

The Voice of the Child in Special Educational Needs Mediation



Dr Lesley Allport

The Voice of the Child in Special Educational Needs and Disability Mediation



- What is Special Educational Needs & Disability Mediation?
- The Legislative Framework
- Hearing the Voice of the Child in SEND Mediation
- Benefits and Challenges

What is SEND Mediation?

An informal process in which parties who are in disagreement about the support received by a child or young person with particular learning needs and / or a disability may come together to resolve their issues with the support of a mediator who is independent and impartial.

Parties to mediation may include the child or young person, their parents, representatives from school, representatives from the Local Authority, professional specialists or others whose views have an influence on decision-making.

What is SEND Mediation?

- Established 2001 with the SEN and Disability Act & introduced SEN Code of Practice
- Operating across age ranges: pre-school, primary, secondary and now up to age 25
- The Code of Practice offers a graduated approach to supporting children with educational, health and social care needs
- Includes a range of interventions:
 - support in school => specialist intervention => prescribed provision
 - recorded in an Education and Health Care Plan
- Includes the right for parents or young people to appeal against decisions made about provision by schools and the Local Authority
- **Disagreement Resolution** is voluntary and can be used at an early informal stage
- **Mediation** is used as a direct alternative to a tribunal

Legislative framework: Earlier Legislation

1989 United Nations Convention on the Rights of the Child: defines children's rights to express a view on decisions affecting their lives

1993 Education Act: promotes the principle that children with SEN should normally be educated in mainstream school, as long as this is what parents want, and this becomes enshrined in law

1994 UNESCO World Conference calls on governments to adopt inclusive approaches as law unless there are good reasons

1997 – 1999: reviews, strategy papers and action plans are drawn up by UK government

2001 SEN and Disability Act: establishes legal rights for disabled students in pre and post 16 education by stating that it is unlawful to treat a student 'less favourably' for reasons due to disability.

United Nations Convention on the Rights of the Child 1989

'In any matter or procedure affecting the child, the views of the child should be given due weight, in accordance with their age and maturity. Those capable of forming opinions should be assured of the right to express their views freely' (Article 12.(1)) either directly or through a representative or appropriate body (Article 12. (2)).

Legislative Framework: Recent Legislation

2014 Children and Families Act

1.1 Section 19 makes clear that local authorities **must** have regard to:

- The views, wishes and feelings of the child or young person and their parents
- Children and young people participating as fully as possible in decision making
- Support for children and young people that enables them to reach the best educational outcomes

SEND Code of Practice 2015

- Brings a clearer focus on participation of children, young people and parents in decision-making
- Stresses the importance of inclusive practice and removing barriers to learning
- Gives greater control and choice to children, young people and parents
- Encourages collaboration between education, health and social care sectors to provide appropriate support
- Introduces requirements before reaching tribunal
 - for authorities to inform parents and young people about mediation
 - for parents or young people to meet with a mediator to find out about it

Mediation itself remains voluntary but an appeal to tribunal cannot proceed without a certificate from a mediator

Recent Developments

Research by the Department of Education in 2017 shows that uptake of mediation is increasing and that it is successful in avoiding Tribunal

In 2017 a working group, chaired by the College of Mediators (COM) and the Civil Mediation Council (CMC) was formed to set standards for SEND mediators

Standards for appropriate training, practice and accreditation of SEND Mediators will be launched May 2018

COM / CMC will maintain a joint register of accredited mediators

Hearing the Voice of the Child

Research from Leeds - 2 perspectives:

The WELFARE Approach

- Children are vulnerable and need to be protected
- Adults make the decisions
- Adults take responsibility for children's welfare

The CITIZENSHIP Approach

- Children are people with strengths and abilities
- Citizenship affords
Recognition
Respect
Participation
- Children may participate in decisions

SEND Mediation in Practice: Developing the model in 2001

- ~ A multi party process
- ~ A need for detailed preparation to identify and meet with parties, perhaps including the child or young person, in order to understand all perspectives
- ~ Early focus on the needs and wishes of the child
- ~ Power imbalances specific to this context
- ~ The importance of the 'authority to settle'
- ~ One single joint mediation session of ½ day in length
- ~ A working knowledge of different educational needs, SEN Code of Practice, processes, timescales, rights and responsibilities

