

REPORT TO: EDUCATION COMMITTEE – 21ST FEBRUARY 2005

REPORT ON: EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2004
CONSULTATION ON DRAFT CODE OF PRACTICE, DRAFT
POLICY PAPERS AND DRAFT ASSOCIATED REGULATIONS

REPORT BY: DIRECTOR OF EDUCATION

REPORT NO: 122-2005

1.0 PURPOSE OF REPORT

- 1.1 This report contains the proposed response from Dundee City Council to key documents drafted by the Scottish Executive to support the new Education (Additional Support for Learning) (Scotland) Act 2004.

2.0 RECOMMENDATIONS

- 2.1 The Education Committee is recommended to:
- i. note the contents of this report; and
 - ii. approve the proposed response to the Scottish Executive.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The uncertain cost of the implementation of the detail of this Act is one of the major areas of contention between the Scottish Executive and local authorities, and will depend in part on the numbers of children and young persons identified as requiring support, and the actual support they are deemed to need. This proposed response raises some questions about the availability of resources, including finance (see para. 7.3 vii below).
- 3.2 The Scottish Executive has provided ring-fenced funding of £221,773 in 2004-05 and £263,356 in 2005-06 to assist with implementation in the initial stages. Similar funding has been granted to health authorities. It is the intention of the Education Department, in discussion with all its partners, to use these funds to:
- second a Development Officer to take responsibility for all operational aspects of implementation
 - prepare and disseminate information leaflets to school staff, parents/carers, children and young people, and other professionals on all aspects of the new legislation
 - provide necessary training for school and other staff on the new Act and its implications for supporting children with additional support needs
 - ensure that schools are properly equipped to be accessible to all children and young people with support needs.

4.0 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 This is a formal response to a Scottish Executive consultative document. If implemented in the way proposed the Act ought to remove barriers to learning from all children and young people who require support.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 The Code of Practice and associated papers, if implemented with proposed amendments, will improve equality of access to educational opportunities for all children.

6.0 BACKGROUND

- 6.1 The Education (Additional Support for Learning) (Scotland) Act 2004 is one of the most significant pieces of legislation in the field of Support for Learning to have emerged in recent times. It introduces a new framework for providing support for children and young people who require additional help with their learning, and aims to ensure that no barriers to learning exist which will prevent all children and young people from reaching their full potential.
- 6.2 The Act significantly widens the range of needs requiring support to encompass not only the disabilities and disorders that previously fell within the heading of 'special educational needs', but any factor which will act as a barrier to a child's learning. Such factors can be temporary in nature, such as bereavement, or more long-term or even permanent, such as physical impairment or severe behavioural difficulties.
- 6.3 Commencement of the Act is scheduled to occur in the autumn of 2005, and the Scottish Executive has produced a draft Code of Practice, along with consultation papers on: Other Appropriate Agencies To Help In The Exercise Of Functions Under The Act; the Co-ordinated Support Plan; Changes in School Education; Dispute Resolution; and the Publication Of Information By The Local Education Authority.

7.0 SUMMARY

- 7.1 Dundee City Council welcomes the opportunity to comment on these draft provisions, and the proposed detailed response is set out in the attached response booklet issued by the Scottish Executive.
- 7.2 Attention is drawn to aspects of the proposals which this Council warmly welcomes:
- the introduction of the concept of factors which are likely to point to a need for a young person to have a Co-ordinated Support Plan – these factors are family circumstances, a disability or health need, a child in need of care and protection, the learning environment, and social and emotional factors.
 - the commitment to the inclusion of children and young people, and their parents and carers, at all stages in the planning process;
 - the inclusion of the voluntary sector as an appropriate agency to assist in the exercise of functions under this Act; and

- the establishment of mediation as a process to resolve disputes between the education authority and parents/carers

7.3 The response document does however draw attention to a number of areas where the Council has real issues of concern, chief among which are:

