

## EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)(SCOTLAND) ACT 2004 & 2009 WORKING TOGETHER AND RESOLVING DISAGREEMENTS

Clear and regular communication between parents, children/young people and those who work with them is essential to build good relationships. Good communication together with information and support help to avoid disagreements or prevent them from escalating into more serious disputes.

It is expected that most disagreements can and will be resolved at school and Education Authority level with only a small number going to formal review procedures. The usual staged procedures for working through disagreements are:

- Step 1            Discussion with class teacher
- Step 2            Discussion with Head Teacher
- Step 3            Involving the Area Additional Support Needs Manager

Even with good practice there will occasionally be situations when agreement cannot be reached locally, tensions arise and a way forward has to be found. The Highland Council has worked closely with CHIP+ to produce this information sheet to give advice and guidance on routes of appeal should they be required.

The Additional Support for Learning Act sets out the three routes which parents and young people can use to resolve disagreements: Mediation, Dispute Resolution and Additional Support Needs Tribunals.

### **MEDIATION**

Mediation is a way of resolving disputes with the help of an impartial third party, a mediator. The mediator works with parents, young people and staff together to enable them to explore options, make decisions and reach their own agreements. The mediator does not take sides and does not decide the terms of any agreement.

Mediation can help families and staff to build or rebuild a positive relationship leading to agreement over the arrangements to meet the child's Additional Support Needs. The overriding principle is that the people involved come to an agreement.

Mediation is completely confidential and any discussions held can only be shared if agreed by both sides.

The Highland Council will arrange independent Mediation services when requested.. The service is optional and free of charge to parents and young people. It is a voluntary service so there is no compulsion to make use of it. It is only to be used for issues concerning Additional Support Needs and can be used more than once.

To request the use of the Mediation service please write to the Head of Service, Additional Support, who will acknowledge your request and help make the necessary arrangements. Contact details can be found at the end of this information sheet.

Sometimes an agreement still cannot be reached and it may be necessary to think about Dispute Resolution.

## **DISPUTE RESOLUTION**

Dispute Resolution is a paper exercise to help resolve disagreements.

When this is requested The Scottish Government will appoint an independent person, an adjudicator. The adjudicator will look at the information provided by both the parents and young person and The Highland Council in order to get a clear understanding of both sides of the disagreement. The adjudicator will then make recommendations to everyone involved as to how the dispute may be resolved. While there is no legal obligation for the recommendations to be acted upon it is expected that this will happen. The process should take about 8 weeks.

### ***When is Dispute Resolution Used?***

Dispute Resolution is normally used when a child or young person has Additional Support Needs but does not have a Co-ordinated Support Plan.

Dispute Resolution can be used when there are disagreements about:

- The assessment of Additional Support Needs
- The level of additional support required or being provided e.g. pupil support assistants, support from another agency.

It is expected that in all but exceptional circumstances the recommendations of the adjudicator will be accepted by the Authority.

Requests for Dispute Resolution should be made in writing to the Support for Learning Division who will acknowledge your request, contact the authority and monitor the process. Contact details can be found at the end of this information sheet.

## **ADDITIONAL SUPPORT NEEDS TRIBUNALS**

Parents and young people have a right to refer to an Additional Support Needs Tribunal when they disagree with a decision made by The Highland Council with regard to a Co-ordinated Support Plan. At the same time, parents can request access to Mediation to come to a local solution.

### **Using Mediation Services does not affect your right to refer to the Additional Support Needs Tribunal.**

- Additional Support Needs Tribunals will hear references from parents and young people on matters relating to Co-ordinated Support Plans, placing requests and school to post-school transitions and disability discrimination in education. E.g. Exclusion appeals-this applies if a CSP is not yet prepared but there is a consideration to do so
- The Tribunal is a panel of independent people who will make a decision where there is disagreement between parents and/or young people and The Highland Council.
- There will be three members, one of whom will have a legal background, the others will be experienced in Additional Support Needs.

- Parents and young people will have 8 weeks after receiving a decision letter from the Education Authority to refer the matter to the Tribunal if they disagree with the Authority's decision.

