additional support needs can be short or long term. For instance, additional support may be required for a child or young person who:

- is being bullied
- has behavioural or learning difficulties
- is deaf or blind
- is particularly gifted
- is bereaved
- is not a regular attender²

² A Guide for Parents, The Additional Support for Learning Bill, Scottish Executive
<http://www.scotland.gov.uk/library5/education/agfp-00.asp>

Under the proposed new legislation the term “special educational needs” will become redundant. For ease of understanding, this report will refer to ASN mediation from now on.

Section 16 of the Education (Additional Support for Learning) Bill as introduced states that every education authority in Scotland must make arrangements as they consider appropriate for the provision of independent mediation services, for the purposes of seeking to avoid or resolve disagreements between the authority and parents of children with additional support needs or young people themselves about the way education authorities exercise their functions under the Bill.

The Policy Memorandum relating to the Bill explains that this duty to make provision for independent mediation services is being introduced in order to promote partnership working between parents/pupils and education authorities. It further states that there is an expectation that informal approaches to resolve disputes at an early stage should continue to be tried first at school or local authority level. If these informal efforts fail, mediation is to be available, at the request of either the parent(s) or young person, or the authority.

However, mediation itself is designed to achieve early and informal resolution of differences of opinion. If disputes have been going on for some time before contact is made with the independent mediation service, and if mediation is presented as the last option when all other efforts to resolve the situation have failed, then there is less likelihood of a favourable outcome. GLC Mediation recommends that further consideration is given to the point in time when disputes should be referred to independent mediation.

Section 2 Mediation concepts and principles

2.1 What is mediation?

The Policy Memorandum relating to the Education (Additional Support for Learning) (Scotland) Bill offers the following definition of mediation:

Mediation is a process in which a mediator, who is an impartial third party, facilitates the resolution of disputes. Either party will be able to request the service, and participation will be voluntary. Participants are encouraged to reach a voluntary agreement. The mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The mediator does not impose his or her views on the participants or take sides, but facilitates discussion.

While this is a helpful definition, it fails to highlight a core principle in mediation, namely the process of empowering the participants to make their own decisions. GLC Mediation prefers the following definition:

Mediation is a decision-making process in which the parties are assisted by a third party, the mediator; the mediator attempts to improve the process of decision-making and to assist the parties reach an outcome to which each of them can assent.

Boulle & Nestic (2001)

There is wide diversity in the practice of mediation. It is used for different purposes and in different contexts. Some of the most widespread and well-established forms of mediation currently operating in Scotland include community mediation (neighbour disputes); family mediation (working with family breakdown); commercial mediation; and mediation services connected to the criminal justice system. All of these different strands have, over the years, developed their own systems, procedures and codes of practice specific to the area in which they are working. Mediators themselves can also have great differences in their background, training, skill level and general method of working.

As a distinct type of mediation, ASN mediation requires to develop its own systems and procedures. To this end, as part of our pilot stage, GLC Mediation carried out a consultation exercise involving parents, education authorities, the voluntary sector and mediators, to begin to develop a system of mediation specifically tailored to ASN.

More recently, GLC Mediation has developed a Code of ASN Mediation Practice with the following objectives:

- to provide guiding principles for ASN mediators' conduct;
- to promote confidence in mediation as a process for resolving disagreements between parents of children with additional support needs and the local education authority and/or school;
- to provide a means of protection for users of the ASN mediation service³

GLC Mediation recommends that its Code of ASN Mediation Practice be adopted as a national minimum standard.

2.2 Guiding Principles of Mediation

Despite the wide array of different types of mediation currently used and different motivations for the development of mediation, mediators are generally guided by the principle of respect for the people involved in a dispute. The mediator's role is to help these people speak for themselves and make their own decisions about how to resolve the difficult situation.

GLC Mediation believes that the following ethical framework should be followed by ASN mediators:

- People should always be treated with respect and without unfair discrimination.
- People should not be coerced into taking part or staying in the mediation process.
- The anonymity of all parties should be fully protected and confidentiality preserved within the service's published guidelines.
- Mediators should declare any conflict of interest which may put their neutrality into question.
- Mediators should maintain clear boundaries between mediation and other forms of intervention such as advice, counselling and advocacy.
- Mediators should seek to enhance the autonomy of parties and remain impartial regarding the objectives and outcomes of mediation.

³ Appendix 2, GLC Mediation Service, Code of ASN Mediation Practice

- Mediators should treat each party fairly and endeavour to serve the best interests of all parties in conflict.
- Mediators should be aware of their own values and prejudices, and work to challenge discrimination in their own and others' behaviour.
- Mediators should recognise their own limitations regarding competence, values and experience and acknowledge that these could adversely affect their capacity to mediate in some circumstances.
- Mediators should evaluate their own practice regularly and be open to feedback from others.⁴

2.3 The nature of conflict

Conflict is often portrayed as a negative phenomenon, to be avoided at all costs or 'fixed' as quickly as possible. On the contrary, conflict is a natural and necessary element of society. It is not the direct aim of mediation to reduce the amount of conflict in the world. Instead mediation can provide a valuable and flexible mechanism for managing and resolving conflict effectively.⁵

It should not be surprising in the least that parents of children with additional support needs find themselves in disagreement from time to time with the child's school and/or education authority. All concerned have the child's best interests in mind, but they may have very different perceptions about how to best meet the child's needs. Conflict always has a human dimension, and the real issues underlying conflict are a mix of past experiences, emotions, prejudices, insecurities and immediate feelings.

"People are not motivated by facts: they are motivated by their perceptions of the facts, their interpretation of the facts, their feelings about the facts."

Acland (1995)

It is mediation's response to the human dimension of conflict that makes it work so well. Conflict in the area of additional support needs is very suitable for mediation as it inevitably has a strong human dimension.

⁴ Mediation UK, Standards for Mediators, Practice Standards

⁵ For more on understanding and transforming conflict, see The Mediator's Handbook, Beer with Steif, 1997

2.4 Additional support needs: when is mediation appropriate?

It is difficult to be definitive about which situations are appropriate for ASN mediation. Enquire states that a wide range of educational issues are suitable for mediation, including:

- school placement;
- level of provision for a child with additional support needs;
- exclusion from school;
- provision of transport;
- provision of respite care.⁶

GLC Mediation also considers that mediation may be appropriate in a wide range of situations involving children with additional support needs. However participants in mediation need to remain realistic; mediation may not be appropriate for all ASN disputes. Consider this example: a family is in dispute with a local authority because their placing request has not been successful. The school in question has no available places and so the subsequent appeal to the education appeal committee is also unsuccessful. It can be argued that mediation is inappropriate in this situation because there is no room for negotiation; the local authority cannot move from its position that there are no available places at this particular school, while the family maintains its position that their choice of school will best meet the child's additional support needs.