- i. There is no description of a process of staged support, from the identification of additional support needs to the opening of a Co-ordinated Support Plan.
- ii. More clarification is needed of the threshold of needs beyond which a CSP should be opened. There is no definition of what constitutes complex factors.
- iii. No attempt has been made to address the very serious matter of parents and carers who lack interest and commitment, and may obstruct attempts to provide adequate support.
- iv. While welcoming the process of mediation we ask that consideration be given to the establishment of national standards and agreed reporting mechanisms for mediators.
- v. Further thought must be given to the administrative processes and protocols underpinning the CSP; these must be nationally agreed and implemented, and deal with issues of timescale, confidentiality, and the use of technology to manage the plan.
- vi. The CSP will be a national document. As such it cannot be the dynamic plan that an individual child with needs requires. Such a plan will continue to be found in the Individualised Education Programme (IEP), drawn up for each child and kept regularly under review.
- vii. The introduction of a three-tier process for resolving disputes is unnecessary, unhelpful and potentially costly. It is possible that parents will completely ignore the first step, mediation, and go straight to dispute resolution. This is the second stage before appeal, where appropriate, to the national Additional Support Needs Tribunal. We also acknowledge that some parents will go quickly into the formal arena of dispute resolution in an attempt to gain additional resources for their children, to the potential detriment of the service as a whole. The overriding concern is that a child's progress will be hampered by drawn out legalistic processes.

8.0 CONSULTATION

8.1 This report has been subject to consultation with the Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), and members of the multi-agency Additional Support Act Dundee Implementation Group.

9.0 BACKGROUND PAPERS

9.1 Nil

ANNE WILSON
Director of Education

3rd February 2005

JC/DD

Education (Additional Support for Learning) (Scotland) Act 2004

Consultation on draft Code of Practice, draft Policy Papers and draft Associated Regulations Response Booklet

CODE OF PRACTICE [Additional Support Needs-02](#)

Following consultation, a revised version of the draft Code and Regulations will be presented to the Scottish Parliament for scrutiny.

Questions/discussion points

The following pages invite comments on some questions about the content of the draft Code, draft regulations and policy papers. These are designed to help you focus on some of the key issues, but are not meant to be an exhaustive list. We would welcome comment on these and any other issues you would like to raise.

Questions

General

This response represents the views of Dundee City Council.

It should also be noted that it has been compiled in close consultation with key partners via the multi-agency Additional Support Act Dundee Implementation Group which has members from NHS Tayside, Dundee City Council Education and Social Work Departments, Primary, Secondary Head Teachers, Kingspark School, Early Years and Child Care, Support for Learning, Alternative Education Provision, the Voluntary Sector, Bilingual and Sensory Support Services, Dundee Educational Psychology Service and Parents.

1. What do you think about the overall structure and format of the draft Code?

- *The overall structure and format of the draft Code is acceptable. It is easy to read and seems comprehensive.*
- *While we may have reservations about significant aspects of the draft Code of practice, we welcome the fact that the form of the final document will be nationally regulated. This will enable a high level of consistency across Scotland and facilitate the transfer of information between authorities.*

2. What is your view of the choice of scenarios in Annex A?

- *The scenarios should be included in the body of the text so that they can be read in conjunction with relevant sections of the Act and the Code of Practice.*
- *We acknowledge that it is impossible to cover all eventualities in the scenarios. We would want the fact of their being based on real stories to be more evident. As examples, they seem oversimplified and the solutions have an unlikely, contrived feel that will be counterproductive.*
- *Further aspects of the process of supporting children and young people might, with advantage, be illustrated: for example,*
 - *a scenario illustrating a multi-agency case conference*
 - *a scenario from the pre-school*
 - *a scenario of a looked after child or young person*
 - *a scenario depicting the processes involving a child or young person admitted to an extra-authority psychiatric unit.*
- *A longitudinal case study from the initial identification of an additional support need to the opening of a Co-ordinated Support Plan would be helpful, especially if directly linked with the 'decision trees'.*

Section 1

This section of the draft Code sets the framework for additional support for learning in the wider legislative and policy context.

