

## EAST AYRSHIRE COUNCIL

### SOCIAL WORK COMMITTEE : 3 NOVEMBER 2005

#### DISPUTE RESOLUTION ARRANGEMENTS

##### Report by the Executive Director of Educational and Social Services

#### 1. PURPOSE

- 1.1 To seek approval for dispute resolution for matters related to the children and young people with additional support needs.

#### 2. BACKGROUND

- 2.1 Section 16 of the Education (Additional Support for Learning) (Scotland) Act 2004 makes provision for the Scottish Ministers to require authorities to put in place procedures to resolve disputes.

#### 3. EXPLANATION

- 3.1 The disputes referred to in the Act relate to the exercise of the authority's function under the Education (Additional Support for Learning) (Scotland) Act 2004, principally issues related to the delivery of services including those in co-ordinated support plans.

- 3.2 The required procedures have the following features:

- they must be free of charge;
- use of them is voluntary by parents and young people;
- users of this service must belong to the Authority's area;
- rights to use existing statutory processes are unaffected.

In law, only parents and young people have a right to use these arrangements. "Young people" in this sense applies to those who are beyond the minimum school leaving age, which is for most purposes 16 years old.

- 3.3 There are some additional points of interest about this development in provision. It is designed to supplement, but not replace existing procedures. Therefore complaints about general service delivery, or an individual member of staff, will remain within the existing Council complaints procedure. Equally, this is not a mechanism for complaints to be made about policy or general matters. Such concerns will remain within the existing systems. Lastly, there is a residential qualification, therefore young people who attend, or parents with children at, an East Ayrshire school but who reside in another authority cannot under the law use this procedure. Conversely, young people who attend, or parents with a child at, a school outwith East Ayrshire who have a dispute about provision would have access to the provisions of this policy. This would only be possible, however, if they can demonstrate that the dispute arises directly out of the authority's exercise of its functions under the Act.

- 3.5 Although intended for additional support needs, there will be substantial advantages to parents and young people to regard these arrangements as being generally available to all service users. It is possible within the terms of the Act, that disputes may arise out of the provision of social work services.
- 3.6 The Scottish Ministers will make provision for independent adjudication of disputes at national level. This will be for cases that cannot be resolved at local level.

#### **4. RELATIONSHIP WITH OTHER ARRANGEMENTS**

- 4.1 Members will recall that the Authority is also required to make provision for access to independent Mediation services free of charge. In order to fulfil this requirement, a contract has been taken out with the Govan Law Centre.
- 4.2 From November 15, there will also be access to the national Additional Support Needs Tribunal. Complainants will not be required to have used the authority dispute resolution procedure, or mediation, before being given access to the Tribunal
- 4.3 The relationship between these various mechanisms is shown at Appendix 1.

#### **5. THE PROPOSED ARRANGEMENTS**

- 5.1 A wide consultation involving Head Teachers, quality improvement, psychological service, school boards, pre-5 services, and legal services was mounted. Social services and the health service were also consulted. As a result of this many helpful comments were received. The teachers' unions were also consulted during the production process. The full set of arrangements is available in the Members' Information Point.
- 5.2 In summary, its main provisions are:
- That disputes are best solved at local level, and that Head Teachers have a key role in the first stages of resolving any disagreements.
  - If systems at establishment level are unsuccessful, the reference should be made to the authority. At this point either appropriate advice will be given or the matter will be investigated with a view to resolving the dispute.
  - Should this fail to produce an agreement, the parent will be offered mediation services, or the opportunity to use external adjudication.
  - Parents will be given advice and support in presenting their case to the adjudicator.
  - Young people and parents have the right to bring supporters or advocates to any stage of the process.
- 5.3 An information leaflet has been prepared to explain the main features of these arrangements. This will be widely available. All procedures and relevant documents will make reference to the rights of access to dispute resolution.