**The aims of the Tribunal are:**

- To make sound, independent and expert judgements
- To be user friendly, being informal and flexible in the way they work, and making it easy for people to use the service
- To discourage formal, legal proceedings by providing a forum for constructive discussion
- To make decisions which reflect best practice in relation to Additional Support Needs

The Tribunal must take account of the Code of Practice, produced by the Scottish Government, which explains the duties on The Highland Council and sets out good practice. The Tribunal will base their consideration of the facts of the case on how well the Authority has had regard to the Code of Practice and the Additional Support for Learning Act.

**What Matters regarding Co-ordinated Support Plans can be Referred to a Tribunal?**

Parents and young people can refer to a tribunal if they disagree with the decision that The Highland Council has taken:

- To prepare a Co-ordinated Support Plan (CSP)
- Not to prepare a CSP
- To continue a CSP
- To discontinue a CSP
- About the time scales of a CSP
- Not to comply with a request to establish whether a child or young person requires a CSP

**Where a CSP already exists parents or young people can refer to the Tribunal on:**

- The information contained in the CSP
- Failure to deliver contents of CSP
- Failure of the Authority to review a CSP at the end of 12 months
- Failure of the Authority to review a CSP within the timescales of the regulations
- The decision of the Authority to refuse a request from a parent or young person to review the CSP
- The decision of the Authority to refuse a placing request. (This also applies if a CSP is not yet prepared but there is a consideration to do so)
- Parents can withdraw their referral to the Tribunal if a satisfactory local solution can be found before the hearing date

- The President of the Tribunal has the power to require the authority to provide him or her with information about the authority's implementation of the Tribunal decision.
- The President of the Tribunal has the power to refer the matter to Scottish Ministers where he or she is satisfied that the authority is not complying with the Tribunal decision.

**Is there an Advocacy Service to help parents and young people to lodge a reference?**

Yes, the 2009 update of the Education (Additional Support for Learning Act) (Scotland) 2004 Act introduced a new legal duty on the Scottish Government to provide an advocacy service to parents and young people following a reference being made to the Additional Support Needs Tribunal for Scotland (ASNTS). Therefore **Let's Talk ASN National Advocacy Service** is available to parents and young people (aged 16 or 17) from the time they have grounds to make a referral to the ASNTS. The **Let's Talk ASN National Advocacy Service** for Additional Support Needs is a partnership between Kindred Advocacy and the Education Law Unit. See contact details below.

In addition Parents can make a reference to the First Minister under section 70 of the Education Scotland Act 1980. This process is available to parents when they feel that the authority is not providing adequate and efficient education for their child and a local agreement has not been reached. The Authority will work with parents to reach a local solution first. A request for a section 70 reference should be made in writing to the Support for Learning Division who will acknowledge your request, contact the authority, investigate and make a decision.

**FOR MORE INFORMATION PLEASE CONTACT:**

Bernadette Cairns, Head of Service,  
Additional Support Needs Team, Care & Learning Service, The Highland Council  
Glenurquhart Road, INVERNESS, IV2 5NX

Tel: 01463 702876

Email: [bernadette.cairns@highland.gov.uk](mailto:bernadette.cairns@highland.gov.uk)

**OR**

CHIP+, The Birnie Centre,  
Raigmore Hospital, Inverness, IV2 3UJ

Tel: 01463 711189

**Requests for Dispute Resolution and Section 70 References can be made directly to:**

The Support for Learning Division, Scottish Education Department  
Area 2C South, Victoria Quay, Leith, Edinburgh, EH6 6QQ

**References to the Additional Support Needs Tribunals for Scotland should be made to them directly at the following address:**

Additional Support Needs Tribunals for Scotland,  
Europa Building, 450 Argyle Street, Glasgow G2 8LG

Helpline: 0845 120 2906 (between 9.00 am and 4.00 pm Monday - Friday)

**To make an enquiry with Let's Talk ASN National Advocacy Service**

Telephone the Let's Talk ASN Centre on their advice line 0141 445 1955 or email [letstalkasn@edlaw.org.uk](mailto:letstalkasn@edlaw.org.uk) Office hours 09.30 - 4.00pm Monday - Friday.

**Tel: 01463 711189**

**Email: [info@chipplus.org.uk](mailto:info@chipplus.org.uk)**

**[www.chipplus.org.uk](http://www.chipplus.org.uk)**