1. How helpful do you find this section and the references to other legislation and policies? Are there any changes you would suggest?
 - *This section is helpful. The references to other legislation are thought to be particularly helpful. It caters for the needs of a range of professionals at various levels and gives a clear background to the legislative and historical context in which the Education (Additional Support for Learning) (Scotland) Act 2004 is set. It encourages the reader to maintain a wider view and shows where to seek further information, if appropriate.*
 - *There was a difference of opinion within the group as to whether it properly belongs within a Code of Practice or whether the information should be provided along with a Code of Practice as an appendix.*

Section 2

This section describes what additional support needs are, sets out the new duties on education authorities and appropriate agencies, and outlines the rights of parents and young people. A separate policy paper sets out proposals for specifying other appropriate agencies.

1. Is it sufficiently clear what additional support needs are? If not, how can it be made clear?

- *Yes. It is clear that a wide diversity of needs which previously would not necessarily have been perceived or accepted as barriers to learning within the currently used terminology 'special educational needs' is now entering the arena.*
- *Consideration should be given to the provision of an appendix wherein a detailed list of related needs that could be regarded as barriers to learning could be given under each factor heading.*

2. How helpful do you find the description of factors which may give rise to additional support needs?

- *The concept of grouping the needs into factors is very useful in that it will assist in deciding whether a child or young person merits the opening of a Co-ordinated Support Plan via the 'multiple factors' route.*
- *Defining need under factors will facilitate selection of appropriate types, modes and intensity of interventions required to support an individual child or young person.*
- *Page 20, 5th paragraph: The inclusion of **learning environment** as a factor is an interesting one in a paragraph which drew criticism from teaching members of the Additional Support Act Dundee Implementation Group. They were of the opinion that the paragraph was unnecessarily negative in tone and objected to the inclusion of the phrase 'inflexible curriculum' preferring that it should read 'inappropriate curriculum'. (See also below for "other points we wish to make with respect to Section 3" Provision Paragraph 93.)*

3. The other appropriate agencies policy paper, (Additional Support Needs — 03) sets out a number of questions. See page 9 for these.

- *SEE BELOW FOR GROUP RESPONSE TO THIS PAPER*

Section 3

This section of the draft Code covers issues relating to the identification, assessment, provision and monitoring and review of additional support needs. It also looks at the criteria for Co-ordinated Support Plans. See also further questions on CSP regulations at page 11.

1. What do you think about the structure of this section?

- *The structure of this section was considered suitable for its purpose.*

2. How clear is the advice on criteria for a CSP?

- *In defining the criteria for qualification for a Co-ordinated Support Plan, the Code quotes from the Act the phrase 'one or more complex factors or multiple factors' rather than 'complex and/or multiple needs'. The Code might help to give meaning to the term '**complex factor**' by amplifying, with examples, its definition in the Act (quoted in paragraph 19, P 30 of the Code). There is a*

danger that 'complex factor' may otherwise be confused with the established term 'complex need' for which an operationally defined definition exists.

- *The Code might do so by exemplifying 'substantial direct and continuing intervention from at least one other agency' and 'continuing high level adaptation or elaboration of the curriculum' (phrases the Code uses in chart 2 (page32)). Since appeals may hinge on how 'complex factor' is interpreted, as much clarity as can be provided is crucial. Furthermore, it will be necessary for all partners to be clear on what constitutes 'substantial' and 'high level' within the above definition.*
- *Particularly in view of the introduction of a level of dispute resolution beyond mediation, there needs to be a level of clarity of definition which will support young persons or parents and give clear guidance to authorities and other appropriate agencies in the discharge of their duties under the Act.*
- *We refer also to the answer given above in response to section 2 question 2.*

3. What is your view on the charts on additional support needs and decision tree for preparing a CSP?

- *We considered that the use of such flow diagrams is a very useful method of ensuring that planning processes are properly and consistently followed.*
- *There are typing errors where important text is obviously missing.*
- *Some rephrasing is needed to achieve clarity. For example, in Chart 1 (page 28) the phrasing results in the meaning being obscured:*

"Teacher/nursery staff and/or other agencies in consultation with parents identifies, in consultation with parents/ carers, child/young person needing support or planning which can be met within the existing structures in the classroom/nursery."

