

Dispute Resolution and Avoidance in Education: A survey of local authorities in Scotland

Elisabet Weedon and Sheila Riddell, Centre for Research in Education Inclusion and Diversity, University of Edinburgh

WORKING PAPER 5

This report forms part of an ESRC funded project examining how disagreements about additional support needs between schools or local authorities and parents are managed by Scottish local authorities. It is a collaborative project investigating practices in England and Scotland. In Scotland, the Education (Additional Support for Learning) (Scotland) (ASL) Act 2004 put in place new measures to increase parents' rights in relation to the education of children with additional support needs. In relation to increasing parents' rights to information on additional support needs and underlining the importance of their involvement in decisions on placement and provision, additional routes of redress were provided to deal with disagreements arising between the parents and the local authority. A legal duty was placed on local authorities to provide independent mediation on request, and the Scottish Executive established a system of independent adjudication and put in place the Additional Support Needs Tribunals for Scotland for disputes relating to Co-ordinated Support Plans (CSPs). One aspect of the research was to carry out a survey of local authorities to examine their views of the measures in the new legislation, including those pertaining to dispute resolution. This working paper reports on survey findings from Scotland.

Summary

The majority of respondents were managers, director of services or in quality improvement posts. Two questionnaires were completed by educational psychologists. Twenty-seven out of 32 local authorities completed the questionnaire representing urban, rural and island authorities.

Policy and practice in additional support for learning

- As noted by HMle (2007), overall a much lower proportion of pupils have a CSP compared with the proportion having a Record of Needs (RoN) under previous legislation. Pupils with CSPs, as a proportion of all pupils within a local authority, was below 0.5% in more than half the authorities and below 2% in the remaining authorities. About 2% of children had a RoN under the old system.
- The proportion of pupils with IEPs as a proportion of the total pupil population was below 4% in just over one third of authorities and more than 4% in just under half of the authorities. A small number (15%) of the authorities were not sure of the exact figures. There were a range of alternative plans in use with the most common one being an Additional Support Plan (ASP).
- The key focus in CSPs was to specify input from other agencies or resources and additional aids to be provided by educational staff. IEPs (or equivalent) also included details of support from educational staff and specified resources but were more likely to specify attainments targets and state teaching methods than CSPs. About two thirds of respondents said that CSPs specified resources to be provided by the local authority and the attempts were made to quantify specific resources or inputs, although it was also noted that there was a need for flexibility as a child's need may change.
- The main benefit of the ASL Act reported by respondents was its wider definition of additional support needs and focus on coordination of services. The key disadvantage was lack of clarity of what counted as 'significant coordination' and the variation in local authority use of CSPs. There were also concerns around cross boundary issues and placing requests and respondents felt that the Act had promoted confrontational attitudes among a small group of parents.

Nature of disputes between parents and local authority in relation to ASN

- There had been relatively few disagreements in relation to ASN. The most common area of disagreement was in relation to classroom support and to a lesser extent in relation to resources specified in the CSP or a decision not to open a CSP.
- Disagreements were most likely to occur around parents' and local authorities' views of the needs of pupils with autistic spectrum disorder, those with social, emotional and behavioural difficulties and dyslexia.
- Middle class parents were considered more likely to disagree with local authorities than parents from socially disadvantaged backgrounds. There was no evidence of impact of urban or rural factors.

Mediation

- The most commonly used service was Resolve, followed by Common Ground, Children First and Parent to Parent. Two did not have a contracted mediation provider and one used in-house provision. Four respondents declined to provide an answer which is maybe an indication of lack of a contract with a mediation service.
- The main means of informing parents about mediation and other dispute resolution mechanisms was through a letter sent to parents of children with additional support needs. Just over half of the authorities provided information on their website. Councils also used parents' groups, school staff and letters to provide information.
- There had been no requests for mediation in one fifth of the authorities and fewer than five in over half the authorities. Only 4% had had more than ten requests. In the majority of cases there was a local authority or school representative at mediation meetings and in most cases this was someone in authority to negotiate or settle disputes.
- The main benefit of mediation to parents and the local authority was its role in increasing understanding and reducing acrimony; it was also considered less stressful than the tribunal and less costly for local authorities.
- There were few disadvantages with mediation, although the lack of legally binding outcomes was seen as problematic for both local authorities and parents. Mediation was seen as being unhelpful to parents when they were dissatisfied with placement or CSP decisions.
- Mediation was seen by more than three quarter of authorities to be beneficial to all parties.

Adjudication

- There had been fewer than five requests for adjudication in all local authorities and nine had had no requests.
- The main benefit to both parties was that adjudication provides an independent view of a problematic situation. LA respondents considered that adjudication was beneficial to parents who could not access the tribunal. A number of local authorities also felt it offered them an opportunity to examine their practices.
- The key disadvantage for parents was that it had to be in writing and for local authorities tight deadlines were problematic.

Tribunal

- There had been few cases going to the tribunal; only two authorities had had between 11 and 20 cases. Fourteen had experienced fewer than five and six authorities had had no tribunal cases.
- The main benefit for parents of the tribunal was that the outcome was legally binding.

Local authorities felt that the main benefits were tight qualification criteria and that justice was achieved, irrespective of outcome.

- The disadvantages of the tribunal for parents were the levels of stress it induced and the lengthy process. For local authorities, the length of the process was seen as problematic, as well as the tight deadlines and cost in terms of time and resources.

Local authority staff were most satisfied with the arrangements provided for mediation and reasonably satisfied with those for adjudication. However, more than half felt that arrangements for tribunals were unsatisfactory.

