

Pupil involvement in special educational needs disagreement resolution: some perceived barriers to including children in mediation

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Recent legislation in England has encouraged the use of disagreement resolution and mediation and emphasised the need to involve pupils in their own schooling. These policies apply in the educational system generally, but are particularly significant in the area of special educational needs (SEN). Kirstie Soar, a lecturer in the School of Psychology at the University of East London; Katie Burke, a PhD student at Salford University, Manchester; Katia Herbst, an independent researcher offering research and development services to the not-for-profit sector; and Professor Irvine Gersch, Director of the MSc educational psychology programme at the University of East London, set out to examine how pupil involvement in informal disagreement resolution has developed across 11 English regions since its introduction. The research consisted of 12 in-depth interviews with local education authority (LEA) SEN officers, mediators and parent partnership officers (PPOs) involved in informal special educational needs disagreement resolution. The aims of the study were to determine how far children were actually involved in mediation and what, if any, barriers existed which were seen to restrict such pupil involvement. A thematic analysis of interview content was conducted. Four major themes emerged, including: the distinction between direct and indirect pupil involvement; the importance of the child's view and how it is elicited; the role of other agencies; and other barriers to pupil involvement in informal disagreement resolution. Direct pupil involvement was found to be limited and variable, but indirect pupil involvement was more prevalent. In this article, the authors note a series of recommendations concerning pupil involvement in the mediation process and, in conclusion, put forward the implications of their work for future policy, practice and research.

Key words: pupil participation, mediation, child advocacy, special educational needs.

Introduction

Recent educational legislation has placed a statutory requirement on all local education authorities (LEAs) within England to make arrangements for independent

disagreement resolution for the parents and carers of children with special educational needs (SEN) (DfES, 2001a). Such arrangements would be called for when parents are dissatisfied with a proposed Statement of Special Educational Needs made for their child by the LEA, or with special provision made by schools. Most disagreements that arise are the result of a misunderstanding between parties and often occur when individuals do not see the other party's point of view.

The idea behind the process of informal resolution of disagreements is to enable parents to find a resolution to their disagreement through understanding and negotiation, in an informal and independent environment. Such resolutions should ideally take place within the two-month statutory time limit for an appeal to the Special Educational Needs and Disability Tribunal. This informal resolution process, it is hoped, should reduce the number of appeals that are placed before the Tribunal. However, it should not be seen as an alternative to the formal mechanism of the Special Educational Needs and Disability Tribunal. Rather, it is designed to achieve early and informal resolution of differences in opinion. Indeed, the *Special Educational Needs Code of Practice* (DfES, 2001a) states that there may always be cases where it is not possible to reach a level of agreement through this informal process and it may therefore be more appropriate for parents to seek recourse to the Special Educational Needs and Disability Tribunal.

Disagreement resolution through independent mediation is one way of enabling parents to find an informal resolution to their disagreement. Mediation is an entirely informal and voluntary process, where the parties in disagreement (in the case of special educational needs mediation, the parent and the authorities) decide the terms of agreement, in the presence of an independent person (the mediator or facilitator). The mediator's role is to facilitate open dialogue between the disputing parties, but at the same time to remain independent and neutral throughout the whole process.

Disagreement resolution through independent mediation only works if all parties are willing to engage in the process and appreciate that the child's best interests and needs are the key consideration. One of the fundamental principles of the *Special Educational Needs Code of Practice* (DfES, 2001a), and the focus of the present study, is that the views,

wishes and feelings of children themselves should be sought and taken into account. An emphasis is placed upon the importance of involving children when decisions are made that affect them, taking into consideration their age and understanding (DfES, 2001a). This is in accordance with the United Nations Convention on the Rights of the Child (UN, 1989), which states that:

‘Children who are capable of forming views, have a right to receive and make known information, to express an opinion, and to have that opinion taken into account in any matters affecting them. The views of the child should be given due weight according to the age, maturity and capability of the child.’

(Article 12)

The *Special Educational Needs Code of Practice* (DfES, 2001a) states that children should be enabled and encouraged to participate in all decision-making processes that occur in their education. Even from an early age, the Code suggests that children should be actively involved at an appropriate level which should reflect the child’s evolving maturity. Where children have particular needs, special arrangements should be made to help them communicate their views or interpret their responses, feelings and wishes. In the few cases where it is not possible to ascertain the child’s feelings and wishes directly, the Code suggests that interpretation of the child’s responses should be achieved and the advice of any relevant professional who has worked with the child should be sought.