4. Draft CSP regulations (Additional Support Needs — 04) sets out some further questions - see page 11.

- *SEE BELOW FOR GROUP RESPONSE TO THIS PAPER*

Other points we wish to make with respect to section 3.

Identifying additional support needs (Paragraph 11)

- *This section was welcomed by the multi-agency implementation group because of the value it gives to the professional judgement of education staff while carrying out their routine work in support of children and young people.#*

Planning processes (Paragraph 14)

- *This reference to the Individualised Educational Programme must clearly refer to the IEP as defined in "Success for All".*

Complex and multiple factors (Paragraph 22)

- *The term 'care plan' means different things to different agencies. There needs to be a nationally agreed acceptance of what the term means which, in turn, needs to be clear to all who are engaged in planning and delivering the educational provision for children and young people at the level of the individual.*

Provision (Paragraph 93)

- *We welcome the inclusion of this important paragraph which validates the delivery of a very flexible curriculum where appropriate. Careful consideration should be given to the terms used in describing alternative arrangements. Rather than the phrase alternative curricular programmes which might imply that they are always the responsibility of another group of teachers, or that they are always delivered in another location, the term alternatively structured curricular programmes could be used.*

Section 4

This section of the draft Code sets out what the Act has to say about supporting families and young people, mediation, etc. See also the separate policy paper (Additional Support Needs - 06) sets out proposals for dispute resolution; and the draft regulations on changes in school education (Additional Support Needs — 05).

1. What do you think about what the Code says about taking the views of children and young people?

- *We fully endorse the view that there are tremendous advantages and benefits to be gained from including children and young people in the planning process.*
- *The Code of Practice should recognise that professionals very often work (i) with children and young people who have such difficulties that they have only a partial understanding of the problems they face and the needs they have, and (ii) with others who do not lack capacity and still may underestimate or overestimate their abilities or their level of need or otherwise dissent from the professional's judgement.*

2. What do you think about what the Code says about supporting parents?

- *The Code of Practice should address the issue of non-compliant, uninterested or disengaged parents/carers.*

3. What are your views on the section on mediation?

- *Arrangements for the selection, training and support of mediators must be quality assured, with nationally determined standards. .*

- *Consideration should be given to reporting mechanisms for mediators and for the sharing of good practice among authorities.*

4. Dispute resolution

The dispute resolution paper Additional Support Needs — 06 contains some further questions which focus on dispute resolution. See page 14.

- **SEE BELOW FOR GROUP RESPONSE TO THIS PAPER**

5. Draft Regulations on changes in school education

Consultation paper, Additional Support Needs — 05 sets out some further questions — see page 13.

- **SEE BELOW FOR GROUP RESPONSE TO THIS PAPER**

Section 5

This section of the draft Code refers to issues not covered elsewhere, for example, placing requests, publishing information, etc. See also the separate policy paper, (Additional Support Needs -07)

1. What are your views on the guidance on placing requests?
 - *The guidance is extensive and explicit.*
 - *Nevertheless, paragraph 17 (page 68) needs further clarification in plain English as do the workings of the Additional Support Needs Tribunal in general which is referred to in the paragraph.*
2. What other issues, if any, do you think should be included in this section?
 - *This question is akin to the 'how long is a piece of string?' variety and is an indication that a Code of Practice should be - to some extent - a dynamic document subject to pre-determined, periodic review.*
3. Policy paper, Additional Support Needs — 07 sets out some questions on what information an education authority should publish. See page 15.
 - **SEE BELOW FOR GROUP RESPONSE TO THIS PAPER**

Other Appropriate Agencies [Additional Support Needs- 03](#)

The Act specifies NHS Boards and social work services as other appropriate agencies. The Policy paper Additional Support Needs 03 sets out proposals for additional agencies to be added to the appropriate agency list (s 23 (2)). The paper also sets out proposals for timescales for agencies to respond to requests for help from an education authority. The paper asks:

1. What are your views on the voluntary sector being specified as an appropriate agency?

- *This is entirely appropriate. A non-exhaustive list of examples of voluntary sector agencies working at national and local levels to support children, young people and their families in the various aspects of their lives under the five factor headings (page 20) would include:*

*National Children's Homes
Barnardo's
Sense
National Deaf Children's School
National Autistic Society
Scottish Society for Autism
Young Carers Partnership
Parent-to-Parent
Guide Dogs for the Blind
Royal National Institute for the Blind
AFASIC
Riding for the Disabled*

2. Are there any other organisations which should be considered? If so, why?
 - *Private providers who will bring expertise and resources (e.g. Fairbridge)*
 - *Other local organisations jointly funded through Health, Education and/or Social Work.*
 - *Partner providers in pre-school education*
3. Are there any other agencies which might be in a position to provide information to education authorities to help them with establishing whether a child or young person has additional support needs, or additional support needs requiring a Co-ordinated Support Plan?

*Social Work
Community Education Services
Child Protection Committee
Children's Panel
Police
The Further Education sector
'Who Cares? Scotland'*

4. Are there any other agencies which should be identified who may be able to provide information on the occurrence of certain events?
 - *All of the above*
5. Are there any other agencies which could help in the exercise of functions under the Act?
 - *All of the above*

6. Is the time limit suggested for other agencies to comply with requests for help realistic? If not, what would be more realistic?
- *The Code of Practice needs to be more specific about the terms 'compliance' and 'response' with respect to this section.*
 - *The timescale raises parental expectations which might be unreasonable and - for some agencies - impossible to meet depending on the level of response required, other demands being placed on the agency, and the resources at the disposal the agency.*
 - *What constitutes a request for help will vary considerably in terms of complexity and therefore in the time it takes to comply.*
 - *On the one hand, it will be very difficult - if not impossible- for some partner agencies to complete a response within the six weeks if the request refers to a previously unknown child or young person. On the other hand, an agency could well respond very quickly if the child and family are already known and work has already been carried out by the agency with respect to the child and family.*
 - *The eventually agreed time limit should begin from receipt of the request and not from the time the request is sent from the education authority.*
7. What are your views on the time limit exceptions?
- *These are appropriate.*
8. Are there any other situations where it could be impracticable to comply within 6 weeks?
- *Please refer to Q6 above.*
 - *Again this question is of the 'how long is a piece of string?' variety. There is a universe of potential reasons where it would be impracticable to comply within six weeks ranging from the prevailing shortage of staff in key agencies such as Social Work and Nursing, staff illness, seasonal holiday timings, bereavement, and non-co-operation of parent/carer or young person to name but five.*

Co-ordinated Support Plan Regulations [Additional Support Needs- 04](#)

The Regulations set out the proposed form and content of the CSP, the time limits to be complied with in preparing and reviewing the CSP, the keeping, the transfer, disclosure and discontinuance of the CSP. The paper asks:

1. Do you think the 12 week time limit is realistic and achievable for preparing a CSP, and b) reviewing the CSP? If not, what would be more realistic?
- *The currently stated draft position is that 'the time limit starts from the date the education authority informs the child's parents or the young person of their intention to establish whether the child or young person requires [...] a CSP'. This statement would be clarified greatly if the wording is amended as follows:*

'the time limit starts from the date the education authority **formally** informs the child's parents or the young person **in writing** of their intention to establish whether the child or young person requires [...] a CSP'.

- *As no provision is made within the proposed timetable for the consideration of a draft form of the CSP by those involved, we propose that, in order for this to be accommodated, the time limit is raised to 16 weeks.*

2. Are there any other grounds of impracticability which should be included?

- *Not as far as we can judge at this stage.*

3. Should the Regulations specify a further time limit if the 12 week one cannot be complied with? If so, what timescale should be set?