Methodology

The questionnaire was piloted with two local authority educational psychologists who made helpful suggestions. Following a revision incorporating these suggestions all 32 Scottish local authorities were contacted and asked to complete the questionnaire (see Appendix 1). It was sent to the person responsible for Additional Support for Learning within each authority and was carried out between May and June 2008. The results are based on returns from 27 local authorities, representing a response rate of 84%. The questionnaire was sent electronically to each person and a hard copy was posted at the same time to give respondents choice of method in completing the questionnaire. An email reminder was sent to all those that had not returned 14 days after sending it out and the remaining non-responses were followed up by telephone calls. One local authority official responded to say they did not intend to complete the questionnaire as they were too busy.

Findings

The questionnaire was separated into five sections and included some background information about the respondent's post. The five sections focused on:

1. Policy on additional support for learning
2. Nature of disputes between parents and the local authority
3. Mediation
4. Adjudication
5. ASN Tribunal

The report is structured using these headings starting with the backgrounds of the respondents. Please note that where percentages are used these are based on the number who responded to the question and does not include missing respondents.

Respondents' backgrounds

The majority of respondents were managers, director of services or in quality improvement posts. Two questionnaires were completed by educational psychologists.

The local authorities included represent urban authorities, rural and island authorities.

Section 1: Policy and practice in additional support for learning

Question 1 asked the respondents to comment on the proportion of children with Coordinated Support Plans (CSPs) within their authority compared to the proportion of those who had previously had a Record of Need (RoN). Table 1 below shows that the proportion of children with CSPs was lower than those with a RoN in virtually all the authorities.

Table 1: A comparison of children with CSPs and RoNs

	%
A higher proportion have a CSP	0
The same proportion have a CSP compared with RoN	3.7
A lower proportion have a CSP	96.3
Don't know	0
Number of respondents	27

Question 2 asked the respondents to comment on the proportion of children with a CSP as a percentage of the total pupil population in that authority. As can be seen from the table below, just over half the authorities reported that children with CSPs constituted less than 0.5% of the total pupil population; conversely slightly less than half said that those with CSPs were between 0.6% and 2% of the total population.

Table 2: The proportion of children within the LA with a CSP as a proportion of the total pupil population in that authority

	%
Less than 0.5% of school population	55.6
Between 0.6% and 2.0%	44.4
More than 2.0%	0
Not sure	0
Number of respondents	27

The respondents were offered the opportunity to comment on these statistics, and ten of the respondents added comments. Five of them added comments on the actual percentages or numbers of CSPs and one noted that some were now being closed as they were '*probably opened ...in haste*'. Another respondent commented on unreliability of percentages due to small numbers. Three referred to the differences between the criteria for a RoN compared to CSPs and how that impacted on those with a CSP as can be seen from the quote below:

This appears to imply that there is a correspondence between Records and CSPs which, other than in transitional arrangements, is not the case. The issue is really whether the previously Recorded group continued to have their needs formally recorded by an individual plan. Without exception, they did in our authority. The critical determining factor for opening a CSP has been the level of involvement of another agency.

Question 3 focused on the content of CSPs and asked respondents about what was included in this document. As can be seen below, input from other agencies was always specified and resources and additional support from staff was specified in the majority of cases. Around two thirds stated that teaching methods, amount of input from other agencies and amount of support to be provided was usually included in the CSP. Attainment targets were least likely to be included; however, as can be seen below in table 5, this is more likely to be included in an IEP.

Table 3: Content of CSP in terms of what is specified

	Yes %	No %		Total Nos	Missing Nos
1. Specify the additional aid to be provided by educational staff, e.g. learning support staff, classroom assistant	88.5	11.5		26	1
2. State the teaching methods to be used	65.2	34.8		23	4
3. Include the attainment targets for the child and the school	38.5	61.5		26	1
4. Quantify the support to be provided	68.0	32.0		25	2
5. Include the input from all the other agencies	100	0		24	3
6. Quantify the input from other agencies	68.0	32.0		25	2
7. Specify the resources, e.g. specialised software, equipment	91.3	8.7		23	4

In addition to responding to the closed questions, respondents were offered the opportunity to comment on each of these statements.

Six of the respondents commented on the nature of the additional aid from staff and these responses suggested that support from educational staff was specified in broad terms and were only more specific in cases of multiple and complex needs. One person referred to this information being included in the IEP and another noted that the level of support may change over a period of time and it was therefore not necessarily helpful to be too specific.

Fifteen respondents noted that teaching methods may be stated; however, only if 'appropriate' and one suggested that this was particularly important for pupils with autism. It was also noted that this may be included in the IEP or other plan rather than in the CSP.

As can be seen above, only slightly more than a third of respondents stated that attainment targets were included in the CSP. Several respondents felt that it was more appropriate to state targets within an IEP. In some cases, other terms, such as 'learning outcomes' were used.

Around two thirds of the respondents stated that support required was quantified but others noted that it had to be flexible. One person said they had been challenged by parents on this issue and another that they had been asked to be more specific. Differences in quantifying support by other agencies such as speech and language therapy was also commented on.

All those who responded (24) about including details of support from other agencies said that an attempt was made to quantify this input. However, four of these respondents qualified their response by noting that this was 'usually done' and 'where quantifiable'.

Respondents were also asked about quantifying the support from other agencies and just over two thirds said this was included. There were thirteen additional comments which focused mainly on the fact that it this was done 'as far as possible'.

The majority of the respondents noted that resources were specified but the comments again indicated that this might be in broad terms and that a child's needs may change.