Within the context of disagreement resolution, the Code of Practice states that in most cases, involvement of the child in discussions between parent and LEA or school is deemed inappropriate. Yet, the child’s views, needs and wishes can, and should, be sought indirectly in this process. Every effort should be made to ensure that the child’s point of view is established early. Disagreement resolution discussions that do not involve the child’s wishes as one of the main priorities often deteriorate into a battle between parents and the school or LEA (DfES, 2001b). To date there is no evidence to support the notion that involving the child directly in disagreement resolution is inappropriate. On the contrary, in the USA, children and young people are beginning to be successfully included within mediation sessions (Russell, 2003). Indeed Gersch and Gersch (2003) have suggested that: ‘there is certainly a role for the child to play in attending part of the mediation process, at least, subject to age and circumstances.’

Other than the child and its parent, the other key players in this informal disagreement resolution process include: 1) the LEA SEN officer, a named person from the LEA who is responsible for liaising with parents over all arrangements relating to the special educational needs of the child and who has the authority to make decisions; 2) SEN mediators, who are impartial individuals who help people identify and clarify the special educational needs of a child and aid communication in exploring solutions and negotiating agreements between parties involved in the

disagreement; and 3) parent partnership officers, who, although funded by the LEA, provide neutral and factual advice, information and support to parents whose children have special educational needs.

A recent research report from the University of Exeter on behalf of the South West Special Educational Needs Partnership (Kelly, Richards & Norwich, 2003) aimed to identify the extent to which these key players elicited and used pupils’ views in the context of resolving disagreements and identified the involvement of mediation services in eliciting children’s views in disagreement resolution. They found that, in practice, although there were some ‘positive pockets’ of work in this area, the nature of this work was fragmented and disjointed. Children’s voices were usually heard at second hand and there was little evidence that agencies proactively sought children’s views. The report emphasised that, despite certain barriers and reservations, mediators and co-ordinators generally felt that it was important to hear the views of the child. The authors noted that there was a need for development in this area, in particular a need for training and specialist skills for communicating with children. They also suggested a possible role for specialist professionals to promote pupil involvement and recommended a national policy on including children’s views in mediation.

In line with this report, the present study aims to establish the extent to which pupil involvement is occurring currently as part of the informal disagreement resolution process on a more national level. The study also aims to identify potential barriers and resistances, considering both direct (pupils actively attending mediation meetings) and indirect (pupils’ wishes, needs and views being represented by another party/means) approaches, to pupil involvement in the new informal disagreement resolution arrangements.

Methodology

The present research is a small-scale, exploratory telephone survey using an opportunity sample of official key players: LEA SEN officers, SEN mediators and parent partnership officers (PPOs).

In selecting the nature of this research topic, the authors were aware of other projects currently being undertaken. In order to avoid duplication, informal discussion took place with the Department for Education and Skills (DfES), who were entirely helpful in sample selection and inviting participation.

Contacts were made with the Regional Special Educational Needs Partnership Co-ordinator in each of the 11 regions within England (East of England, East Midlands, West Midlands, London, Merseyside, North East, North West, South Central, South East, South West, and Yorkshire and Humberside) via an email from the National Framework Team, SEN Division, DfES. Regional Partnership Co-ordinators were asked to help facilitate further contacts with those mediators, LEA SEN officers and PPOs within their region who had experience and knowledge of the mediation process and who would be willing to contribute to the study.

Telephone interviews were then carried out with the volunteered interviewees using a proforma, in order to standardise the interviews. The interview was piloted on an LEA SEN officer. The final interview consisted of 14 questions concerning informal disagreement resolution and pupil involvement. These covered such issues as the current implementation of indirect and direct pupil involvement; circumstances where this has occurred and, if not, why not; current arrangements in eliciting children's views; and actual and perceived barriers in involving children in informal disagreement resolution. The interviews were, on average, half an hour in length. All telephone interviews were pre-arranged by appointment to ensure co-operation. Each interviewee received some basic background information concerning the research area with opportunities to discuss this prior to the interview. Each telephone interview was recorded (with the permission of the interviewee) and later transcribed for analysis.