- *We suggest that a further 12 weeks is set as a maximum i.e. (taking into account our previous proposal to extend the initial 12 weeks to 16) 28 weeks in total.*

4. Is the 4 week timescale for the transfer of the CSP to another authority reasonable? If not, why and what would be reasonable?

- *If this refers only to the administrative task of physically or electronically transferring an existing CSP to another authority, we feel this is reasonable.*
- *If, however, there is an implicit expectation that the receiving authority would implement the CSP within the 4 week limit, this is wholly unreasonable.*
- *A receiving authority would have to be given an appropriate length of time to establish whether the resources available to it and its partner agencies can match or supersede what was made available within the incoming CSP by the previous authority and its partners.*
- *As this is to all intents and purposes a new CSP for the authority, a period of twelve weeks from receipt of the incoming CSP to completion of a revised version in line with locally available resources and partnerships is not unreasonable.*
- *It would be important for parents/carers and young people to realise that equality of provision between authorities cannot be guaranteed.*

5. Are there any other people or organisations which should be added to the list of people to whom the CSP can be disclosed without permission?

- *All agency representatives who are involved in providing continuing and direct support for the individual child or young person.*
- *The education authority and partner agencies must develop an agreed policy on disclosure of information.*

- *The links between the CSP and the forthcoming national integrated assessment framework must be clear and understood by all contributors as must the articulation of the CSP with the Individualised Educational Programme and personal learning planning **and** all other plans simultaneously in force to support a child or young person and his/her family (e.g. Care Plans, Anti-Social Behaviour Orders).*

6. Are the proposals for discontinuance, preservation and destruction of the CSP reasonable? If not, can you suggest an alternative?

- *There must be well organised and effective administration procedures which stipulate how many copies of the CSP are in circulation, who will hold a copy of the CSP, how CSPs are to be stored and - if stored electronically - transmitted.*
- *Similarly the discontinuance, preservation and destruction should be uniformly administered. This may cause problems where different public bodies have differing standards for the retention of data. Health authorities, for instance, hold a patient's records until s/he reaches the age of 25 - well beyond the proposed five-year threshold for education authorities.*

7. How user friendly is the CSP template?

- *As a summative record of planning discussions and decisions, the proposed CSP form is a user-friendly document.*
- *As a high-level administrative document, it will serve the purpose well.*
- *It is less useful as a dynamic plan for learning because of its static nature and annual review period. The working document must remain the IEP. The section titled 'Learning Plan' should be revised to become a statement of identified need/s, the contributing agency, and the nature and objective of its contribution/s.*
- *There is currently no notion of the planning context into which the learning plan is supposed to fit.*
- *There is nowhere on the form - as it is currently drafted - to record the identified need/s of the child or young person, only the factors which give rise to additional support needs.*

8. Do you think that the CSP will be easily understood used readily by everyone involved? If not what suggestions for improvements are there?

- *If the form is universally used throughout Scotland in a common format, then it will become a nationally recognised and understood document. However, there are some significant alterations we think should be made.*
- *Parental details: as one of our implementation group commented, there are two spaces for parental information. In the modern school, two is possibly the least frequent number of parents/carers involved with children with significant*

support needs. There appears to have been a naïve assumption about the structure and nature of families at play in the design of the document.

- *In the section 'Social Work Contact', we question why only the social work contact is asked for here. Why not the Health Visitor, the GP, for example?*
- *The 'Profile' section seems to be separate from 'factors giving rise to additional support needs'. Surely, these would form a significant and inherent section within a 'Profile'.*
- *Please refer to the previous comment on the section titled 'Learning Plan'*
- *What is not clear from the consultation paper is whether a CSP can have electronic form. If this **is** the case, there must be guidance for users on its use, its security and its dissemination. Electronically formatted documents - although highly useful - tend to be more easily spread and consequently less secure than paper documents.*
- *If the inclusion of a learning plan indicates a desire on the part of the Executive to have it operate as a dynamic, working document, there needs to be a place where the date of the updated operating version is recorded and signed by whoever updates or otherwise amends it.*

9. How do you see the CSP, particularly the information contained in the Learning Plan, fitting with existing planning mechanisms?

