

Resolving disagreements

Sometimes there are disagreements between parents of children with additional support needs and the people who work with those children. This factsheet explains how parents can use the processes that the law¹ provides for resolving these disagreements. In all the processes, the views of children and young people should always be taken into account. The factsheet also provides sources of further information and advice.

Most disagreements between parents of children with additional support needs and the people who work with them can be resolved by open and honest communication. If you disagree with anything to do with your child's education, you should raise your concerns with your child's teacher first.

If you are not satisfied with the outcome, you can speak to the head teacher. If you have spoken to the head teacher and still have concerns, you should explain them in writing to the head teacher and ask for a written response.

If you are still dissatisfied with the head teacher's response, contact the person responsible for additional support for learning (ASL) in your local authority (usually in your local council's education department). See www.enquire.org.uk/local-authorities for the names and contact details of people responsible for ASL in each local authority.

If you think the matter has not been resolved by doing this, the council officer must tell you about other ways of resolving the disagreement. These are outlined in the rest of this factsheet.

Mediation

Mediation is a voluntary and confidential process during which an impartial third party (a mediator) helps those involved in a disagreement or dispute to find a shared solution that resolves the problem. Most disagreements about the education of children with additional support needs can be referred to an independent mediation service. You can use mediation at any time during a disagreement or dispute. Local authorities must provide independent mediation services free of charge for parents and young people.

If your child attends a school that is not in your own local authority area as a result of a **placing request**, or you are in the process of making a **placing request**, you can use the mediation service of the local authority responsible for that school. **Placing requests** are explained in the **Enquire factsheet: Placing requests**.

For further information, see **Enquire factsheet: Mediation**.

¹ The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

Education Appeal Committees (EACs)

Local authorities must set up EACs to hear appeals against decisions to exclude a child or refuse a placing request to a mainstream school. They are made up of no more than seven people from the local area, selected from a range of backgrounds, such as elected councillors, parents and teachers.

The letter from the school or local authority containing the decision to exclude your child or refuse a placing request to a mainstream school will tell you how you can appeal to the EAC. If your placing request for a pre-school placement has been refused, you can appeal only if your child has been identified as having additional support needs.

The EAC will give at least 14 days notice of the date for the hearing. The hearing will probably be held within 28 days of you sending your appeal letter.

The EAC will either confirm or refuse to confirm the local authority's decision.

The local authority's decision can sometimes be 'deemed' (assumed) to be confirmed.

This happens if the EAC:

- has not heard an appeal within 1 month (for exclusions) or 2 months (for placing requests) of the appeal being made
- has failed, following the adjournment of a hearing, to fix a date for a resumed hearing
- has failed to give a written decision within 14 days of the hearing.

The local authority must carry out the EAC's decision. In certain circumstances, it can challenge the EAC's decision using a judicial review (see page 5).

If you think the EAC's decision is wrong, you can refer it to the Sheriff Court (see page 4). The Sheriff Court must receive your appeal within 28 days after you receive the EAC's decision. The Sheriff will either confirm or refuse to confirm the local authority's decision. An appeal to the Sheriff Court is a complex legal procedure so it is advisable to seek legal advice from a solicitor familiar with education law.

Normally, you can appeal against refused placing requests to mainstream schools only once each year for each of your children. If your placing request is for a place in a special school, an Additional Support Needs Tribunal (see below) will hear this appeal.

Placing request appeals involving a co-ordinated support plan (CSP) or a special school

In some cases your placing request appeal will be heard by an Additional Support Needs Tribunal. These appeals, called 'references', are made when:

- your child has a CSP
- a CSP is being considered for your child
- your child does not yet have a CSP, but the local authority has decided they should have one
- you have already appealed against the local authority's decision not to prepare a CSP for your child
- your child does not have a CSP but the placing request is for a special school.

Sometimes, an appeal to an Education Appeals Committee (or Sheriff) against a refused placing request may be transferred to an Additional Support Needs Tribunal. This may happen if the Committee (or Sheriff):

- has not yet made a final decision on the placing request appeal, and
- has been informed that an appeal has also been made to the Tribunal against the refusal of a CSP.