Finally the respondents were asked if anything else was included in the CSP. Seven respondents added comments as follows:

- Three noted that either other plans were included and/or parents' and children's views
- Three said that the level of collaboration/liaison/coordination required was included as this related to the extent to which this was 'significant'
- One comment referred to the need to include information about specialised referrals

Question 4 focused on the use of IEPs and/or other plans and proportion of children within the authority who were covered by a plan of that nature.

Table 4: The proportion of children within the LA with an IEP or equivalent as a proportion of the total pupil population in that authority

	%	Missing
Less than 2.0% of school population	3.8	
Between 2.0% and 4%	34.6	
More than 4.0%	46.2	
Not sure	15.4	
Number of respondents	26	1

If the authority used an alternative plan, they were asked to state that name of that plan. Thirteen out of the 27 authorities stated that they used an alternative or a range of alternatives. The most commonly mentioned was an Additional Support Plan (ASP). One authority noted that all children at Stages 3 and 4 of Staged Intervention would have an IEP; those on stage 2

of Staged Intervention would have an Action Plan. These two plans covered approximately 16.5% of their total school population.

The content of the IEP or any alternative plan was the focus of question 5. This question was similar to the one for the CSPs omitting the information about interagency working.

Table 5: Content of IEP or alternative plans

	Yes %	No %		Total Nos	Missing Nos
1. Specify the additional aid to be provided by educational staff, e.g. learning support staff, classroom assistant	92.0	8.0		25	2
2. State the teaching methods to be used	88.0	12.0		25	2
3. Include the attainment targets for the child and the school	91.3	8.7		23	4
4. Quantify the support to be provided	56.5	43.5		23	4
5. Specify the resources, e.g. specialised software, equipment	95.8	4.2		24	3

Respondents were offered the opportunity to comment on each of these statements.

The majority of plans specified the additional support from educational staff. Eight of the respondents added comments, one noting that this would be as for the CSP. Others stated that additional support was specified where appropriate, and, in some cases, specific staff who were responsible for the additional support were named.

Most of the plans indicated which teaching methods should be used. The main additional point made by nine of the respondents was that this was done in some cases if it was appropriate. Generally, teaching methods to be used were specified in broad terms and might be included as an addendum to the IEP or alternative plan.

As can be seen in table 3, most of the IEPs included attainment targets. Thirteen respondents added to this that in the main the targets were child specific and used where appropriate.

Fewer IEPs quantified the support to be provided as this was done by just over half of the authorities. The additional comments suggested that support was described in general terms:

Yes, in very broad terms. The specificity of prioritisation, targeting, methods and evaluative criteria are highly variable.

A high proportion said that they specified the resources in the IEP, although additional comments suggested that this varied according to the particular case.

Nine respondents noted additional information included in the IEP as follows:

- Two noted that support from other agencies was also included in this plan and one that the setting for the support might be included
- Two commented on the inclusion of parents' and pupils' views
- Evaluation of the targets was referred to by two respondents
- Two stated that the plan included a large amount of information about the child both in terms of social background, contact details and educational performance

The questions so far have focused on the number and nature of CSPs, IEPs and other plans. Respondents were asked their views on the strengths and weaknesses of the ASL Act.

Table 6: Strengths of ASL Act

	Yes %	No %		Total Nos	Missing Nos
1. Wider definition of additional support needs	100	0		26	1
2. Focus on co-ordination of services	84.0	16.0		25	2
3. Additional routes of redress (mediation/adjudication/tribunals)	50.0	50.0		22	5
4. Strict qualification criteria for CSP	60.0	40.0		20	7

Table 7: Weaknesses of ASL Act

	Yes %	No %		Total Nos	Missing Nos
1. Lack of clarity about what counts as 'significant co-ordination needs'	95.8	4.2		24	3
2. Lack of clarity about the nature of a child's needs	10.0	90.0		20	7
3. Limited access to the Tribunal	11.1	88.9		18	9
4. Lack of clarity about assessment	38.1	61.9		21	6
5. Lack of specificity in relation to content of IEPs	22.2	77.8		18	9
6. Considerable variation in local authority use of CSPs	86.4	13.6		22	5

As can be seen from table 6 the main benefit of the new legislation was the wider definition of additional support needs which it employed and its focus on coordination of services. However, table 7 indicates that there is considerable disquiet about the definition of 'significant coordination' and variation in local authority use of CSPs. Strict criteria for CSPs were seen as beneficial by just over a third of the total sample and about the same proportion felt that additional sources of redress were beneficial. There was little concern about access to tribunal, assessment and specificity of content in IEPs.

Respondents were asked to add further comments on both of these questions. Out of the sixteen comments that were included in relation to the strengths of the Act, only eight focused on benefits of the legislation. One comment included all the aspects that featured in the other comments:

1) Definition focuses on need rather than categories; 2) Recognition of the varied factors which may give rise to additional support needs. 3) Duty to each individual learner. 4) Obligation to other agencies to assist Education Authority where required; 5) Involvement of learners and parents; 6) Greater clarity of Education Authority's duties in comparison to previous legislation; 7) Compatibility with the UN convention. 8) Greater clarity re the duties of the EA

There were a number of comments on the weaknesses of the Act. The main ones were:

- Problems around cross-boundary issues and placing requests
- Lack of clarity of responsibilities of other agencies
- That it was too parent friendly and that the act had been '*hi-jacked*' by a small group of parents and that '*independent bodies*' were policing the Act. There was little mention of parents' responsibilities in relation to additional support needs and the Act tended to encourage a confrontational attitude
- Variability in understanding of, and too much emphasis on, CSPs to the detriment of IEPs.
- An increase in unwelcome bureaucracy.