## **6. POLICY/LEGAL IMPLICATIONS**

- 6.1 This policy is a significant addition to the Council's Customer Care arrangements. Parents and young people cannot be compelled to use the procedure. Existence of the procedure does not affect an individual's right to use any available, alternative or statutory procedure.

## **7. COMMUNITY PLANNING IMPLICATIONS**

- 7.1 This procedure is relevant to the Improving Opportunities and Improving Health themes of the Community plan.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 There is no direct financial implication from this policy. However, it is a new service required by statute, that must be delivered within the terms of the new national Code of Practice. There will be significant additional burdens on the service, particularly if a dispute progresses to mediation or external adjudication.

## **9. RECOMMENDATIONS**

- 9.1 It is recommended that Members:

- (i) approve the dispute resolution arrangements described in this report;
- (ii) note that this report will also be considered by the Education Committee; and
- (iii) otherwise note the contents of this report.

**John Mulgrew**  
**Executive Director of Educational and Social Services**  
**18 October 2005**  
**Enc (1)**

Members requiring further information should contact:  
Graham Short, Head of Service: Quality Improvement, (01563-576089).

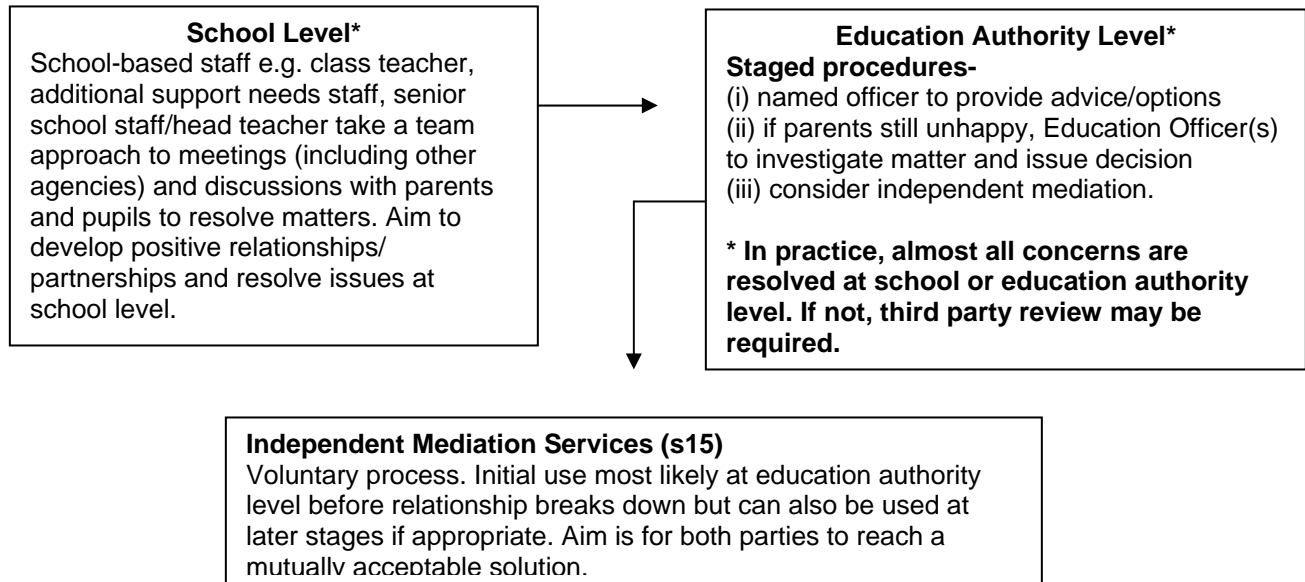
### **LIST OF BACKGROUND PAPERS**

1. Supporting Children's Learning, (the National Code of Practice), issued by the Scottish Executive, August 2005

**IMPLEMENTATION OFFICER: GRAHAM SHORT**

**Framework for resolving disagreements**  
Page 102 from the National Code of Practice

**PARTIES REACH AGREED OUTCOME AT LOCAL LEVEL**



**THIRD PARTY REVIEW AND RECOMMENDATION**