The People Around the Child



The People Around the Child

Parent Partnership Officer

Independent Parental Supporter

Occupational Therapist

Educational Psychologist

Speech and Language Therapist

Education Welfare Officer

Named Officer

Peripatetic teacher

Class teacher

Parents

Learning Support Assistant

Special Educational Needs Coordinator

Head teacher

Child and Adolescent Mental Health Services

Patient Advice and Liaison Service



Types of educational need

- **Dyslexia** – learning difficulty affecting reading, writing and spelling
- **Dyspraxia** – a disorder affecting motor co-ordination
- **Autistic Spectrum Disorder** – a range of conditions affecting social interaction, communication, interests and behaviour for example:
 - **Aspergers syndrome** – a developmental disorder affecting social interaction and non verbal communication
 - **Attention Deficit Hyperactivity Disorder** – cognitive, learning, emotional and behavioural problems
- **Hearing impairments**
- **Speech and Language delay**
- **Medical conditions**
- **Emotional, Social and Behavioural Difficulties**

Sources of Conflict in SEND Disputes

Commodities	Principles
Territory	Relationships

Hearing the Voice of the Child in SEND Mediation

Indirectly

- Talking with parents
- Talking with class teachers and SENCOs
- Looking at the Individual Education Plan
- Collecting Information from specialists



Directly

- Meeting a child or young person before the mediation
- Asking for an expression of views through pictures, emails, letters
- Invitation to some or all of the mediation meeting

Placing the child at the centre of the discussions



A Letter from Jo

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Dear Sir/Madam,

I, Jo [Redacted] age 11, need your help. Please will you give me at least a chance to go on the bus to school I'm not asking very much, this could change my life.

I have a problem called epilepsy which sometimes makes me feel heartbroken. When I begin to have a seizure first I make funny noises, next I can't speak properly. Then I actually go into one and do stupid things like try to drive the car or running into the road; these happen 2 or 3 times a week. Most of the time I'm

normal and [Redacted] take 12 tablets a day (6 in the morning and 6 at night).

On September the 2nd I start school at Holy Trinity Senior. When I go there I need to be safe. Apparently the only way of getting to school safely for me is on the Access mini-bus but NO! To make me feel normal you only need to say yes you can go on the normal school bus. I don't like being treated as if I have a problem. I always try my best to lead a normal life. IF I have to go on the Access bus this life will be spoilt.

Please can I go on the bus with all my friends because they will make me feel better and help me to forget about my problems. I understand that I will need an adult watching

over me but please help me to lead a more normal life so that I can do the things other children my age can do.

Yours faithfully

Jo [Redacted]

(age 11)

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Tom's experience

Tom is on the autistic spectrum (ASD) and is very bright and articulate. He has been out of school for 4 months. The school has not supported him very effectively. He felt bullied by pupils and stigmatised by staff. He had not been allowed to go on school trips due to perceived poor behaviour and not following instructions in school.

Some teachers tried hard to understand him: he was writing a novel and working on some very complicated maths and physics projects. However the school had tried to get his mum to take him off roll.

He came into the meeting for about $\frac{3}{4}$ hour and read out an incredible letter about how he felt, how he had thought about self-harm and suicide at times. His mum didn't know this and he explained that if he had done so it would have upset his mum and younger brother too much. The meeting had to be paused as the LA, mum and his year head, who had been unpleasant to him and refused the trip all became so emotional that they could not continue without a break.

The mediator said **“His input was transformational”**.



Hearing the Voice of the Child in SEND Mediation

Benefits

Citizenship – children can make sense of their world and have a view of what works for them

Clarity – views expressed directly and clearly can cut through bureaucracy

Commitment – a child or young person can feel committed to decisions that affect them

The child or young person becomes visible

Challenges

Complexity – complex needs may make it difficult to talk to a child without specialist expertise

Over involvement - the people around the child can be numerous

Welfare – placing undue responsibility on a child or young person

Capacity – social, emotional, physical

Conflict – parents and children may disagree