

From: **Roger Gough, Cabinet Member Education and Health Reform**
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To: **Education and Young People's Services Cabinet Committee**
11 May 2016

Subject: **Special Educational Needs and Disability (SEND) Mediation and Disagreement Resolution Services**

Classification: **Unrestricted**

Past Pathway of Paper: **None**

Future Pathway of Paper: **None**

Electoral Division: **All**

Summary: This report provides an update on the how the County Council is fulfilling its statutory duties in relation to the provision of Special Educational Needs and Disability (SEND) Mediation and Disagreement Resolution Services.

The County Council's single service model for disagreements about education, health or social care been recognised as good practice and the procurement approach lead a collaboration with fifteen other Local Authorities in the South East Region as well as Kent's seven Clinical Commissioning Groups (CCGs).

Whilst there has been a positive increase in take up of the service in 2016, this will increase costs and necessary management action is in monitor local arrangements to resolve disputes earlier.

Recommendations

The Committee is asked to note the progress in ensuring an effective statutory compliant service is delivered.

1. Introduction

- 1.1 The Children and Families Act 2014 (Part 3) which came into force in September 2014 introduced a new duty on each Local Authority (LA) to provide Independent Mediation, Mediation Advice and Disagreement Resolution Services. Previous legislation set out a duty to consider mediation; this is a new duty means the Council must mediate when requested to do so.
- 1.2 As well as parent(s)/carer(s) of children with special education needs and disabilities (SEND), young people with SEND can now access this service.

- 1.3 In December 2014, the Education and Young People's Services Cabinet Committee endorsed the decision to enter into joint commissioning arrangements for delivery of Mediation and Disagreement Resolution Services and award a contract to the preferred bidder as identified by the tendering process.
- 1.4 The County Council led a collaborative approach with fifteen other Local Authorities in the South East Region (listed as appendix a) as well as Kent's seven Clinical Commissioning Groups (CCGs), from developing the initial tender through to contract award. Kent co-chairs the regional group and is responsible for contract compliance.
- 1.5 The model which the County Council has put in place has been recognised as good practice; a single service for parents who do not feel their views about education, health or social care have been heard or who are considering an appeal, the option to have a joined up mediation across all three agencies. Whilst there is a legal duty to offer mediation, this innovative approach with other local authorities also brokered arrangements which can be directly accessed by Kent's settings and schools.
- 1.6 Disagreement resolution services are available:
 - Between parent(s)/carer(s) of children with SEND or young people with SEND and Clinical Commissioning Groups (CCGs) or Local Authorities about health or social care provision during Education, Health and Care needs assessments, while Education, Health and Care (EHC) plans are being drawn up, reviewed or when children or young people are being reassessed
 - To all young people with SEND or the parent(s)/carer(s) of children with SEND that have a disagreement with the School, early years provider or college about the special educational provision made for a child or young person, whether they have Education Health Plans or not
 - Between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, further education institutions or the proprietors of academies (including free schools), about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not.
 - To support Local Authorities and Health commissioning bodies to resolve disagreements in relation to the drawing up of Education Health and Care plans.
- 1.7 The contractual arrangements comprise two distinct parts
 - A core subscription service to provide the telephone information line, issue of certificates, operational infrastructure, information materials
 - A 'Pay As You Go' (PAYG) service for the provision of mediation and disagreement resolution meetings, including all tasks such as making the arrangements within statutory timescales, production of pre and post mediation documentation and venue costs
- 1.8 The 3 year contract started on April 1st 2015 and has an option to be extended by one year twice or 2 years once.

- 1.9 The provider of these services is Global Mediation
<http://www.globalmediation.co.uk/our-services/education/special-educational-needs-and-disability>

2. First year evaluation

- 2.1 The new legislation offered a right of appeal to young people as well as their parents and the age range has been extended up to 25 years. This has increased demand. In addition, Voluntary organisations and Independent Support groups are actively promoting the use of mediation to resolve disagreements. Widespread publicity is resulting in an increased level of requests for mediation.
- 2.2 The numbers of mediations requested has been significantly higher than was expected. In the South Kent area alone there have been 19 requests for mediation between in the first quarter of 2016 (January 2016 to April). This compares to the year prior to the legislation being implemented, where there were 7 mediations across the whole county. As well as the increased cost for mediation, this has an impact on workload of officers undertaking assessments.
- 2.3 In total 43 mediation requests have been received since September 2015; 11 cases proceeded to Tribunal.
- 2.4 There were 209 appeals to the Tribunal in the period September 2014 to August 2015, which was a reduction on the previous year total of 279. In the first half of the academic year 2015-16 the number of appeals has dropped significantly and although the cumulative total for the year excludes phased transfers where appeals against decisions can be appealed until June, it at this stage we are forecasting a further year on year reduction.
- 2.5 In May 2015, the County Council and its Health Service partners participated in a pilot inspection with Ofsted and CQC as part of their arrangements to develop a framework for implementation of the SEND reforms. Feedback from visiting Inspectors indicated the contractual arrangements were an area of strength and good practice.