One respondent felt that the idea behind the Act was positive but its implementation problematic:

Abysmally delivered legislation and guidelines, based on a good idea. When Scotland (or England & Wales) can produce a sustainable definition of the term, "needs", then the ASL

legislation may work. Until then, a ridiculous over-reliance on 'significance' will leave this legislation in the 'surely it must be replaced soon' category.

The respondents were asked to make suggestions for improvements in the Act. This resulted in a considerable number of suggestions and there was also reference to comments that the authority had made in the official consultation process that was ongoing at the time of the survey. The key areas commented on were:

- The nature and use of CSPs and the extent to which this has become the focus at the expense of other aspects of the plan. It was also noted that a low number of CSPs and low usage of mediation/adjudication/tribunals could be an indication of good practice.
- Definitions, especially of what constitutes 'significant support' as there is variation in interpretation across Scotland.
- Placing requests and issues in relation to responsibilities of home/host authority and who is responsible for reviewing the CSP when a child is at an independent specialist school.
- The nature of tribunals and the need for a staged approach to the use of tribunals rather than them being the first point of complaint. It was also noted that tribunals took a lot of time and were highly stressful and that local authority officials lacked defence against litigious parents.
- Lack of statutory requirements on non-educational agencies that are needed to support the child.
- The clash between opinions of different 'experts', for example, a parent may refuse to accept a judgement about educational need made by an education professional in favour of one made by a medical professional who is not familiar with educational practices.

One respondent felt that the HMIE evaluation of the implementation of the Act was probably the fairest and most accurate assessment to date and this should be used as a blueprint for change. Finally it was noted that the government needed be more specific in relation to all the procedures:

Do all the hard work – specifying all the procedures processes, all criteria used, the resources levels necessary – at the government level. This is tough, painstaking and expensive work; however, it becomes no easier, and significantly more expensive, when 32 authorities attempt to do it themselves because of lack of legislative foresight in Edinburgh.

Section 2: Nature of disputes between parents and local authority in relation to ASN

Question 9 considered the possible sources of disagreements between local authorities and/or schools and parents.

Table 9: Nature and occurrence of disagreements between LA/school and parents

Reason for disagreement	Frequent %	Sometimes %	Rarely %		No	Missing
LA decision to place child in mainstream school	0	16.7	83.3		24	3
LA decision to place child in special school or a department of additional support	0	8.3	91.7		24	3
Particular school named regardless of sector	0	26.1	73.9		23	4
Decision of LA not to open CSP	0	30.4	69.6		23	4
Resources specified in CSP	4.2	29.2	66.7		24	3
Failure to deliver resources specified in CSP/IEP	0	26.1	73.9		23	4
Decision of LA not to open IEP	0	8.7	91.3		23	4
Content of IEP	0	13.0	87.0		23	4
Most appropriate teaching methods	0	20.0	80.0		25	2
Access to classroom assistant or other personnel	7.7	57.7	34.6		26	1

The responses indicate that there are relatively low levels of disagreement, and when they arise disputes are likely to focus on access to classroom support and issues around opening and managing CSPs. In the additional comments, one respondent noted that there had been an increase in parental expectation of one to one support in the classroom for their child and that there were disagreements over what constituted 'significant input'. Another respondent felt that the Act did not fully stress that problems and conflicts should be resolved at the local level wherever possible rather than going to a costly tribunal.

The next question focused on the child's particular type of difficulty and asked respondents if there was a higher level of disagreement over support for children with certain types of additional support needs.

Table 10: The impact of the child's support needs on the level of disagreement

Reason for disagreement ¹	Frequent %	Sometimes %	Rarely %		No	Missing
Learning disability	0	33.3	66.7		18	9
Dyslexia	10.0	60.0	30.0		20	7
Other specific learning difficulty (e.g. numeric)	0	0	100		19	8
Other moderate learning difficulty	0	10.5	89.5		19	8
Visual impairment	0	5.3	94.7		19	8
Hearing impairment	0	5.3	94.7		19	8
Deafblind	0	0	100		19	8
Physical or motor impairment	0	15.8	84.2		19	8
Language or speech disorder	5.0	30.0	65.0		20	7
Autistic spectrum disorder	19.0	61.9	19.0		21	6
Social, emotional and behavioural difficulty	11.1	61.1	27.8		18	9
Physical health problem	0	0	100		19	8
Mental health problems	4.8	9.5	85.7		21	6
Interrupted learning	0	10.5	89.5		19	8
English as an additional language	0	0	100		19	8
Looked after pupil	0	21.1	78.9		19	8
More able pupil	0	19.0	81.0		21	6

1. The categories used are those used in the pupil census in Scotland to record additional support needs

Two of the non-respondents stated the local authority sample was too small to comment on any of these; another non-respondent commented on the fact that these categories assumed within child factors rather than taking account of other dimensions. Seven of the additional comments expanded on the type of difficulty that may cause disagreement and these included: dyslexia, autistic spectrum disorder, ADHD, Tourette's syndrome, medical conditions and language and speech disorder. There was also a comment indicating that disputes arose around pupils with autism because schools lacked experience in dealing with this. Bullying was also noted as an area where disputes arose and others suggested that disagreements were not linked to specific difficulties, rather they were due to a whole range of factors which were not necessarily 'within' child factors.

Our experience is not that such patterns are apparent. Disagreements in our rural authority tend to be quite specific to individual children and their circumstances.

Finally, within this section respondents were asked whether a parent's social background impacted on the extent to which they engage in dispute. As can be seen from table 11, the majority of respondents thought that middle class parents were more likely to engage in disputes over additional support requirements for their child. Parents in urban locations were not considered more likely than those in rural areas to engage in dispute. There were only fourteen responses to this last question suggesting it may have been problematic to respond to by those authorities which were predominantly one or the other. The additional comments on these questions confirm this view. In addition, comments were made that socially advantaged parents were in a better position to make use of the legislation as they are likely to be better

informed, and a further comment stated that this led to unfair resource allocation. A number of respondents did not reply as they felt the question required further empirical evidence.