If the Tribunal agrees with the local authority that the child does not need a CSP, the placing request appeal may or may not be returned to the EAC (or Sheriff).

What is an Additional Support Needs Tribunal?

An Additional Support Needs Tribunal is an independent and expert body that hears and decides appeals (called ‘references’) about:

- decisions the local authority has made about CSPs
- certain placing request refusals
- failure to provide the additional support contained in a CSP, or
- failures to carry out their planning duties before young people leave school.
- cases about disability discrimination of pupils²
- decisions the local authority has made about children’s capacity to make use of their rights.

Three people will be present at each tribunal hearing – two tribunal members and one ‘convener’. Conveners are legally qualified, while members have knowledge and experience of children with additional

support needs. Tribunal hearings can be held anywhere in Scotland, and will usually take place as close as possible to where you live.

Your local authority should provide you with information on your right to make a reference to the Tribunal, how to do this and your right to bring along a supporter or advocate.

There is an advocacy service available on request to parents and young people who make or are considering making a reference to the Tribunal on an additional support for learning issue. You can get information about this service from your child’s school, your local authority or Enquire. For further information on the role of an advocate, see **Enquire factsheet: Taking part in your child’s education**.

You can normally make a reference to the Tribunal about a refused placing request only once in a year, unless changes have been made to your child’s CSP.

The local authority must carry out the Tribunal’s decision, and the Tribunal has the power to ensure this happens. If you or the local authority disagrees with the Tribunal’s decision on a point of law, you or they can appeal. The letter telling you about the Tribunal’s decision will explain how you can appeal.

Resolving disputes using independent adjudication

Independent adjudication is a way of resolving disagreements about additional support needs. An independent adjudicator, outside the local authority, formally reviews your case. They will consider the circumstances leading to the disagreement and make a report with recommendations for all parties. If your child attends a school

² The Equality Act 2010

that is not in your own local authority area as a result of a placing request, the independent adjudicator will review your case with the local authority responsible for that school.

Independent adjudication will normally deal with issues that cannot be taken to the Tribunal, but there are some issues it cannot deal with. For further information please see **Enquire factsheet: Resolving disputes using independent adjudication.**

Involving your local councillor or MSP

At any stage in your dispute you can contact your local councillor or MSP with a complaint about a school or local authority. They may be prepared to make enquiries on your behalf, although they do not have to do this.

You could also contact the councillor who chairs or convenes the local education committee in your council. You can usually find out who this is from your council's website or by phoning your local authority/council.

The Scottish Public Services Ombudsman (SPSO)

If a formal appeal process is not available, you may be able to raise your concerns through a local complaints process. If you are not satisfied with the response to your complaint, you can refer it to the SPSO. The person or organisation providing the service, for example your school, local authority, hospital or GP, should be able to give you details of the local complaints process. For school or local council complaints, the council's website should give information

about the process or you can call its main number and ask. The SPSO is independent of councils but there are limits on what it can do. For example, it cannot look at complaints that have been dealt with in Court or change decisions that have been made in line with the proper process. You can get advice directly from the SPSO about what it may be able to do or if you are having difficulty using the local complaints process. Their contact details are on page 6 of this factsheet.

Sheriff Court

There are about 50 Sheriff Courts across Scotland, which deal with local civil disputes. They can hear further appeals against decisions by the Education Appeals Committee about placing requests and exclusions. Appeals against attendance orders go directly to the Sheriff.

The letter containing the EAC's decision will tell you how to appeal to the Sheriff Court if you disagree with it.

The local authority must carry out the Sheriff Court's decision. If you or the local authority disagrees with the Sheriff Court's decision on a point of law, you or the authority can appeal to the Court of Session.

Court of Session

The Court of Session, based in Edinburgh, is the supreme civil court in Scotland. It will hear appeals from the Sheriff Court on a point of law. An appeal in the Court of Session will not re-hear the evidence, but it will assess whether the law was correctly interpreted or applied when a decision was made.