In total, five LEA SEN officers, five mediators and two PPOs from various regions across the country completed the full interview (as summarised in Table 1). A further three PPOs were contacted but their interviews were not included in the analysis because direct contact with mediation was too limited.

Table 1: List of interviewees and the region in which they worked

Service and SEN Region	Totals
<i>LEA SEN officers:</i>	
East of England	2
South Central	1
Merseyside	2
<i>Mediators:</i>	
London	1
East of England	1
Midlands (East & West)	1
South Central; South East; Midlands; South West	1
Yorkshire & Humberside	1
<i>Parent Partnership Officers:</i>	
East of England	2
TOTAL:	12

Of the final 12 interviews, all were transcribed and a thematic analysis was carried out on the content of the responses by question and by role of the respondent.

It should be noted that not all of the regions have been represented within each service area (see Table 1). Additionally, there is a bias in the sample, since five of the interviewees were from the same region (East of England). However, with the exception of two of these five interviewees, they did work for different LEAs. All but two regions (North East and North West) have been represented, by at least one of the 12 interviewees, giving some indication as to what is occurring nationally with regard to pupil involvement in informal disagreement resolution.

Results and discussion

Four major areas of common interest which emerged from the analysis will be discussed in turn in the following section. All quotes included in this section are verbatim from the interviews themselves and thus grammatical errors may appear.

Direct and indirect pupil involvement

According to the *Special Educational Needs Code of Practice* (DfES, 2001a), every effort should be made to consult the child's wishes, needs and views in the general educational context of the child. All interviewees showed awareness of this statutory requirement. However, the level of knowledge of how this was being achieved in education was variable and related to the level of professional involvement with education. For example, LEA SEN officers had greater awareness and knowledge of this recommendation than did PPOs, who were also more informed than mediators.

It was revealed that children are generally involved in their assessments and educational plans. However, it was the degree of *active* child involvement that varied between regions and LEAs. In some cases, involvement consisted of child-friendly questionnaires and semi-structured interview proformas with which the child's views are recorded, with the help of either a teacher or learning support assistant (LSA) where necessary. In other cases, young people participated in Annual Review meetings at some point or other. As one participant said: '*... they would normally be in the meeting for some time ... rarely for the whole meeting*' (LEA SEN officer).

All interviewees were clearly aware that the child's view should be sought in the case of informal disagreement resolution, at least indirectly, and in practice this appeared to be occurring. In most cases, parties would rely on the child's views being obtained by methods generally used in the educational context within their LEA, namely the semi-structured questionnaire. The child's views were also ascertained from other parties, such as educational psychologists, since many educational psychologists feel that it is part of their role to represent the child's views in their written report. This is probably the only reported example of pupil involvement that is consistent across LEAs. Parents and LSAs have also been known to contribute. One LEA SEN officer stated that the task was to:

'... talk, if possible, to the teachers or the support assistants in the school who know the child ... to get some idea of the child's apparent responses to what is being provided...'

(LEA SEN officer)

Pre-mediation work by the mediator often involves seeking the views of the child in person or, if not in person, via the parent.

When it comes to the issue of directly involving children in mediation, opinions and practices seem to vary considerably. SEN officers generally thought that involving

the child directly in the process of informal disagreement resolution was not necessarily helpful for the child. One such officer stated:

'it is not a suitable place ... particularly for a young child ... the meeting is going to be long and arduous and potentially a lot of conflict...'

(LEA SEN officer)

The reasons LEA SEN officers gave for not directly involving children in mediation mainly focused upon their concerns about the emotional impact this might have on the child and the level of cognitive understanding of the child, especially if the child had severe developmental delay or profound and multiple learning difficulties. Additionally, mediation will often involve a certain degree of conflict and debate between all parties involved, which in some cases can become quite aggressive. Some LEA SEN officers argued that it is important to protect the child in such situations, by avoiding placing the child in the middle of a potentially unhelpful emotional environment. In one case the SEN officer stated that:

'the child was deemed to have high levels of anxiety... It would not have been appropriate to raise those levels of anxiety by involving them in that kind of formal meeting.'