Table 11: The impact of parents' socio-demographics characteristics on readiness to enter into dispute with the local authority and/or school

	Yes %	No %	Total Nos	Missing Nos
1. Socially advantaged parents are more likely to disagree with LA on ASN provision compared with socially disadvantaged parents	66.7	33.3	21	6
2. Parents from urban areas are more likely to disagree with LA on ASN provision than parents in rural areas	21.4	78.6	14	13

Section 3: Mediation

Question 12 asked the authorities to name the mediation service used by the authority.

Table 12: Mediation service used by local authorities

Mediation Service	Nos
CEC Advice and Conciliation Service	1
Children First	3
Common Ground	4
Family Mediation	1
In-house from housing service	1
Mediation First	1
Parent to Parent	3
Resolve	7
Resolve and Common Ground	1
Stravaig E Consultants	1
No external service at present/use recognised service as required	2
Total	25
Missing	2

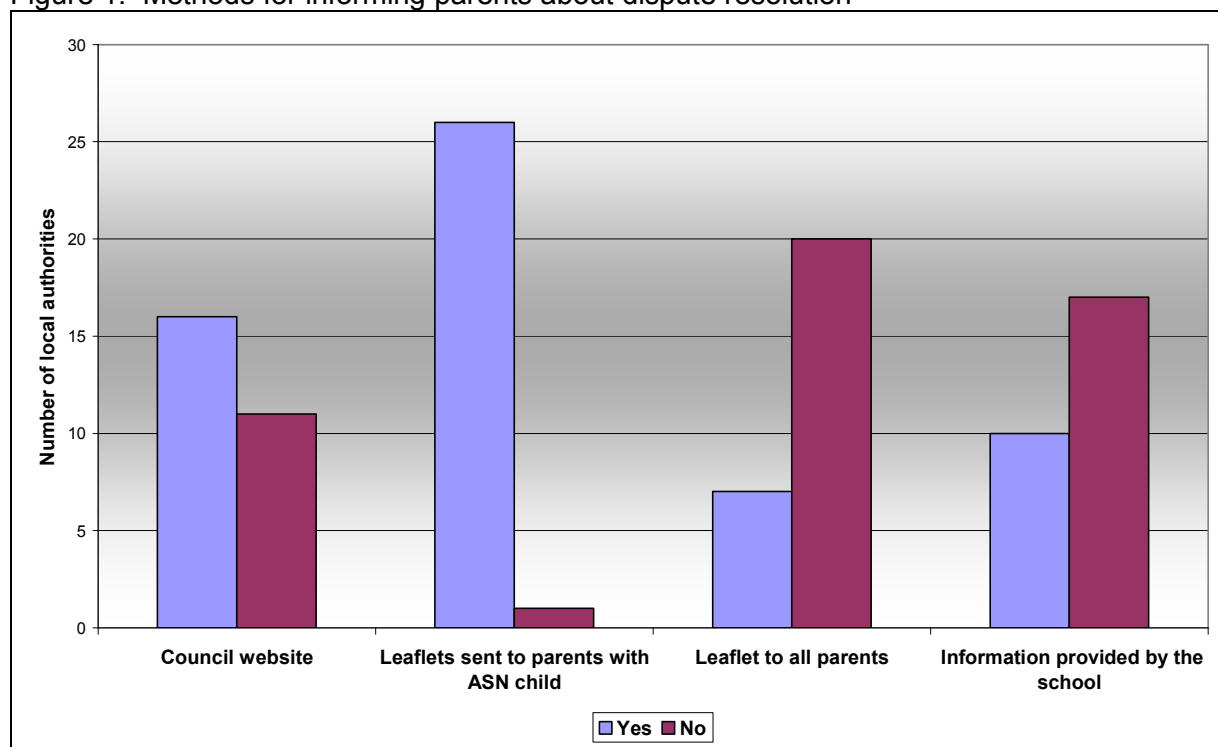
As can be seen from table 12 the most commonly used mediation service was Resolve, followed by Common Ground, Children First and Parent to Parent. Two did not have a contracted mediation provider and one used in-house provision. Four respondents declined to provide an answer which is maybe an indication of lack of a contract with a mediation service.

Question 13 asked the respondents to explain how they informed parents about mediation and other forms of dispute resolution.

Table 13a: Methods for informing parents about dispute resolution

	% Yes	Numbers	
		Yes	No
On the council website	59.3	16	11
Through leaflets sent to parents whose child required additional support for learning	96.3	26	1
Through leaflet to all parents	25.9	7	20
Through information provided by the school, e.g. school prospectus	37.0	10	17

Figure 1: Methods for informing parents about dispute resolution



Eleven respondents added further information about the way they provided information for parents. The main alternative route was letters, information to parent groups or through school staff and educational psychologists.

Table 13b: Further methods used to inform staff of dispute resolution mechanisms

Letters	4
Parent information days	1
Parent group/forum or ASN interest group	4
Leaflets in all schools	1
Staged intervention meetings	1
School staff or ed psych	4
Mediation DVD and training programme	1
Voluntary organisations	1

Respondents were asked to report on the number of requests they had had for mediation and also who attended mediation meetings. As can be seen from table 14, the number of requests for mediation had been limited in most authorities; the majority stated they had fewer than five. One fifth stated they had none and just under quarter had between six and ten with only 4% having had more than 10 requests.