Notwithstanding these entrenched positions, mediation can still be appropriate and useful if the participants are encouraged to communicate openly and honestly, and can gain a better understanding of each other's perspectives. It is important, therefore, that the mediator helps the participants to clarify everyone's expectations from the mediation process at the very outset.

⁶ Enquire Mediation Service leaflet, Children in Scotland, 2003

GLC Mediation recommends that the following table of factors relevant to the appropriateness of ASN mediation should be considered:

Mediation Indicators	
More suitable	Less suitable
<ul style="list-style-type: none"> • Parties willing to negotiate – this is the single most important factor • Early stage of conflict • Commitment to process from participants • On-going relationship between parties • Ability to participate in the process • Multiple or complex issues • No clear guidelines around issues • Issues in dispute relate directly to the child’s additional support needs • Child/young person’s views have been sought 	<ul style="list-style-type: none"> • Ulterior motives • Fact-finding required • Difference of standards or moral values • Responsibility avoidance • Court remedy needed • Legal issues need to be addressed or clarified • Direct negotiation appropriate • Child protection issues • Child/young person’s views opposed to those of their parents

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It is recommended that at an early stage of referral, before each case is allocated to a mediator, the co-ordinator of the ASN mediation service considers carefully the appropriateness of mediation.

The appropriateness of mediation depends to some extent on the model of mediation chosen by the mediation service, and this issue will be dealt with in the next section.

Another factor to be considered is the relationship between mediation and the new ASN Tribunal proposed in the Education (Additional Support for Learning) (Scotland) Bill.

⁷ Adapted from Boule and Nestic, *Mediation: Principles, Process, Practice*, 2001

Arrangements made in pursuance of subsection (1) (the duty to make arrangements for the provision of independent mediation services)

(a) must not require any parent or young person –

- (i) to refer any disagreement with the authority to the mediation services provided in accordance with the arrangements, or
- (ii) to pay any fee or charge for the provision of the mediation services, and

(b) do not affect the entitlement of any parent or young person to appeal any matter to a Tribunal.

Section 16(3), Education (Additional Support for Learning) (Scotland) Bill, as introduced

In other words, there should be no compulsion on families with children or young people with additional support needs to use the mediation service. Whether or not mediation is used, must have no effect on the right to appeal to a Tribunal.

However, in England and Wales there is some evidence of pressure on families to go through the mediation process before approaching the SENDIST (SEN and Disability Tribunal). From 1 September 2002, these Tribunals in England and Wales hear appeals about pupils with special educational needs and parents' appeals about disability discrimination in schools.⁸

Any expectation or pressure on parents to participate in the mediation process is likely to affect its potential success. A core principle of mediation is that it is a voluntary process, and GLC Mediation recommends that due consideration is given to this principle, by all concerned.⁹

2.5 Models of mediation

Because of the diversity of mediation practice, it is useful to distinguish between four models of mediation, namely settlement, facilitative, therapeutic and evaluative.¹⁰ However, these models are not distinct alternatives; mediation in practice may display features of two or more of these models. At this stage it is useful to consider briefly each of the four identified models, because they can have distinctly differing objectives and outcomes. Providers

⁸ http://www.teachernet.gov.uk/_doc/3720/SENUpdate10.pdf

⁹ See Appendix 2, GLC Code of ASN Mediation Practice, 5.1 Voluntary participation

¹⁰ Boulle and Nestic, *Mediation: Principles, Process, Practice*, Butterworths, 2001

and practitioners of ASN mediation need to consider which model of mediation they are predominantly using.

Problem-solving mediation, otherwise known as facilitative mediation, focuses on the parties' underlying needs rather than their stated positions or legal entitlements. The parties are encouraged to create their own mutually acceptable outcomes. The mediator facilitates the mediation process, while the parties are in charge of the outcome. This model of mediation is sometimes referred to as 'pure' or 'classic', and much writing about mediation has this model in mind. It is suitable for ASN mediation because it allows the participants in the mediation process to consider all the issues and make their decisions.

Transformative mediation, otherwise known as therapeutic mediation, is based on the values of 'empowerment' of each of the parties as much as possible, and 'recognition' by each of the parties of the other's needs, interests, values and points of view. Improving or transforming the parties' relationship is the main objective as a basis for resolution of the dispute. This model of mediation is also suitable for ASN disputes because of the importance of the on-going relationship between the parents of the child with additional support needs and the school/education authority.

Outcome-focussed mediation, also known as evaluative mediation, is characterised more by efforts to help disputants reach an agreement. Success is measurable by whether or not an agreement has been reached. This model can be seen as somewhat directive, and the skilful outcome-focussed mediator will be careful not to impose his/her opinions, but rather help the parties 'reality test' their positions. The outcome-focussed mediator not only structures the process, but also can have direct influence on the outcome of the mediation. A possible shortcoming of this model is that it can sometimes blur the distinction between mediation and arbitration. This type of mediation is suitable for ASN disputes when the participants are particularly eager for a conclusive agreement.

Settlement mediation, also known as compromise mediation, encourages the parties to compromise and 'bargain'. The mediator's main role here is to determine the parties' 'bottom line' and move them in stages off their positions to a point of compromise. Again, the skilled mediator has to be careful not to impose his/her opinions, but to help the parties consider how far they are prepared to move towards a compromise. This type of mediation could also be appropriate in some ASN disputes when initial positions appear to be very entrenched.

The GLC Mediation Service which was designed specifically for ASN disputes uses an outcome-focussed approach, predominantly, although in practice features of all four models are used as appropriate. Currently, users of the mediation service and funders are looking for an outcome-focussed approach, rather than a transformative process. The specified purpose of introducing

ASN mediation in the Education (Additional Support for Learning) (Scotland) Bill is to avoid or resolve disagreements.

The typical relationship between funders and service providers at the moment and for the foreseeable future is one of providing resources in return for measurable practical outcomes, and personal growth is not likely to be viewed either as a high priority or as something which is easily measured.

McDonough, Community Mediation, Ensuring Good Practice, SACRO, 2002

However, the Policy Memorandum to the Education Bill as introduced, states that the new duty to make provision for independent mediation services is being introduced in order to promote partnership working between parents/pupils and education authorities.¹¹ Real partnership involves a meaningful relationship, and so it can be argued that improving understanding and transforming attitudes are important factors in ASN mediation.