(LEA SEN officer)

Some LEA SEN officers and also PPOs were aware of cases that had directly involved the child in mediation. Often this was the wish of the parent(s) and was often as a result of child care issues, rather than the desire to involve their child actively in the process of disagreement resolution.

In contrast, SEN mediators strongly supported the opinion that children should be involved directly in the mediation process. They stressed that care has to be taken to ensure that all parties agree to this and that it should be based upon the child's wish to be involved rather than parental wishes. They suggested that some parents, with the best intentions, can use their child *'as a sort of – "look here is my child!"'* (Mediator). Parents placing their child's special needs on display as evidence for their case, rather than involving their child constructively, was mentioned as a concern by some mediators.

Although all the mediators who were interviewed strongly advocated the direct involvement of children in mediation, they emphasised that every case should be considered individually on its own merits and indicated that involvement is dependent on the child's particular needs. For example:

'Some ... mediators have found that it was a real asset having the child there and then in other situations if the child has got, for instance, severe learning difficulties and it is autistic ... the child doesn't actually contribute to the meeting.'

(Mediator)

In contrast, regarding the case of a child of 12 years, with visual impairment:

'He was very able to speak and to have his views heard and the mediator felt that that was a real asset...'

(Mediator)

Thus, the level of special needs will often serve to determine the level of involvement the child has in mediation meetings.

Mediators also suggest that age is another factor in determining whether direct pupil involvement in mediation is beneficial. It was felt by some of the respondents that involving young children, for example, three-year-olds, is unrealistic. However, the involvement of teenagers was seen to have been of particular use in mediations in actually ascertaining what the real underlying issue was.

It therefore appears that when a child is old enough and mature enough, mediators view the direct involvement of pupils very positively and argue that mediations certainly benefit from having them there. The advantages of having direct involvement from children must be considered on a case-by-case basis. Age, special educational needs, social and domestic issues, child protection and parental mental health clearly must all be taken into account.

The importance of the child's view and how it is elicited

A majority of interviewees agreed that it was better to consult the child continuously throughout the mediation process, so that if issues were to arise in a meeting their views would be known. However, in practice, this is hard to implement if children are not attending the meetings. Thus, consulting children prior to mediation seems to be the norm and ensures that all parties attending meetings have an understanding of the child's view. Indeed, according to the *Special Educational Needs Code of Practice* (DfES, 2001a), the views of the child should have been ascertained as part of the process before disputes have even reached the mediation stage via the LEA. Further, one aspect of the mediator's role in the pre-mediation phase is to seek the views of all parties involved. Hence, mediators appear to be ascertaining the child's view independently of the LEA.

Whatever the outcome of mediation, decisions and choices will be made which concern the child in question. Consequently, it is appropriate for feedback to be given to the child concerning the outcomes of the mediation meeting(s). In practice there does not seem to be a consistent pattern in respect of *who* communicates the outcomes of mediation to the child. The general opinion of respondents is that parents are currently a key part of this process. However, a view also emerged that more than one person should feed back information to the child, ideally an independent person who knows the child. *'I think it should be agreed who it is and probably more than one person ... so that they're giving the same message...'* (LEA SEN officer). Respondents agreed that this should be the sole responsibility of the parent.

While LEA SEN officers and PPOs suggest this independent person could be the mediator, mediators are very clear that it is not part of their role: *'We need to be clear about the*

mediator's job role... We are facilitators of the process ... but we don't present parties with possible solutions' (Mediator). Thus, there does not appear to be any set protocol on who should communicate back to the child the outcomes of mediation.

SEN Officers and PPOs emphasised that there are often great inconsistencies in a child's views depending on who the child talks to:

'You might have a teacher interview a child and they say one thing and then the parents interview them and they may agree with something else.'

(LEA SEN officer)

Furthermore, in practice, there appear to be a number of cases where the parental views of their child's wishes are not always accurate. For example:

'The father kept saying he was unhappy in the school ... he wanted to go to another school... We did actually feel we had to speak to him because we were getting conflicting stories... He did tell me he was quite happy in the school he was at but he liked doing sport and the other school was going to be better to do sport... We found a compromise actually in the end of how he could spend part of the time in each school.'