Table 14: Number of mediation requests

None	18.5
Less than 5	55.6
Between 6 and 10	22.2
More than 10	3.7
Don't know	0
Total numbers	27

Table 15: Local authority and school representation at mediation meeting

Local authority/school representation happens:	From the LA %	From the school %
Always	45.0	45.5
Sometimes	50.0	36.4
Never	5.0	18.2
Don't know	0	0
Total numbers	20	22
Missing numbers	7	5

Respondents were also asked to state whether there was local authority/school representation at mediation meetings. Table 15 indicates that there was representation from the authority or the school at most of the mediation meetings. Those that responded with always or sometimes were asked to expand on their response and state whether this person was in a position to make a decision in relation to dealing with the dispute. As can be seen from the table below, in more than half the cases, there was an officer who had powers to negotiate or settle present at the meeting and, in around a quarter of the cases, the person involved initially was at the meeting. In a small number of cases, somebody who had not previously been involved was at the meeting. Four of the respondents qualified their responses by further comments. One stated that a school official was included in the category of 'officer with powers to negotiate'; the other three comments referred to variability in practice depending on the particular case.

Table 15a: Level of authority of LA/school representative

	% Yes	Numbers	
		Yes	No
The initial decision-maker	29.6	8	19
An officer with powers to negotiate/settle	66.7	18	9
An officer who has had not had any dealings with the case before	7.4	2	25

The respondents were asked to comment on the perceived benefits of mediation to parents (see table 16). The majority of respondents stressed that it could be a useful mechanism for increasing understanding and avoiding acrimony and also less stressful than the tribunal. Only around half felt that it resolved disputes quickly and that it was less costly than other means of dispute resolution and only one third felt it took account of the child's view. Just under a quarter of respondents felt it might reduce the number of cases going to tribunals. It is clear that the emphasis was on increasing understanding between the different parties. This was also stressed by four of those who added additional comments as the following quote shows:

If conducted appropriately it will be fair, (as will adjudication or a tribunal). Less formal than a Tribunal, less emphasis on rules and procedure. Generally it is more efficient in use of time and resources. It is also more conducive to consensus/compromise and supporting positive and sustainable relationships.

Another respondent, supportive of mediation, felt that it reflected the original intentions of the act:

Mediation is more in the spirit of the Act to resolve matters without going to the law.

However, two of those adding extra comments were less positive about the use of mediation. One stated that when tried, it had not satisfied the parents who had used it and the other felt it was not useful:

Mediation, like dispute resolution and the Tribunal system, appears to be a costly system established for little reason and less purpose.

The four additional comments added to advantages for the local authorities were virtually the same as those for the parents.

Table 16: The benefits of mediation for parents and local authorities/schools

	For parents %	For LA/ School %		Total Nos ¹	Non-response ₁
Mediation tends to resolve disputes quickly	51.9	55.6		14 15	13 12
Mediation is less stressful than Tribunal or adjudication	85.2	63.0		23 17	4 10
Mediation increases all parties understanding of each others' perspective	85.2	85.2		23 23	4 4
It is easier to take the views of the child into account	37.0	37.0		10 10	17 17
Mediation is less costly in terms of time and resources	55.6	63.0		15 17	12 10
Mediation is fairer	33.3	22.2		9 6	18 21
Mediation reduces the number of cases going to the Tribunal	22.2	40.7		6 11	21 16
Mediation is available for parents who do not meet the Tribunal criteria	63.0			17	10
Mediation can avoid acrimony, which is important if the child is to stay at the school	63.0			17	10

1. Note that numbers in italics are for the local authorities

The respondents were also asked what they saw as the key disadvantages for parents of using mediation (see table 17). There were limited perceived disadvantages for parents of mediation; though around one third felt it was problematic that the outcome was not legally binding and a quarter that it was not helpful when dealing with placements or matters relating to a CSP. As can be seen, to some extent the benefits for parents are also benefits for local authorities/schools, although respondents felt that it was more beneficial to local authorities in relation to reducing cases going to the tribunal and more beneficial to parents in relation to fairness. The reduction in cost and in the number of tribunals was also seen as a more important benefit for local authorities.

Nine of the respondents added further comments. Four of these emphasised the positive aspects of mediation:

No disadvantages - communication is vital whether formal or otherwise.

However, two of the respondents felt that it was not necessarily helpful and one of these stressed that policy sometimes constrained the local authority/school's ability to act:

Mediation is not helpful when the disagreement is to do with a decision based on policy within which those involved have to work. There is no room for manoeuvre other than to try to maintain relationships

The disadvantages for local authorities were similar to those for parents, but in relation to CSPs mediation was seen as less beneficial for local authorities than for parents. Just over a quarter felt that the lack of safeguards of the outcome of a mediation was problematic for the local authorities, but few felt that it was problematic in terms of time. The additional comments in relation to the disadvantages for the local authority tended to emphasise the advantages rather than the disadvantages, although it was stressed that it needed to be appropriate and that more informal measures should be tried first:

It is always preferable that issues are addressed at as early a stage as possible. However, if matters go to mediation there are no disadvantages

Table 17: The disadvantages of mediation for parents

	Yes %	Total Nos	Non-response
There may be less safeguarding of parents' legal rights	7.4	2	25
The outcome of a mediation is not binding on any party	33.3	9	18
The appropriate people from the local authority and/or the school may not attend the mediation	11.1	3	24
Mediation may not be helpful when disagreements are to do with placement, opening a CSP or content of CSP	25.9	7	20

Table 18: The disadvantages of mediation for local authorities

	Yes %	Total Nos	Non-response
The outcome of a mediation is not binding on any party	29.6	8	19
Mediation may be very time intensive	14.8	4	23
If a parent is unhappy with placement or a decision in relation to a CSP, mediation may not be helpful	40.7	11	16

The final question in this section asked the respondents to state who benefited most from mediation. As can be seen from table 19, the majority felt that all parties benefited from mediation. However, a small number added comments suggesting that they were not in a position to comment as mediation had not been used. One respondent also felt that the act and this questionnaire focused on problems and that the greatest beneficiaries may be the mediators:

Professional mediation companies? - Better legislation, models of intervention and specific guidelines would result parents, children, local authorities and schools spending their time on educating children and celebrating success, not on investigating what has gone wrong. ... This is the equivalent of, 'Is a mop or a squeegee the best way of clearing up an overflowing sink?', and ignoring (a) turning the taps off and (b) fixing the leak

Table 19: Who benefits most?