3. Financial Implications

- 3.1 Kent's annual core subscription service is £7,200
- 3.2 In relation to the PAYG service, the contractual arrangements include volume discounts which mean that when a pre-determined threshold is reached in terms of the number of mediations which have taken place, discounts will apply. Whilst the combined numbers of mediations purchased by the collaborate group of authorities has reached a threshold which means the cost of each mediation is now £200 lower (from £1,000 to £800), the volume of mediations requested has had a significant financial cost which must be met from within the existing SEN Service budget.

- 3.3 Whilst Mediations are expensive, the cost of Mediation is less than the cost of an Appeal in terms of both Officer time and the financial burden.

4. Local arrangements for earlier dispute resolution

- 4.1 The County Council is working hard to reduce demand and has developed its own less formal disagreement resolution systems. Officers now offer a 'Ways Forward' meeting to parents and carer or young person if it declines to agree a request for a statutory decision. This has been welcomed by the Kent Carer Parent Forum and recognised as less stressful for families as it often leads to quicker resolution of their concerns than an appeal route though the SEND Tribunal.
- 4.2 The take up of Ways Forwards meetings was initially slow – less than 50 across the County in the first year of the SEND reforms (September 2014 to August 2015). However, in the second year, since September 2015 more than 110 Ways Forward meetings have taken place.
- 4.3 Since September 2015, 111 ways Forward meetings have been held. This compares with 43 mediation requests in the same period.
- 4.4 Through direct face to face statutory assessment meetings (SAMs) with parents we are explaining our criteria, levels of service and any choices. SAMs provide parents with the opportunity to influence decisions and 'co-produce' Education, Health and Care Plans (EHCP). Parents can be confident that these face to face meetings will let them know what they can reasonable expect.
- 4.5 Very recent changes to the way in which decisions are made in relation to initiating a statutory assessment and the decision as to issue an EHC Plan or not have been designed to upskill officers in relation to their understanding of the decision making process and the Law. This enables them to be clearer about the reasons for such decisions during the Ways Forward meeting and ensure officers are able to signpost families to services available to those settings such as LIFT and High Needs Funding.
- 4.5 Kent has been selected by the DfE as a pilot area to test new arrangements for Tribunal appeals which are expected to come into force in 2017. This pilot gives Kent families extended rights of appeal against health and care elements of their EHCP although the decisions will be recommendations rather than be legally enforced. This approach means that we are offering Kent families a joined up approach to mediation and a single right of appeal if they remain unhappy about the provision for their child.

5. Equalities implications

- 5.1 The service provided is greater than that previously required as it now includes young people aged 16-25 as well as their parents and carers. It is anticipated that the expansion will impact positively on children and young people with

special education needs and disabilities and their parents and carers. The contract relating to this service has been developed to ensure that the individual needs of parents or carers of children as well as young people are able to be met. Mediators must have experience of working with young people with SEND. The service specification allows each member authority's social care, education and health teams to use this service. This means that if a parent or young person moves boundaries in the South East Region they will be able to contact the same service provider. It also specifies that the provider must make leaflets available in alternative language and venues must be accessible and local to the young person or their parent/carers

- 5.2 An equalities impact assessment was undertaken as part of the contractual arrangements.

6. Conclusions

- 6.1 The County Council's single service model for disagreements about education, health or social care been recognised as good practice and the procurement approach lead a collaboration with fifteen other Local Authorities in the South East Region as well as Kent's seven Clinical Commissioning Groups (CCGs).
- 6.2 Whilst there has been a positive increase in take up of the service in 2016, this will increase costs and necessary management action is in monitor local arrangements to resolve disputes earlier.
- 6.3 Kent County Council must continue to make arrangements for the provision of these services in order to be compliant with its statutory responsibilities

7. Recommendations

7.1 Recommendations

The Committee is asked to note the progress in ensuring an effective statutorily compliant service is delivered.

8. Background Documents

- 8.1 Children and Families Act 2014
<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

Link to the SEND Code of Practice:0-25
<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

9. Appendices

Appendix 1 – Mediation and Disagreement Resolution Services; Participating Local Authorities

10. Contact details

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Appendix 1

Mediation and Disagreement Resolution Services Participating Local Authorities:

Bracknell Forest	Buckinghamshire
East Sussex	Essex
Kent	Medway
Milton Keynes	Oxfordshire
1. Portsmouth	2. Reading
3. Southampton	4. Surrey
5. West Berkshire	6. West Sussex
7. RB Windsor and Maidenhead	8. Wokingham