

Submission from Resolve ASN Mediation and Common Ground Mediation

Further to our conversation with regard to extending rights to children to access and participate in ASN Mediation we have attached below further information to explain our concerns and experiences. We aimed to give you an understanding of the mediation process and principles which has led to us not supporting the rights being extended to children from the mediation practitioners and service provider expertise and experiences.

Resolve Independent Mediation Service and Common Ground Mediation are the two largest ASN mediation providers in Scotland and have provided mediation services to 23 of the 32 local authority areas since 2004.

If you have any questions please do not hesitate to contact us but we do hope this is helpful for your future discussions to help commence this Bill.

EDUCATION (SCOTLAND) BILL 2015

Additional Support Needs Mediation and extending the rights to Children

Disputes between families and their child's school and/or education authority often have extremely detrimental effects on everyone involved. It was in recognition of this fact that Additional Support Needs (ASN) mediation and other forms of dispute resolution were introduced legislatively 10 years ago. ASN mediation must be child-focused, with an understanding that a child's educational needs and support for these needs are at the heart of the dispute. It has been and continues to be consistent good practice to seek the views of the child (where s/he wishes to share them) and to ensure that these views are included in the discussion, by a variety of methods, appropriate to the needs of the individual child, e.g. the child participating for part or all of the meeting, sharing their views on paper, or an audio/video recording etc.

There is however, a huge difference between seeking the views of the child to inform the mediation process and the proposal to give children the legal right to request ASN mediation involving a child in the mediation process. Mediation is a structured process, which assists parties in dispute to find a mutually agreeable solution, with the help of an impartial and professionally trained mediator and requires both parties to participate in the process on a level playing field.

The mediator's role includes dealing with any power imbalances and taking cognisance of parties' emotional, mental and physical needs during the process.

A cornerstone of the mediation process is the protection of self-determination. There are many forms of imbalance, eg. this self-determination may be in jeopardy because the desired outcome of choice is not real, or an emotional imbalance where one party is overpowering or taking advantage of a meeker or less confident participant, or someone who has poor self-control in difficult situations. The imbalance could be intellectual, verbal, or an imbalance of experience and particularly in ASN mediation the educator's in-depth knowledge of legislation, assessment, placements, and resources available.

Success lies partly in the mediator's skills, but also with the readiness of the parties to participate meaningfully. The ability to negotiate, compromise and empathise are life skills learned over time. Many children (and some adults too!), depending on age, stage, experience, maturity and support needs have not yet developed these necessary skills. Successful mediation requires participants to be able to understand and explore the issues, to be able to understand the other party's perspective, and to be able to make and influence decisions on any proposed options/solutions.

The ability to make decisions at the mediation table and to be able to follow through any agreements made at mediation is crucial to being a participant in the mediation process. Participants in mediation also need to be able to understand the consequences of the outcomes and how to continue relationships with teachers, head teacher and/or parents. As adults we recognize that part of our role is in helping children to understand the implications of any outcomes they believe they want and learn to cope and manage if their choices are not possible.

There are no other fields of mediation where children under the age of 16 mediate directly with adults as the power imbalances are deemed so great, and the process could be detrimental to the child's mental health, wellbeing and ongoing relationships with the adults they would mediate with. Conflict can have a negative effect on the behaviour of even the most well meaning parents and teachers. It is damaging for children to witness this behaviour from the very people who should be positive role models. In our experience we often have children tell us they don't want to be involved in the 'adult arguments'.

Parents and carers have legislative duties to have their children (16 and under) educated and we should not confuse or stress pupils to feel they are responsible for making decisions when in reality their parents often decide what is best and therefore would ultimately have the power to make/change the decisions a pupil might make in mediation.

We also know that there is a shortage of trained independent children's advocacy support across Scotland; this means there is not equality of access for youngsters who might want to participate.

Children **do** participate well in peer mediation and studies have demonstrated the success of peer mediation schemes in schools. However, this is a completely different concept from ASN mediation; the children are mediating with other children, often with no direct adult involvement, and crucially there is no power imbalance.

To expect a child to have the ability to mediate with adults on a level playing field is inherently unfair and unrealistic. As experienced mediation practitioners we have severe concerns as to the harm placing children in this position could have at many levels.

For this reason we urge the policy makers to consider strengthening and supporting the ability to have the child's views included by the educators and parents in mediation.

Sandra and Morag

Sandra Mitchell
Mediation Manager
Direct Dial 0131 313 8844

Morag Steven Common Ground Mediation
Director morag@commongroundmediation.co.uk

Children in Scotland