In many situations the transformative process or change in attitude or understanding is necessary in order to achieve resolution. By experiencing the benefits of resolving conflict collaboratively, it is possible that participants will approach their future conflicts in a more positive way. They may be better equipped with the skills to resolve conflict earlier and more effectively. However, this is a very difficult outcome to measure.

The fundamental question appears to be whether the outcome or the ASN mediation process itself is more important. GLC Mediation considers that it must be the outcome. Neither parents of children with additional support needs nor education officers will engage with ASN mediation for the sake of personal growth; they are focussed on the outcome and on resolution of the dispute.

¹¹ Point 44, Policy Memorandum, Education (Additional Support for Learning) (Scotland) Bill, 2003, The Stationery Office

Section 3 How to deliver the service

3.1 Choosing a model of service delivery

There are four main ways of delivering mediation services, each of which has its own advantages and disadvantages:

- independent mediation service
- in-house mediation service
- training existing staff to be mediators
- using freelance mediators¹²

Anyone setting up an ASN mediation service needs to give careful consideration to the service delivery model, taking into account considerations such as financial constraints, ethical considerations, geographical factors, likely number of cases to be processed, public perception of the chosen model, etc.

The Education (Additional Support for Learning) (Scotland) Bill places a duty on education authorities to make such arrangements “as they consider appropriate” for the provision of independent mediation services. It appears that the choice of service delivery model is deliberately being kept open, and education authorities will make their own decisions regarding how to meet this new duty.

The danger with this approach, however, is that ASN mediation in Scotland becomes a jumble of different styles and models, with no standardisation of approach. While appreciating that education authorities across Scotland differ from each other in many ways, it will be difficult for users of ASN mediation services to feel confident about the mediation process until there are national guidelines for minimum standards. With this in mind, GLC Mediation suggests that its Code of ASN Mediation Practice is adopted as the national standard.

The **independent service** delivered by the Govan Law Centre was chosen as the model most likely to be seen as neutral both by parents of children with additional support needs and local authorities. This perception of neutrality and independence is very important to the success of any service, as this section aims to demonstrate.

The GLC Mediation Service has its policy scrutinised by a User Advisory Committee which consists of representatives from both voluntary organisations and education authorities. Referrals are taken from parents of children with additional support needs or voluntary organisations that are providing support, or from the education authority. The costs of the mediation process are covered by the education authorities making use of the

¹² McDonough, Community Mediation, Choosing a Model of Service Delivery, SACRO, 2001

service. A pool of 14 experienced mediators is available to undertake the mediation work on a sessional basis. This model offers great flexibility in response to variable demand.

An advantage of using a good-sized pool of mediators is the avoidance of the same one or two mediators always working in a particular education authority area. If a mediator works on a number of cases with the same education officer, there is a risk that they could build some sort of professional relationship which could in turn damage the integrity of the mediation process.

One potential disadvantage to this independent model from an education authority perspective is that although they may be represented on the User Advisory Committee, they have little direct control over the quality and style of service delivery. They do however have the choice whether to use this service, purchase another mediation service, or develop their own in-house model.

The **in-house model** of service delivery favoured by some education authorities has staff directly employed by the local authority and located within the education department. Such a service operates within and is guided by the local authority's management structure and overall priorities. Obvious advantages of this model from an education authority perspective include direct control over quality and style of service delivery, and the opportunity to dovetail with other council strategies.

The main disadvantage to the in-house model is that it is very unlikely to be seen as neutral by parents of children with additional support needs and their support agencies. It is most likely to be perceived as just another part of the education department. As mediation is a voluntary process, it is crucial that potential users can trust the neutrality of the service. The importance of a mediation service's perceived neutrality by its users cannot be over-emphasised.

This same disadvantage also applies to the model of **training existing education authority staff to be mediators**. This model has been used as an interim measure in the provision of community/neighbour mediation and can save on costs and time. However, expecting existing staff to become mediators in addition to their other duties can not only add to their workload and general stress levels, but also cause serious clashes between an individual's role as a mediator and their other role, for example education officer. Also, mediation training is not a quick, one-off process; after basic training mediators become experienced through practice and reflecting on their work. This issue will be further discussed in Section 3.3, Selection of Mediators.

The final model available is **using individual freelance mediators**. Education authorities could engage the services of freelance mediators by

employing them directly. If mediation is used very infrequently this could be a useful model, but cost implications are high. Another potential disadvantage to this model is that education authorities would have little influence over the quality and style of service delivery which could vary between individual mediators. Also, external commercial pressures could affect the quality of the mediation service, and the potential risk when using the same mediator in a number of cases has been outlined earlier.

Although different models of service delivery may be equally successful in the right circumstances, GLC Mediation considers that the independent model is the most appropriate in the particular context of children with additional support needs. Unless potential users of the mediation service can fully trust the neutrality of the mediator, they will not participate in the mediation process, preferring to choose other ways to tackle the dispute. The independent model is "most likely to be able to satisfy the exacting requirements of ensuring adequate procedural and ethical safeguards for clients", and it also appears to be more capable of handling a higher volume of cases.¹³

GLC Mediation recommends that education authorities give serious consideration to the independent model of service delivery.

Systems and procedures

Regardless of the model of service delivery, it is very important that ASN mediation services adopt adequate values, policies and procedures. GLC Mediation believes that all ASN mediation services should adhere to the following Practice Standards:

Mediation Services are expected to:

- ensure and preserve the neutrality of their mediators regarding the objectives and outcomes of all mediation cases;
- be independent in management and operation or have a strategy to counter the potential influence of a managing or funding agency which might have a stake in the outcomes of specific mediations and threaten the impartial nature of mediation;
- maintain a confidential mediation service in line with management policy, procedures and legal obligations;
- ensure that all activities are free from unfair discrimination and are governed by principles of equal opportunity, with referral criteria that

¹³ Dignan and Sorsby, Resolving Neighbour Disputes Through Mediation in Scotland, Scottish Office Central Research Unit 1999

give equal access to mediation for all who come within that service's remit;

- respect and care for all workers, whether paid or voluntary, valuing the contribution of volunteers and not exploiting them; and
- be accountable to all who have an investment in the service and continually seek to improve the service offered to clients.¹⁴

When setting up an ASN mediation service, each organisation must consider whether it has the abilities to meet these essential practice standards. In addition to this document and the GLC Code of ASN Mediation Practice, advice can be sought from Mediation UK, and closer to home the Scottish Mediation Network (SMN). SMN's aim is by 2005 to put mediation in the mainstream, widely available and clearly understood as a first option for resolving disputes of all kinds in Scotland.