	Yes %
Parents	9.1
Child	9.1
Local authority/school	4.5
All	77.3
Total numbers	22
Missing	5

Section 4: Adjudication

Respondents were asked to state the number of adjudications that had been requested in their authority since the Act came into effect in November 2005. As can be seen from table 20, there had been very few requests for adjudication with only seventeen authorities stating that they had some cases.

Table 20: Number of requests for adjudication

	Number
None	9
Less than 5	17
Between 6 and 10	0
Between 11 and 20	0

More than 20	0
Don't know	0
Total number	26
Missing	1

They were also asked to indicate how many disputes were resolved before the request was made to the Scottish Government to appoint an adjudicator. Eight of the seventeen respondents who stated they had had requests for adjudication said that none had been resolved; two noted that one of the cases had been resolved and four mentioned that all had been resolved. Three of the authorities where there had been requests for adjudication failed to answer this question.

Respondents were also asked about the potential benefits of using adjudication to deal with disagreements for parents and for local authorities.

Table 21: The benefits of adjudication for parents and local authorities

	For parents %	For LA/School %		Total Nos ¹	Non-response ¹
It is quick	29.6	29.6		8 8	19 19
It provides an independent view of a problematic situation	59.3	63.0		16 17	11 10
It allows arguments to be distilled in written format	37.0	48.1		10 13	17 14
Adjudication is available for parents who do not meet the Tribunal criteria	51.9	33.3		14 9	13 18
It may be easier for parents to express their views in writing than having to talk about their child ²	18.5			5	22
It may help LA and schools to examine their practices with a view to making improvements ³		55.6		15	12

1. Numbers in italics refer to local authorities
2. Asked only in relation to parents
3. Asked only in relation to local authorities

As can be seen from the table above, just over half the local authorities felt that the main benefits for parents were that adjudication provided an independent view and that it was provided for parents whose case did not meet the criteria for the tribunal; the independent view was also considered a benefit for local authorities by nearly two thirds of the respondents. Just under half felt that local authorities benefited from having the argument in writing and just over half felt it might help local authorities to improve their practices.

Five of the respondents made additional comments in relation to the advantages for parents; three of these stated that they could not comment due to lack of experience, the other two commented on the problems that some parents have with being obliged to make their case in writing.

As can be seen from table 22, the respondents considered the written format to be most problematic for parents; whilst for local authorities it was the tight deadlines that were viewed as the major problem. There were additional comments from seven respondents on the disadvantages for parents, three of these were simply that they could not comment, one felt that adjudicators might permit oral evidence as /she may interview the parties. Two reinforced the problems with producing written evidence, though one stated the authority did offer assistance. Additional comments with reference to the local authorities (seven in total) focused on lack of evidence to comment, the problems with time and the possibility that the adjudicator may not fully understand the educational implication if s/he is not an educationist:

If the adjudicator is not an educationist, findings may be unhelpfully legalistic without resolving issues of principle/practice from an education point of view. A local authority may be providing a first rate, enlightened, proactive and appropriate educational experience and be judged wanting on a minor technical point.

Table 22: The disadvantages of adjudication for parents and local authorities

	For parents %	For LA/School %	Total Nos ¹	Non-response ¹
Adjudication findings are not binding	18.5	14.8	5 4	22 23
It does not allow oral evidence to be presented	48.1	14.8	13 4	14 23
Some parents may be deterred by having to prepare a written case ²	74.1		20	7
Tight deadlines place staff under a lot of pressure ³		70.4	19	8

1. Numbers in italics refer to local authorities

2. Asked only in relation to parents

3. Asked only in relation to local authorities

Section 5: ASN Tribunal

As for adjudication, respondents were asked to note how many requests there had been for the ASN tribunal in their local authority since the implementation of the Act in November 2005. As can be seen from table 23, there had been relatively few requests overall. Only two authorities had received more than 11 requests, four had had between six and ten, fourteen had fewer than 5 and six authorities had not had any requests.

Table 23: Number of requests to the ASN tribunal

	Number
None	6
Less than 5	14
Between 6 and 10	4
Between 11 and 20	2
More than 20	0
Don't know	0
Total number	26
Missing	1

The respondents were also asked to comment on the benefits of the tribunal for parents and local authorities and the difficulties with it. There were differences in terms of what was perceived beneficial to parents and local authorities. Nearly two thirds of the authorities felt that parents benefited most from the tribunal outcomes being legally binding. Local authorities were seen as benefiting more from the tight qualification criteria, the knowledge that justice had been done and that the tribunal encouraged dispute resolution. In relation to parents, one of the respondents questioned whether the tribunal could develop case law as this might be a matter for the Court of Session; one respondent felt it also allowed parents to have their say in a formal setting. A further three additional comments emphasised negative aspects: one felt it was an unnecessary apparatus and another two felt that parents would only be satisfied if the outcome was in their favour. All those that added comments relating to the benefits for local authorities stated that either they had no cases to comment on or that it was an unnecessary exercise. One respondent added that they would try to solve the problem before it went to tribunal.