(Mediator)

Hence it was felt by some respondents that one must obtain a range of views from different sources. Mediators appear to be able to balance the different views. If the child is very clear and has a fixed view, for example, by telling everybody the same thing, then there is no argument as to the child's views and wishes. Respondents felt that having the child directly involved in the mediation meeting can help parents listen to, and understand, the differing opinions between themselves and their child and possibly come to some sort of agreement.

Acknowledging potential differences in views between parent and child appears to be one aspect, with mediators attempting to take on board the child's differing viewpoint in mediation. However, an important question raised is how much weight should be given to the child's view? *'There is nothing in the legislation saying that the child's view has precedence'* (LEA SEN officer). All interviewees acknowledged that, at the end of the day, it is the parents who have the dispute with the school or LEA initially and that:

'Parents have overall responsibility for the child ... so I think the benchmark is that the child's views should be considered but in actual fact it's the parents who have the actual final say.'

(Mediator)

Children are not always necessarily right and as Gersch (2001) argues:

'It is fair to comment that whilst advocating the importance of listening to children, one should bear in mind the fact that children are still growing, changing, developing and learning. Thus, professionals and other adults retain a duty of care to ensure the child's welfare and best interests rather than their immediate preference.'

(p. 228)

The role of other agencies

According to the *Special Educational Needs Code of Practice* (DfES, 2001a) and *SEN Toolkit* (DfES, 2001b), parent partnership schemes are key in helping prevent disagreements between parents and schools or LEAs by encouraging dialogue between parties as soon as difficulties arise. However, in the later stages of informal resolution through mediation, the general view of respondents in our survey was that it would be inappropriate to involve the parent partnership service. They cannot take on responsibility for mediating between parents and the LEA or school, since their primary service is to work alongside the parents: *'they are funded to support the parents and there isn't any equivalent funding for pupils'* (LEA SEN officer). PPOs acknowledged that they encourage parents to listen to their child's views and that they are aware of the need to take account of the voice of the child from a legal, as well as moral, perspective. However, PPOs are currently apprehensive that they *'will be asked to take on board the whole responsibility for pupil participation and actually that is everybody's responsibility'* (PPO).

One suggestion that was made by the majority of respondents was to have a service similar to that of the parent partnership scheme, but for pupils, thus creating pupil partnership officers, or child advocates. Those who suggested such a service emphasised the need for an independent agency which should have the skills, necessary training and experience of working and listening to children, especially with those with special educational needs. However, it is noted that such a service would need to be part of a system with supportive legalisation, all of which would create a further expense to LEAs.

Other barriers

In addition to the issues discussed above there were a number of other converging barriers that became apparent from the interviews concerning pupil involvement in mediation. These included:

- The need for clear protocols surrounding the involvement of children in informal disagreement resolution. Indeed, as one interviewee pointed out, the

'... Code of Practice states that the views of the child should be considered and paid heed to, but what it doesn't say is who should do that.'

(Mediator)

In particular, mediators would like to see a more clearly established protocol for proceeding with pupil involvement in mediation. The *Special Educational Needs Code of Practice* (DfES, 2001a) and *SEN Toolkit* (DfES, 2001b, 2001c) are:

'quite vague when it comes to pupil involvement in mediation, every case seems to be quite different and has to be taken at an independent level.'

(Mediator)

- Historical barriers. It was believed that, in the UK, people are not used to and are not very good at involving children: *'Sometimes there are some schools and teachers who may think we shouldn't be listening to the views of the children'* (LEA SEN officer). Until this attitude changes, arguably, the development and progress of pupil involvement in general will be somewhat limited.
- Political agendas. LEA SEN officers believe that one of the barriers to pupil involvement in mediation is the attitude of some of the adult parties involved. *'The main barriers ... one is the adults involved, because they have a vested interest in not doing it'* (LEA SEN officer). In addition, mediators suggest that there are always hidden agendas concerning cases of conflict, – they are constantly battling to these find out:

'Certainly there's a political agenda in relation to decisions being taken behind closed doors – about special schools closing, for instance, or merging... We're always trying to find out what the hidden agenda is.'

(Mediator)

Respondents' recommendations

In addition to clearer protocols, other key suggestions, made by respondents and designed to help in developing child participation in mediation, were as follows.

More training, focused on listening to and communicating with children, should be made available for mediators and all staff involved in working with pupils with special educational needs. Such training and information dissemination should increase the readiness of staff to hear the child's voice at every opportunity. This specialised training would also help in raising awareness about the expectations of the *Special Educational Needs Code of Practice*, which is viewed as necessary in improving pupil involvement in disagreement resolution.