Consideration also needs to be directed towards the following list of policies and procedures which need to be in place, as a matter of good practice, for all mediation services, regardless of the model adopted:

- Governing Documents, eg constitution or memorandum & articles of association; service level agreement or other contract with education authorities
- Personnel Policies: adequate policies for recruitment of mediators, terms and conditions of employment, grievance and disciplinary procedures, and/or policies for working with volunteer mediators
- Training and on-going skills development for mediators
- Support and supervision for mediators; access to advice and guidance regarding casework
- Monitoring and evaluation; the service needs to have in place methods of evaluating its work and measuring its success; a complaints procedure is also necessary
- Referral protocol and case management system
- Confidentiality policy; it is vital that the service is clear about its boundaries on confidentiality
- Health and safety policy, including personal safety of mediators
- Equal opportunities policy

¹⁴ Standards for Mediation Services, Mediation UK Practice Standards

- Promotion of the service: how does the service get its message across to the general public?¹⁵

For useful examples of policy documents which could be adapted for ASN mediation services, refer to the Appendices to Community Mediation, Ensuring Good Practice, SACRO, 2002.

3.3 Selection of mediators

Much discussion has taken place about what sort of people make good ASN mediators. One school of thought is that ASN mediators need to have expert knowledge of the Scottish education system, in order to fully understand the issues that are in dispute, and that mediation skills can be taught quickly to people with this knowledge. The opposing view is that good mediators do not need to have expertise in the subject matter of the dispute; their mediation competence and experience are far more important. GLC Mediation agrees with the latter point of view, and recommends that ASN mediators should have established competence in at least three areas:

1. knowledge of the theory and process of negotiation and mediation;
2. the mediation skills of planning, organisation, communication, intervention and analysis; and
3. attitudes appropriate for mediation, including an acceptance of its philosophy and ethics.¹⁶

Competence in these areas is constantly developed by training, practice and reflection.

Notwithstanding this argument, GLC Mediation takes the view that ASN mediators should at least have some knowledge and understanding of the Scottish education system, with particular reference to children with additional support needs. Applications to train as ASN mediators with GLC Mediation were invited from experienced mediators who could demonstrate at least two years' practice. A training programme was devised for these mediators with two main aims:

- to provide information about the Scottish SEN/ASN framework including proposed changes in legislation, with particular reference to the issues that can cause disagreement and conflict; and

¹⁵ McDonough, Community Mediation, Choosing a Model of Service Delivery and Ensuring Good Practice, SACRO, 2001 and 2002.

¹⁶ Boule and Nestic, Mediation: Principles, Process, Practice, Butterworths 2001

- to provide the opportunity for experienced mediators to transfer existing skills to a new area of work.

An information resource pack was made available for the GLC mediators, and they were advised of sources of further accurate, current information, for example Enquire and the Govan Law Centre's Education Law Unit itself. Further training for our mediators in ASN issues is on-going.

Some other organisations involved in developing ASN mediation in Scotland have taken the decision to use existing staff members such as parent supporters and advocates, or indeed education department personnel. These people already have an in-depth knowledge of the ASN education framework, but they require comprehensive mediation training, as well as the opportunity to develop their mediation skills through practice.

GLC Mediation is Scotland's principal provider of ASN mediation training, delivering to Enquire, CHESS and Parent-to-Parent. However, it is important to recognise that completion of such a training programme in itself does not mean people become skilled mediators.

Most mediation services regard a basic thirty-hour training course as only the first step in acquiring the necessary skills. For example, in community mediation initial training is normally followed by a probationary period where the mediator works with a more experienced colleague, gradually taking on more of a leading role as skills and experience develop. The difficulty with ASN mediation is that it is a new type of mediation in Scotland and there have been relatively few cases to date. Therefore it is rather difficult for new mediators to develop the necessary skills by 'shadowing' a more experienced mediator without practising in other fields of mediation.

For this reason GLC Mediation took the decision to select already experienced mediators who could demonstrate at least two years' casework experience in other fields of mediation, and who could also demonstrate a commitment to continuing professional development. We believe that the skills, knowledge and expertise that our mediators already possess can easily be transferred into the developing field of ASN mediation.

Another issue to be considered when selecting mediators, is that those with expert knowledge of the additional support needs educational framework may find it difficult not to use their own judgement to decide what is best for the parties. This may not only frustrate the participants in the process to find their own best solutions, but more than likely will adversely affect the participants' perceptions of the mediator's impartiality. There is a danger too that experts may find it difficult to distinguish between their different roles as, for example, an education officer or parent advocate on one hand where they

may have an advising or counselling function, and as a mediator on the other hand.¹⁷

The GLC Mediation Service pays its mediators on a sessional basis at accepted professional rates. This is a reflection of the skills, knowledge and professionalism that the experienced mediator brings to ASN mediation. Education authorities using our service cover the mediation costs on a case by case basis. For ASN mediation in Scotland to develop to its full potential, it is strongly recommended that services are adequately funded, allowing mediators to be paid at acceptable professional rates.

Many community mediation services use volunteer mediators, and this model of working is favoured by some in the field of ASN mediation.

The decision to use volunteer mediators should always be made for clear reasons, and never simply as a way to avoid staff costs.

McDonough, Community Mediation, Ensuring Good Practice, SACRO 2002

Many community mediation services use volunteer mediators for reasons of community development; local people get involved and feel they can contribute something useful to their own community. Working with volunteers raises specific issues for consideration, and specific guidelines need to be followed.¹⁸ Further advice about working with volunteers can be gathered from the Scottish Council for Voluntary Organisations (www.scvo.org.uk).

However, GLC Mediation considers it inappropriate to use volunteer mediators in ASN mediation for a number of reasons. Firstly, the role of the mediator in ASN disputes demands a skilled experienced professional, and this merits financial compensation at the accepted professional rate. Mediation services cannot place the same demands on volunteers as they can on paid staff, and some services experience difficulties with volunteers' availability if they are also in full-time employment elsewhere.

¹⁷ Boulle and Nestic, *Mediation: Principles, Process, Practice*, Butterworths, 2001

¹⁸ McDonough, *Community Mediation, Ensuring Good Practice*, SACRO 2002

3.4 Levels of Funding

Like any other public service, mediation needs to be properly resourced with adequate staffing levels, administrative back up, premises, and general running costs. A failure to provide an adequate service budget is, in effect, a failure to provide an adequate service.

McDonough, Community Mediation, Choosing a Model of Service Delivery, SACRO, 2001

GLC Mediation has been funded by the Scottish Executive over the next 3 years to develop an ASN Mediation Service. This level of funding covers the managerial and some training costs associated with the post of Mediation Consultant. Costs such as administrative support, premises, support and supervision for mediators, on-going training for mediators, and publicity materials for the service are to be covered as any generated income allows.