- *We refer to the points made previously.*
- *Of particular concern is the apparent perception that the CSP will replace the IEP as a working document. This is emphatically not the case in its current draft guise and with the draft guidance. The IEP must continue and more work needs to be done on how the CSP will dovetail with the IEP.*

10. Is there any other information you think should be included in the CSP?

- *Given the previous answers, it is obvious that we see the CSP as being supplemented by an IEP where more detailed, immediate information will be stored and periodically amended as short-term targets are overtaken.*

Changes in School Education Regulations [Additional Support Needs-05](#)

The draft Changes in School Education Regulations make provision to require certain action to be taken by education authorities when a child or young person, with additional support needs and for whose education they are responsible, is or is likely to have a specified change in their school education.

1. What are your views on the definition of a change in school education and circumstances that may arise?
 - *We accept the definition of 'expected change' in school education as referring to those planned and inevitable transitions between stages of schooling which apply to the general school population as a whole.*

2. Are there any others which need to be included?
 - *See previous answer*
3. What are your views on the timescales both for seeking and providing information?
 - *It is felt that while the timescales are adequate - provided efficient and clearly understood jointly agreed and implemented local planning processes and structures are in place - at the primary and secondary school stages, there will be problems which arise when difficulties in pre-school-aged children have either (i) not manifested themselves, (ii) resolved themselves (because of developmental factors) or (iii) been diagnosed until beyond the stipulated deadlines.*
 - *Twelve months of a child's life at age two is a huge span of time in relative terms between that child entering and leaving pre-school provision when compared to a child progressing through seven years of a primary school. This could place unnecessary burdens which run counter to the developing needs of these children and which could be rendered overly complex and bureaucratic and lead to consequent unhelpful and undesirable delays.*
4. Can the timescales be applied to all changes in school education allowed for in the Regulations? Particularly in relation to children about to enter pre-school (those aged 3 and 4)?
 - *See previous answer*

Dispute resolution [Additional Support Needs-06](#)

Policy paper Additional Support Needs-06 sets out proposals for a dispute resolution model aimed at resolving disputes, regarding any of the functions of the authority under the Act, which arise, between the authority and any parents or young people in the local authority area. The paper asks:

1. What are your views on the proposed dispute resolution model?
 - *We wholeheartedly and unanimously support the process of mediation as described in the Act and the Code of Practice seeing this as a positive step forward for all parties.*
 - *We are concerned that the presence of a separate level of dispute resolution will result in parents regarding participation in mediation as a necessary but **less important** step towards dispute resolution.*
 - *There has to be absolute clarity of the different roles of dispute resolution processes and the Additional Support Needs Tribunal. The fact that these are distinct and, furthermore, different from mediation services contains the germ of confusion for members of the public. Indeed, it seems from the paper that the Executive has no clear vision of what dispute resolution will look like.*
 - *Whatever model is ultimately in place, there are no doubt cost implications and yet dispute resolution is to be provided free of charge. This cannot be a cost-neutral exercise.*