Table 24: The benefits of the ASN tribunal for parents and local authorities

	For parents %	For LA/ School %		Total Nos ¹	Non-response ¹
Tribunal outcomes are intended to be legally binding	63.0	33.3		17 9	10 18
The qualification criteria are tightly specified	22.2	51.9		6 14	21 13
Whatever the outcome justice has been done	18.5	55.6		5 15	22 12
The existence of the Tribunal acts as an incentive to ensure due process and encourage dispute resolution	25.9	48.1		7 13	20 14
A body of case law can be establish to guide future practice	37.0	29.6		10 8	17 19

1. Numbers in italics refer to local authorities

The greatest disadvantage of the tribunal for parents was that it was a stressful and lengthy process; for local authorities cost was considered a considerable problem as was the length of the process. Very few respondents felt that the strictness of the criteria was a problem for local authorities or parents. Around a quarter felt that getting representation for parents could be an issue but that it was less so for local authorities. The additional comments in relation to parents stressed that it would disadvantage less articulate parents and could also damage relationships in school if the parent did not get the desired outcome. The main emphasis in the additional comments relating to the local authorities are summarised in the following quote:

Relationships between parents and LA can be difficult to repair/ rebuild if parent is not successful. [There is] no provision to identify inappropriate referrals - parents do not have to provide any supporting evidence to justify an initial referral. The tribunal process can feel unfairly weighted towards parents.

Table 25: The disadvantages of tribunals for parents and local authorities

	For parents %	For LA/ School %		Total Nos ¹	Non-response ¹
Representation may be difficult to find for parents	25.9	14.8		7 4	20 23
The ASN Tribunal process is stressful	74.1	55.6		20 15	7 12
It is costly in terms of time and resources	48.1	85.2		13 23	14 4
Tribunal outcomes may be difficult to enforce	18.5	25.9		5 7	22 20
It is a very lengthy process	66.7	70.4		18 19	9 8
The criteria for access are very strict	18.5	7.4		5 2	22 25
Tight deadlines place staff under pressure ²		77.8		21	6

1. Numbers in italics refer to local authorities
2. Asked only in relation to local authorities

There were three questions which asked respondents to rate their satisfaction with current arrangements for mediation, adjudication and the tribunal (see table 26). Arrangements for mediation were generally considered satisfactory. There were three types of additional comments about mediation. One noted that it was an expensive service and four suggested that the relationship with the mediators and the service was generally satisfactory. One respondent felt arrangements were satisfactory but that there was a lack of incentive to use it as an alternative to the tribunal. Another respondent felt that it was adversarial and that parents did not understand the role of mediation and another felt it would be useful if parents accepted the advice it provided.

As can be seen below, levels of satisfaction with adjudication were generally lower than for mediation and there was a high level of 'no opinion' responses. These responses can be explained by the fact that several authorities have not had any experience of adjudication. Generally comments focused on the lack guidance, the process was described as 'sterile' and the lack of contact with child, parents of staff involved was seen as negative. The timescale was also considered problematic but one respondent felt that it might offer useful suggestions

to the authority; however, the fact that it was not binding for the parent meant that much time might have been spent on something which did not resolve the issue. The tribunal was considered as having least satisfactory arrangements. This is reinforced by the additional comments which stressed the generally adversarial nature of the tribunals and the variation in approach. It is captured by the following comment:

[We have] now experienced 3 tribunals. [There has been] huge variation in the way they have been conducted depending on the convenor. Still very adversarial, hugely stressful and do nothing to repair damaged relationships. Often parents go straight to tribunal without any opportunity for the authority to intervene. [This] counts as a reference even though the parent might withdraw. Some parental representation has been very adversarial and not looking to find solutions or to repairing relationship between the authority and the parents. Need a better spread of representation.

Table 26: Level of satisfaction with arrangements for mediation, adjudication and ASN tribunal

	Highly satisfactory %	Satisfactory %	No opinion %	Unsatisfactory %	Highly unsatisfactory %	Nos.	Missing
Mediation	24.0	68.0	4.0	4.0	0	25	2
Adjudication	0	40.9	36.4	22.7	0	22	5
ASN Tribunal	0	39.1	4.3	47.8	8.7	23	4

Finally respondents were asked if they felt that the number of disputes in ASN was too high and to comment on how it could be reduced if they felt it was too high. Eight respondents, just over a quarter of the total sample felt it was too high. Their suggestions for reducing the levels included improving communication between school and home, others felt that encouraging advocacy organisations to commit to dispute reduction would help. A further comment suggested that parents needed to be discouraged to go straight to the tribunal. It was also emphasised that the new measures were costly and were at the expense of providing effective education and support for all children and young people.

Respondents were asked to add further comments and the key message from these comments was that there was a need to develop more effective partnerships between parents and local authorities and other agencies. In particular, educationists need to be recognised as professionals who have an understanding of the needs of children:

The Act and in particular the guidance/information for parents which supports it, needs to be strengthened in the area of partnerships between parents and LA's/partner agencies. All the emphasis is on the agencies working together but none on the duty of parents to work with us, take account of assessments, etc. There is an implied assumption that because parents want the best for their children, they always know what the best is. The resolving disagreements aspects of the Act does not encourage a balanced approach from parents and does not encourage them to recognise the work done by LA's prior to any disagreement going to a formal process. The emphasis on the CSP is out of proportion to the weight of the planning which takes place for the majority of children with additional support needs.