Govan Law Centre provides mediation services to a number of local authorities, and these services are funded by the education department either by service level agreement or on a case by case basis. When GLC Mediation carried out the consultation exercise, a number of respondents indicated their concern that the perceived independence of a mediation service could be affected if the education department pays the costs. Around half of the respondents felt that direct funding from the Scottish Executive would be the best way of ensuring that the mediation service was independent and had no links with the local authority.¹⁹

A rough indication of setting up local ASN mediation services can be considered using the following figures:

Small independent or in-house mediation service

(co-ordinator plus one staff member or group of volunteers)

Capital (non-recurring) Costs £5,000

Annual Budget £70,000

Medium independent or in-house mediation service

(co-ordinator plus two staff members and group of volunteers)

Capital (non-recurring) Costs £7,000

Annual Budget £100,000

Large independent or in-house mediation service

(co-ordinator plus three staff members and group of volunteers)

Capital (non-recurring) Costs £10,000

Annual Budget £140,000

¹⁹ Appendix 1, Summary of responses to the GLC Consultation Questionnaire, 2002

The above costs are at 2000/2001 levels and were calculated using NJC local government pay scales and travel rates.²⁰

The Explanatory Notes to the Education (Additional Support for Learning) (Scotland) Bill contain a Financial Memorandum. This document confirms that the Bill as introduced is not prescriptive about how mediation services must be provided, so additional costs could vary across local authorities. Notwithstanding, likely costs of mediation services are calculated for this Financial Memorandum using two service models: a national mediation service and a local authority in-house education conciliation service.

Estimated costs for setting up a national ASN mediation service are suggested to be £130,000, to cover recruitment, staffing, training and central service overheads. The total cost per annum for such a service is estimated at **£0.8m-£1.8m**.

Alternatively, providing an in-house ASN mediation service is estimated at a cost of **£1.2m-£2.5m** per annum, according to the Financial Memorandum. No details are provided about staffing levels in either of these two models, and who would provide the mediation - paid staff, sessional workers or volunteer mediators.²¹

If ASN mediation is to develop appropriately in Scotland, it is crucial that services are funded properly and realistically. GLC Mediation recommends that, at least in the first instance, this funding should come directly from the Scottish Executive.

3.5 Role of children and young people in ASN mediation

One important feature of ASN mediation is that at the centre of every dispute is a child or young person with additional support needs. Current legislation, including the Children (Scotland) Act 1995 and Standards in Scotland's Schools etc Act 2000 emphasise the importance of the rights of the child and the necessity of involving them in decisions that significantly affect them. This echoes the principles set out in the UN Convention on the Rights of the Child. In many cases it may not be appropriate for a number of reasons to involve children or young people directly in a mediation session between their parents and the school or education authority. However, it is crucial to the ASN mediation process that children and young people are consulted to determine their views, and every effort should be made by the mediator to enable this to take place.

The mediator must bear in mind that the views of the child and of their parents may differ. Also, depending on the nature of the additional support

²⁰ McDonough, Community Mediation, Choosing a Model of Service Delivery, SACRO, 2001

²¹ Point 85, Explanatory Notes, Education (Additional Support for Learning) (Scotland), Stationery Office

needs, it may difficult to obtain the child's views, and the mediator may have to use different methods to ensure this, such as videos, taped messages or drawings. It can take a significantly longer time to sufficiently get to know a child with significant support needs in order to obtain their views, and advice should be sought from the parents and professionals about how best to do this. For example, working with a child who is visually impaired with significant learning disabilities and speech and language difficulties could prove challenging for a mediator with no prior experience. In such a situation someone who knows the child well, yet is sufficiently detached from the situation causing the dispute, could support the child or young person to express their views to the best of their ability. This could be a support worker, befriender, health professional, or even another family member.

Section 4 Overcoming barriers to ASN mediation

GLC Mediation and other voluntary organisations involved in the early stages of ASN mediation in Scotland have come across a number of barriers (mainly attitudinal) which are necessary to overcome. It is useful to consider some of them here.

One of the main difficulties in getting ASN mediation services off the ground is the misunderstanding and general confusion amongst the general public about what mediation is. There is still, therefore, a great need for strategies to inform and educate the population about mediation and its potential benefits. The Additional Support for Learning Bill, as introduced, places a duty on education authorities to publicise their mediation services.²² For this reason, GLC Mediation is working with education authorities to deliver mediation awareness training to school staff and education officers, so that they will have a better understanding of the principles of mediation. GLC Mediation welcomes the proposal for a code of practice setting out minimum standards for mediation services²³, and recommends that its own Code of ASN Mediation Practice be adopted as the national standard. Consideration should also be given to compiling minimum standards for education authorities to meet when they make arrangements for the provision of mediation services.²⁴

At this time, some commentators maintain that there is no need for ASN mediation or the other proposed changes in the Education (Additional Support for Learning) (Scotland) Bill. They maintain that the current system for resolving disagreements is adequate, involving education appeal committees, Sheriff Court, Scottish Ministers and the Ombudsman.

Existing methods of resolving difficulties in ASN are adversarial, and mediation offers a different approach. Further, real concerns over the operation of education appeal committees in Scotland have been identified for some years now. In June 2000, the Council of Tribunals prepared a report for the Scottish Executive which clearly indicated concerns that the current educational appeals procedure is inaccessible to parents, and lacks independence, flexibility and balance.²⁵

The 2003 Annual Report of the Scottish Committee of the Council on Tribunals notes that while there have been some improvements in the last three years, unfortunately these have not been across the board and lack of training for panel members is still an issue in some local authority areas.

²² Point 49, Policy Memorandum, Education (Additional Support for Learning) (Scotland) Bill, Stationery Office

²³ Point 47, *ibid*

²⁴ For an example, see Minimum standards for LEAs, SEN Toolkit, Section 3: Resolution of Disagreements, DfES, 2001

²⁵ Education Appeal Committees in Scotland, Council on Tribunals, June 2000.

Work is on-going in this area with input from the Scottish Executive Education Department.²⁶

Another identifiable barrier to ASN mediation is the exclamation from education officers and others: "but we already do this!"²⁷ This appears to be a common reaction from professionals already working in the field in many new areas of mediation. All education authorities have complaints procedures, and parents of children with additional support needs are encouraged to voice any concerns they have about their child's education with someone at the school in the first instance. Some local authorities have set up a direct service within the education department to deal with complaints and situations where parents experience communication difficulties with the school. An example of this is the City of Edinburgh Council's Advice and Conciliation Service.