Pupil participation in general should be developed and increased. Once pupil involvement occurs generally in mainstream education, and pupils are active participants in all issues and at all levels, then this is likely to extend to mediation:

'You can't do these things as one-off events if there isn't already a practice of talking and listening to children in schools... Where schools are talking to children on a day-to-day basis, asking how they're

learning and how they're developing, what helps, on a regular basis ... they are really much closer to what the children actually think.'

(LEA SEN officers)

There is a need to promote the general ethos surrounding pupil involvement in order to achieve a cultural shift in education towards pupil participation. Presently there is a view that pupils are involved by being told how they should be learning, whereas what should be happening is helping and encouraging children to make informed and confident choices about their education, by *'promoting their confidence in their learning'* and *'not so much asking them their views ... it's enabling them to make a reasonable judgement'* (LEA SEN officers).

Conclusions

This study has attempted to establish the extent to which pupil involvement occurs in the process of mediation and the potential barriers and resistances there are to direct and indirect pupil involvement in special educational needs mediation. The evidence suggests that direct pupil involvement in special educational needs informal disagreement resolution is limited and variable, but indirect involvement is more prevalent. It appears that, at present, all parties involved with children in disagreement resolution strongly advocate *indirect* involvement of the child in all cases, whatever their age and ability, and in practice this appears to be happening.

Opinions and practice concerning the *direct* involvement of children in this process vary across services and regions. The direct involvement of a child in mediation is really determined on a case-by-case basis, dependent on age, level of maturity and special educational need, which is in accordance with the United Nations Convention on the Rights of the Child. There appear to be inconsistencies in practice across and within LEAs, perhaps indicating the need for more precise guidelines in involving pupils in mediation.

Implications

In closing this article, we suggest that the following implications concerning the involvement of pupils in special educational needs disagreement resolution flow from our work:

1. It may be useful to suggest that professionals adopt a *starting position* whereby children are included (as far as possible) in the mediation process, at some level, in accordance with their particular age and prior experiences.
2. In order to achieve greater uniformity, and perhaps greater pupil involvement, changes may be needed in attitudes towards the importance of children's viewpoints. By increasing awareness and changing the culture surrounding pupil involvement in general, children's views can come to be seen as important, helpful and constructive and therefore to be encouraged. This can be achieved, in part, by specific training for those adults who work with children with special educational needs.

3. The introduction of a child advocacy service should be considered to help children voice their views, wishes and needs within the general educational context as well as in the context of special educational needs.
4. Further research is needed since the conclusions drawn from this exploratory study are somewhat limited in their scope. It is not possible to generalise these findings to all individuals and services within the 11 Special Educational Needs Regional Partnerships, because of the small size of the sample of interviewees; the lack of representation from all the regions; and sample bias, as noted earlier. However, the findings from this study support those found at a regional level in the South West (Kelly et al., 2003). Both studies agree that eliciting children's views in disagreement resolution is evident in practice, but needs to be developed, in particular with regards to increasing training and specialist skills for communicating with children and the suggestion of a possible role for child advocacy specialists.
5. The current study focuses on some of the key players involved in the informal disagreement resolution process; however, issues concerning the parents of children with special educational needs have not been addressed. Further research is currently underway looking at the potential barriers and resistances in involving children in the mediation process from a parental perspective.
6. It is of note that the Special Educational Needs and Disability Tribunal (SENDIST) has introduced a new

requirement on LEAs. In particular, once the appeal is lodged, the SENDIST writes to the LEA outlining the procedures and seeks their response to the appeal. As part of this response, LEAs are now required to inform the SENDIST about the views of the child. The LEA must state the views of the child or the reasons why these could not be obtained. In addition, since April 2004, the DfES funds LEAs directly, rather than going through the Regional Partnership Co-ordinator. LEAs and other services within England involved in special educational needs disagreement resolution need to be aware of shifting policy and legislation concerning the processes involved in mediation and pupil involvement to help them ultimately fulfil the needs of the child. We suggest that the extent of pupil involvement in special educational needs disagreement resolution and issues of best practice in this area warrant further study at both regional and national level.

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