The Court of Session's decision is final.

Judicial review of a case

If you have gone through all the appeal routes available to you and you want to appeal further, you have to take your case to the Court of Session in Edinburgh. If you are thinking of going to court, you should first contact a solicitor who deals with education law.

Taking your complaint to Scottish Ministers

Scottish Ministers will consider complaints brought by parents or other interested parties who think the local authority has failed to fulfil its legal duty under education law. This is called a section 70 complaint.

If you wish to do this, you must put your complaint in writing, stating in which duty or duties you think the local authority has failed.

If Scottish Ministers are satisfied that an authority has failed to fulfil one of its legal duties, they may make an order requiring the authority to carry out that duty.

For further information, including how to make a section 70 complaint, please see **Enquire factsheet: Section 70 complaints.**

Where to find out more:

Publications

Enquire information sheet: **Step to resolving disagreements** (2018)

Enquire factsheet: **Mediation** (2018)

Enquire factsheet: **Resolving disputes using independent adjudication** (2018)

Enquire factsheet: **Section 70 complaints** (2018)

Enquire factsheet: **Taking part in your child's education** (2018)

Supporting children's learning code of practice 2010 gives guidance to education authorities on implementing the Additional Support for Learning Act.

www.gov.scot/resource/doc/348208/0116022.pdf

You can get more information and download **Choosing a school: a guide for parents** from www.gov.scot/Publications/2010/11/10093528/0

Useful contact details

Additional Support Needs Tribunals for Scotland

Contact the Tribunal's office on 0141 302 5860 for a copy of their users' guide, or visit their website at www.asntscotland.gov.uk

Let's Talk ASN

The national additional support needs advocacy service is provided by the Govan Law Centre and Kindred Advocacy.

Telephone: 0141 445 1955

Email: letstalkasn@edlaw.org.uk

Local councillors and MSPs

You can find out who your local councillor or MSP is from your local library or Citizens Advice Bureau. You can find out who your MSP is by searching the Scottish Parliament website: www.scottish.parliament.uk/msp

Sheriff Court and Court of Session

You can find out more about these from the Scottish Courts website:
www.scotcourts.gov.uk

Minister for Children and Young People

You can find out more about the role of the Minister for Children and Young People and the Learning Directorate from the Scottish Government website: www.gov.scot

Scottish Public Services Ombudsman (SPSO)

For more information about the SPSO call 0800 377 7330 or visit their website at www.spsso.org.uk

Mediation services

Contact the Enquire helpline (see page 7) for the contact details of your local mediation service.

Other sources of advice

Legally qualified staff from the following organisations can give advice on the Additional Support for Learning Act.

Education Law Unit – Govan Law Centre

An Education Law Helpline gives legal advice by telephone or email to organisations. It does not provide direct advice to parents.

Telephone 0141 445 1955
Email: advice@edlaw.org.uk
www.edlaw.org.uk

Scottish Child Law Centre

Freephone for under-21s: 0800 328 8970
Telephone: 0131 667 6333
Email: enquiries@sclc.org.uk
www.sclc.org.uk

ENQUIRE

Helping you understand additional support for learning

Enquire is the Scottish advice service for additional support for learning. We provide independent and impartial advice to parents and carers, to practitioners in education, social work and health services, and to children and young people themselves.

www.reach.scot offers advice to young people struggling at school. With practical tips on what can help and young people sharing their views and experiences on all sorts of life issues, Reach offers the 'go-to' source of advice to help pupils make the most out of their education.

This factsheet has been awarded the Clear English Standard.



Contact details

Enquire, Children in Scotland, Level 1, Rosebery House,
9 Haymarket Terrace, Edinburgh EH12 5EZ

Helpline: **0345 123 2303**
(Access to interpreters through Language Line)

Office: 0131 313 8800

Email: info@enquire.org.uk

www.enquire.org.uk

Enquire factsheet: Resolving disagreements © Enquire January 2018



Enquire is managed by Children in Scotland
and funded by the Scottish Government