ASN mediation is not intended to replace any of these existing models of good practice, but to complement them. However, as this guide has hoped to demonstrate, involving a skilled mediator to facilitate the communication process is a very different approach from existing methods of dealing with complaints. It can be difficult to explain exactly what happens in mediation which does not happen in any ordinary face-to-face interaction or negotiation. What is certain is that the dynamics of the interaction change considerably. This is due to the role of the skilled mediator who approaches the situation as an outsider with no vested interest in the outcome. The mediator acts impartially, but even more importantly, the participants trust that impartiality. Once people have actually participated in mediation and seen with their own eyes its benefits and how it is a different process, they can better understand the process.

It has certainly been a source of frustration within GLC Mediation where education authorities turn down parental requests to participate in mediation. Out of seven referral enquiries to the mediation service in 2003, only one progressed to mediation. In the remaining six cases the education authorities declined to participate. While participation in mediation is always voluntary, education authorities must consider what message this course of action sends to parents of children with additional support needs. Education authorities will have to reconsider such a position once the Education (Additional Support for Learning) (Scotland) Bill is passed. As previously mentioned, education authorities will be required to provide information for parents and pupils about the availability of recourse to mediation.²⁸

As well as attitudinal barriers, the development of ASN mediation services has also been hindered by financial barriers, which have been mentioned in

²⁶ Scottish Committee of the Council on Tribunals, Annual Report 2002-2003

²⁷ Acland, Resolving disputes without going to court, a consumer guide to alternative dispute resolution

²⁸ Point 45, Policy Memorandum, Education (Additional Support for Learning) (Scotland) Bill, Stationery Office, 2003

Section 3. GLC Mediation recommends that serious consideration is given to national funding of developing services.

Section 5 Recommendations

1. Serious consideration should be given to the development of a national additional support needs (ASN) mediation service, in order to establish uniform standards of mediation across the country.
2. A national, centrally funded ASN mediation service is also likely to be the most cost efficient model.
3. Every ASN mediation service must be fully independent of education authorities so that users of the service can have full confidence in its neutrality.
4. The GLC Code of ASN Mediation Practice should be adopted as a national minimum standard for ASN mediation services.
5. Further consideration should be given to the appropriate stage in disputes for referral to independent mediation.
6. The principle of voluntary participation is key to mediation, and pressure must not be exerted on parties to participate.
7. Consideration needs to be given to ensuring that the views of the child/ young person with additional support needs are included in the mediation process.
8. Methods of monitoring and evaluating ASN mediation services need to be put in place in order to measure standards of work against "best practice".
9. Information about the availability of independent ASN mediation should be freely available, for example in school handbooks and education department publications.
10. Consideration should be given to the potential benefits from the use of mediation as a method of dispute resolution not only in the area of additional support needs, but in all aspects of education provision.

Appendix 1

GOVAN LAW CENTRE EDUCATION LAW UNIT SUMMARY OF RESPONSES TO THE CONSULTATION QUESTIONNAIRE November 2002

Existing Good Practice

1. How should mediation link in with local authorities' existing methods of working with parents, and with current complaints procedures?

The majority of respondents felt that mediation needs to be integral with existing practices in local authorities and the national SEN framework while still retaining its own independence. The complaints procedures already in place in local authorities could highlight that mediation is available and at what stage it can be sought. However, a number of respondents felt that both parents and local authority personnel should be made aware that mediation can be available at any stage in a dispute and not just when an official complaint has been made. Parents need to be aware of all the options available to them, and mediation needs to remain a voluntary process.

2. How and when should local authorities let parents know that independent mediation is available? Is there a role for local voluntary organisations and parent support groups?

The majority of respondents felt that information about the availability of independent mediation should be freely available at the earliest possible stage, perhaps when a child starts nursery or school. This information could be included in school handbooks and education department publications in various formats and community languages. It was felt that being aware of the possibility of mediation before any potential difficulties arise would be preferable to being given the necessary information after a problem arises. However, some local authorities said that it should be made clear to parents that mediation is only used rarely and as a last resort when other methods of resolving the difficulty have been unsuccessful.

Most respondents felt that local voluntary organisations and parent support groups could have a role in supplying information about mediation, but that they should not have a role in the mediation process itself. National voluntary organisations could also inform parents about mediation. Information about mediation could be available to parents through the local press, by leaflets to all households, or through School Boards. One suggestion was that voluntary organisations and support groups could benefit from presentations from the mediation service to enable them to become better informed about the

mediation process and the role of the mediator. Mediation awareness training for education department personnel was another suggestion.

Availability

3. Should mediation be available for all parents who request it? Or only those of children with a Record of Needs/Co-ordinated Support Plan? Or those at a certain stage in the staged intervention process?

Most respondents felt that mediation should be available for all who request it. Its availability should not be tied to the Record of Needs or Co-ordinated Support Plan. However, there was a difference of opinion here – some local authorities felt that it should only be available when all other methods have been tried and failed. Mediation should be available when it is clear that a dispute is becoming protracted. Others disagreed and said that early intervention by an independent third party may prevent problems escalating. These respondents said that mediation should be offered as widely and as early as possible in any situation where relationships and communication have broken down.

4. At what stage of a disagreement/conflict should mediation be suggested? Should independent mediation be available at a school level?

Again there was a significant difference in opinion. Respondents from local authorities and schools said that mediation should be made available only when there has been no resolution at school level and initial discussions at local authority level have been unsuccessful. One suggestion was that since the problems that may be the focus of mediation are local authority responsibilities, then mediation should only be available at local authority level.

Other respondents felt that independent mediation should be available at school level in order to prevent entrenched disputes. Ideally mediation should be considered before the relationship between parents and school and/or local authority breaks down, but in practice this can be difficult. If information about mediation is widely available, this may help people involved in a disagreement to know when to try this method of conflict resolution. Training in the principles of mediation could be beneficial for many staff members and could even avert the need for independent mediation at an early stage.

5. Should the aim of mediation be to improve relationships and communication between the school, the local authority and the parent, or should it focus on meeting the educational needs of the child/young person?

Nearly all the respondents felt that mediation should address both issues. By improving relationships and communication, the child's educational needs will in turn be addressed. Without improved relationships the potential for future

disagreements remains. A number of respondents pointed out that some disputes are caused through differing perceptions of the needs of the child, and this issue needs to be addressed in the mediation process. Focus on the child must be implicit in the mediation process since the responsibility for educating the child is a shared one between the parent and the local authority.

Some respondents said that the mediation process should focus on the educational needs of the child/young person.

The Mediation Model

6. How should referrals to the service be made? (For example, from local authority officers, from schools, from parents – or open referral?) Should one person in the local authority be the "link" with the mediation service?