- *If formal appeal routes as described in paragraph 10 of the consultation paper are implemented, then it is unlikely that dispute resolution procedures will result in an outcome which satisfies all parties. What it does mean is that even more time will pass with the potential that the child or young person's need/s will not be adequately addressed because a breakdown of trust between various parties is preventing forward momentum.*
 - *We are concerned, moreover, that the very existence of a supplementary bureaucratic layer of 'resolution' could actually present parties with a disincentive to come to an accommodation at an earlier phase of the process.*
 - *If parents/carers or young people are led to believe - as implied, at least, within paragraph 9 of the consultation paper - that dispute resolution could result in increased staffing or the provision of additional resources, then it may be perceived by them to be inimical to their interests to come to an agreement at an earlier stage. This could result in unrealistic expectations which education authorities quite simply cannot meet from the public purse.*
2. What are your views on who should be external independent adjudicators and how should the process operate?
- *We do not believe there should be external independent adjudicators who, by definition, are not accountable for the consequences of decisions which could result in significant additional expenditure by the education authority to the detriment of the education services it provides.*
 - *All other agencies can opt out at any point in the process if providing support to the education authority is incompatible with their own functions or unduly prejudice their carrying out their functions.*
 - *Inevitably, decisions which go against the parent/s or the young person will be appealed - they have nothing to lose. Just as inevitably, the education authority will appeal decisions which go against it. Its case will have been based on how it can support the child or young person within the given resources available. To accept without appeal a decision which means that existing policies, agreements, strategies are called into question could leave an education authority extremely vulnerable to significantly increased costs. Education authorities have a duty to ensure all children receive adequate resources within an environment where costs are potentially infinite but finance available is finite.*
3. What are your views on a maximum timeframe of 8 weeks? If you do not think this is appropriate, what other timescale would you suggest?
- *Given our previous responses, it is clear that we do not support this form of dispute resolution but would clearly work towards ensuring that the structures and processes work as well as possible, our clearly expressed reservations notwithstanding.*
 - *Nevertheless, we are asked to contemplate a further delay of two months - bearing in mind these disputes could be about modes, levels and intensity of intervention and support for children as young as four or five. This will, in our view, inevitably stretch further in cases where appeal processes are brought*

into play. Remember that this is the final stage of a 5 or 6-stage development. The following is not an impossible scenario under these proposals.

Stage 1 - *Disputes occur at school level - these are not spontaneous and could fester for a period of time*

Stage 2 - *Likely review of decisions and proposals at school - dispute continues*

Stage 3 - *Authority level intervention - changes to initial school-based proposals for intervention and support will be proposed and acted upon but further disagreement surfaces*

Stage 4 *Formal authority-level intervention - report by education officer not accepted by parent/carer or young person leading to continued dispute*

Stage 5 - *Mediation fails to resolve the dispute*

Stage 6 - *Dispute resolution results in an adjudication which is regarded as unsatisfactory by either party*

Stage 7 *Appeal*

- *In the meantime, potentially, a child or young person needs are not being addressed and a climate of separation and mistrust grows.*

Publication of information [Additional Support Needs-07](#)

Policy paper Additional Support Needs-07 invites comments on guidance around issues on which authorities must publish information in respect of additional support needs.

It asks:

1. Are there matters, other than those in the policy paper, on which you think authorities should publish information?
 - *No*
2. Is a 3 month timescale from commencement of the Act realistic for publishing information? What are your views on the annual review timescale? Would a specific date be better?
 - *We think the 3-month timescale is reasonable given the amount of pre-commencement notice that has been given on this subject.*
 - *We think that the annual review timescale is appropriately judged.*
 - *We see no reason for making this uniform throughout Scotland by the provision of a specific date. Fixing the publication of information to the first day of an education authority's summer term allows for local flexibility.*
3. Are there any other alternative forms that could usefully be added to the list?

- *DVD provides a sophisticated and accessible presentation format. The increasing availability of very cheap and proficient DVD players/recorders means that, in homes where there may be no computer, DVDs are a very useful and cheap way of providing information and can contain combinations of documents, graphic and photographic images, and 'movie' formats. For those with access to a computer, DVDs can include PC-compatible software with links to relevant local, national and international websites. DVDs can also be subtitled in a variety of languages allowing greater flexibility of use.*
- *Websites*
- *Discussion boards*
- *Internet-based newsgroups*

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name: Jim Gibson,
Education Officer (Access and Inclusion)
Chair, Additional Support Act Dundee Implementation Group

Postal Address:
Education Department, Floor 8, Tayside House, Crichton Street, Dundee, DD1 3RJ

Consultation title: Consultation on Additional Support for Learning Act draft Code and associated materials

1. Are you responding as: (please tick one box)
- (a) an individual (go to 2a/b)
- (b) **on behalf of** a group or organisation x (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on the SE website)?

- Yes (go to 2b below)
- No, not at all

2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees *will be* made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes x
- No

SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No