Nearly all respondents were in favour of open referral to the service which means that schools and parents would need to be aware of its existence. The idea of one "link" person from each local authority being the route in to the service was felt by some to be the best method, but it was pointed out that this would depend on the existing structure of the local authority. Other respondents felt that although a one door approach would be beneficial, there should not be one "link" person in the local authority. It was pointed out that this could cause problems if that person was off sick, away on holiday, or indeed had strong views about independent mediation. Before any referral goes ahead, both parties should agree that independent mediation is necessary.

7. The mediator will always encourage people to meet face-to-face, but sometimes "shuttle" or indirect mediation is used in other types of mediation when people are particularly unwilling to meet. Should SEN mediation include shuttle mediation?

There was general agreement among respondents that shuttle mediation should ideally be used as an intermediary step to direct mediation only in situations where the parties are particularly unwilling to meet. The understanding should be that the parties will meet at some point when they feel ready, as the mediation process is all about helping them to communicate.

8. How long should a direct (or face-to-face) mediation last?

In general respondents said that clearly all cases are different and some will require more time than others. However it was felt by the great majority of respondents that 2 hours should be the maximum time for a face-to-face meeting. If all the issues have not been discussed to everyone's satisfaction, a further meeting should be offered.

9. *How important is a neutral venue for meetings?*

All respondents said that a neutral venue is very important. Mediation should not be carried out in local authority premises.

10. *GLC intends working with a pool of experienced trained mediators – should the people involved in the dispute be able to choose their mediator?*

The majority of respondents said that this would neither be necessary nor beneficial. A good mediation service will match the mediator to the requirements of the individual case. However a few respondents said that both parties should have the opportunity to decline a selected mediator and request a different one on the basis that they are already known to one or other party, or that there is evidence of a conflict of interest.

11. *GLC aims to pay the mediators on a sessional basis – how can funding of the service ensure the mediators' independence?*

About half of the respondents felt that direct funding from the Scottish Executive would be the best way of ensuring that the mediation service was independent and had no links with the local authority. However, a number of other respondents said that local authorities could pay for the service either through a service level agreement or on a case by case basis. They said that funding alone does not ensure independence, and that experienced mediators understand the concept of remaining independent, regardless of who pays their fees. A small number of respondents suggested that parents involved in mediation could be asked to pay a small amount in the interest of equality.

12. *How much information does the mediator need? (For example copies of correspondence, minutes of previous meetings, assessment reports, etc.)*

More than half of the respondents said that mediators should have adequate information to allow them to carry out their role properly, and that the amount of information needed will vary from case to case. Any written information such as assessment reports, correspondence, minutes of meetings, etc should only be shared with the mediator by mutual consent of all the people involved in the dispute. Care needs to be taken not to breach confidentiality. It was suggested that the first meetings with the parties could determine how much written information would be useful or relevant. The mediator's role is to encourage communication and understanding amongst the parties, and too much written information can be complex and unnecessary.

However, some respondents felt that the mediator needs as much information as possible about the situation. Mediators need to have an understanding of the Scottish education system and the SEN framework. It was pointed out that they may not have expertise in the area of working with children who have difficulties with learning.

Children and young people's participation

13. How can the service ensure that the voice of the child/young person is heard?

All the respondents recognised that the views of the child/young person must be taken into account. A number of respondents said, however, that it would not be appropriate for the child to be present at a face-to-face meeting because potentially this could be stressful. The mediator should meet the child and take some time to get to know their views, and it was pointed out that the amount of time could vary enormously depending on the understanding and communication methods of the child. Other suggestions included getting the child's views in writing, or in a short video, or even by tele-link to the face-to-face meeting. A significant number of respondents felt that some children would benefit from support from an advocate or other independent local person already known to them in order to make their views known.

Ensuring the child's views are taken into account can be a difficult and complex issue, as parents have a responsibility to have their child educated, yet their perception of the child's educational needs can sometimes be very different from that of the education service provider, or indeed the child him/herself.

Outcomes

14. Mediation does not always result in a full agreement – sometimes a better understanding of the other person's point of view is all that can be achieved. Bearing this in mind, how can the service ensure measurable outcomes?

Most respondents said that measurement of outcomes should be carried out on a qualitative basis, eg evidence of improved understanding and communication. User feedback and evaluation will ensure recording of the outcomes. One suggestion was that in some cases it may be possible to measure outcomes in terms of stages or steps taken over a period of time.

15. When agreements are reached should they be put in writing? Should there be a "follow-up" procedure to check if agreements are holding?

Nearly all the respondents felt that any agreements reached should be put in writing. However, a few respondents said that agreements should be written only if both parties agree to this, and they may choose another option such as a verbal agreement or a letter of understanding.

Nearly all the respondents indicated that there needs to be a follow-up procedure to check on how any agreements are holding and whether there is still evidence of improved understanding and communication.

Future Developments

16. The Scottish Executive has proposed that local authorities should be able to offer independent mediation when conflict arises. Should there be one national SEN mediation service, or services at a local level, or both?

About half of the respondents felt that a local service would be more immediate, more approachable and could adapt to local situations and issues. However it was recognised that this could be costly to operate, and a significant number of respondents said that consistency and quality standards across Scotland are very important issues. To address these issues, a number of respondents suggested a national body to oversee quality, consistency and training, with local services providing the mediation. Others felt that a national service would be seen to be more independent. If services were available both locally and nationally, participants would be able to choose appropriately.

17. Should this type of mediation be extended from SEN to the whole of education provision?

Nearly all the respondents felt that this could be both appropriate and beneficial. The term "SEN mediation" suggests a segregated service which perhaps does not fit comfortably with the policy of inclusion. However, some respondents said that mediation is needed more in the SEN system than in education in general, and that SEN mediation should remain a specialist service.

It was pointed out that an appeals mechanism exists already through legislation for dealing with placing requests, exclusions, etc.

18. Could mediation have a role in disputes in other areas, such as social work departments and health authorities?

Nearly all the respondents said that this idea could have some value. Some respondents felt that it could be a useful tool in multi-agency working, particularly when a disagreement arises over funding responsibilities between education departments and other service providers.

Appendix 2

GOVAN LAW CENTRE
EDUCATION LAW UNIT



ADDITIONAL SUPPORT NEEDS MEDIATION SERVICE

CODE OF ASN MEDIATION PRACTICE

1. The need for a Code of Practice

Additional Support Needs (ASN) mediation is a new and developing field in Scotland. Mediation has already proved itself as an excellent tool for resolving disputes in Scotland in more established fields such as community mediation, family mediation, etc.

The Govan Law Centre (GLC) considers that the development of ASN mediation in Scotland will be assisted by the development of a Code of Practice which is accepted by its mediators and the general public.

2. Objectives of ASN Mediation

The main objectives of this Code of Mediation Practice are:

- to provide guiding principles for ASN mediators' conduct;
- to promote confidence in mediation as a process for resolving disagreements between parents of children with additional support needs and the local education authority and/or school; and
- to provide a means of protection for users of the ASN mediation service.

3. Definitions

Mediation is a process that aims to assist people involved in a disagreement to reach a mutually acceptable solution, appropriate to their own particular circumstances, with the help of a neutral independent person – the mediator. Any agreement reached is decided by the participants themselves, not the mediator.

The **mediator** is an impartial person whose role in mediation is to assist and encourage the people involved in a dispute to communicate and negotiate in good faith with each other.

Impartiality means conducting the proceedings in a fair and even handed manner, without favouring one person over another.

Conflict of interest means direct or indirect interest of any kind in the outcome of the dispute, or any existing or past relationship which is likely to affect impartiality or reasonably create an appearance of bias.

Confidentiality is the obligation on the people involved in the dispute, their advisers, the mediator and any other person attending the mediation not to disclose or use any of the information generated within the mediation.

4. Scope of ASN Mediation

- 4.1 ASN mediation is available free of charge to **all** parents whose child has additional support needs, and also to the child/young person themselves where appropriate, in such cases when their local authority education department has agreed to use the GLC Education Law Unit ASN Mediation Service.
- 4.2 The central issue in dispute must relate to the educational provision being made for a child in relation to additional support needs.

5. General Principles

Voluntary participation

- 5.1 Participation in mediation is always voluntary. Any participant or mediator is free to withdraw at any time. The mediator has a duty to:
 - fully inform the participants about their respective roles in mediation, including the fact that decision making rests with themselves, not the mediator;
 - fully inform the participants about the principles of mediation and how it differs from other services which may be on offer;
 - refrain from coercing or improperly influencing anyone to make a decision or to participate unwillingly in mediation;
 - refrain from giving advice to the participants;
 - make it clear, where appropriate, that people may obtain independent advice to help them make informed decisions; and
 - promote a balanced approach and encourage the participants to conduct the mediation in a collaborative, non-adversarial manner.

Impartiality

- 5.2 The mediator shall act as mediator only in those situations where he/she can remain impartial and comply with the duty to remain impartial throughout the mediation.
- 5.3 If a mediator becomes aware of any reason which may diminish his/her impartiality, he/she shall disclose this to all concerned at the earliest opportunity and withdraw from the mediation, unless the participants do not wish this to happen.

Conflicts of interest

- 5.4 Mediators must be independent of all the participants and must not have any personal interest in the outcome of the mediation.
- 5.5 Mediators must not mediate in any case in which they have acquired or may acquire relevant information in any private or other professional capacity.
- 5.6 Mediators who have acquired information in the capacity of mediator in any particular case must not act for any participant in any other professional capacity in relation to the subject matter of the mediation.
- 5.7 Mediation must be conducted as an independent activity and must be distinguished from any other professional role in which the mediator may practice.
- 5.8 The mediator's commitment is to the people involved and the process, and he/she will not allow pressure or influence from others to compromise his/her independence.
- 5.9 The mediator's duty to disclose any conflict of interest is a continuing obligation, from beginning through to completion of the process.

Confidentiality

- 5.10 The mediator must not disclose any information about the mediation, or obtained in the course of mediation to anyone, without the express consent of each participant, subject to 5.11 and 5.13 below.
- 5.11 Where a mediator has been given information that someone is in danger of significant harm, or it appears necessary that a specific allegation of harm should be properly investigated, mediators must

ensure that an appropriate authority with the power to investigate is notified.

- 5.12 In reporting the outcome of any mediation to a court or tribunal, the mediator shall only indicate whether an agreement was reached or not. The terms of any agreement shall only be disclosed with express permission of all the participants. The mediator shall not disclose any information exchanged or any observations regarding the conduct of the participants during the mediation unless they all give their permission.
- 5.13 The mediator's obligation of confidentiality shall not apply where the law requires him or her to disclose specific information.

Violence

- 5.14 In all cases mediators shall be alert to the possibility of violence or other harm. Where violence is alleged or suspected mediators must discuss whether the participants are willing to proceed, and consider whether it is safe or appropriate to do so. Steps must be taken to ensure the safety of all participants including the mediator.

6. Mediator competence

- 6.1 ASN mediators will have successfully completed a recognised training course approved by Mediation UK, SACRO, UK College of Family Mediators, the Law Society of Scotland, CEDR, or other appropriate organisation.
- 6.2 ASN mediators will have a minimum of two years post training experience as a mediator, and be able to demonstrate continuing professional development.
- 6.3 ASN mediators will undergo initial training in Scottish education law and the issues around additional support needs, and thereafter agree to maintain and improve their skills through regular casework supervision and discussion and continuing professional development training, as required by the mediation service.
- 6.4 ASN mediators shall have the responsibility only to mediate when they believe that they have the necessary skills to satisfy the reasonable expectations of the participants.
- 6.5 ASN mediators will not mediate any case unless they are covered by professional indemnity insurance and have completed a Standard Disclosure for Disclosure Scotland.

6.6 Mediators will adhere to this Code of Practice and all Govan Law Centre Education Law Unit Mediation Service documented Policies and Procedures.

7. Mediation Process

- 7.1 All participants will have agreed that a resolution is desirable.
- 7.2 All participants will have been given information about any other local disagreement resolution procedures available to them in order to be able to make an informed choice to mediate.
- 7.3 All participants will agree the choice of mediator, who will be seen to be independent and neutral.
- 7.4 Those involved in the mediation will have the authority to settle the dispute or have informed the mediator of any limitations of their authority, so that the mediator can make additional arrangements as necessary.
- 7.5 The child's/young person's views must have been sought and taken into account wherever possible and appropriate.
- 7.6 Participation in the mediation process does not prejudice any rights to take issues further, for example to the ASN Tribunal. Mediators will ensure that all participants are aware of this fact.
- 7.7 Wherever appropriate or required by the participants, mediators will prepare a written summary of the factual outcome of the mediation. The summary should contain an agreement relating to the distribution of the summary itself, including any information that the participants wish to have passed to a tribunal or court if appropriate.

8. Other Codes

Nothing in this Code of Practice replaces or supersedes ethical standards or codes which may be already imposed on the mediator through his/her professional calling.

9. Govan Law Centre complaints procedure

Any mediator carrying out a mediation under this Code of Practice agrees to be subject to the complaints procedure of Govan Law Centre, and shall respect the outcome of it.

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Standards in Scotland's Schools etc Act 2000

Children (Scotland) Act 1995

Useful organisations

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