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## Unexcused Absence: A Review of the Need, Costs, and (Lack of) State Support for Peer Mediation Programs in U.S. Schools

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## COMMENT

# Unexcused Absence: A Review of the Need, Costs, and (Lack of) State Support for Peer Mediation Programs in U.S. Schools

### I. INTRODUCTION

You might not have heard about peer mediation lately. You might not have heard about it at all. That's a problem. Peer mediation, though grossly underutilized, could be the potent and cost-effective answer to many of the problems facing U.S. schools.

As concerns continue to mount over school violence, alternative dispute resolution (ADR) practices have expanded beyond their traditional role and into a means of deterring violence among students.<sup>1</sup> Educators' concerns of school conflicts are valid: half of all violence against teenagers each year occurs "in school buildings, on school property, or on the street in the vicinity of a school."<sup>2</sup> As a reaction, various groups have attempted to apply principles and methods of ADR in schools in order to curb school violence. One example of such a program is Project Outreach, formed by the American Bar Association (ABA) "to reduce societal conflict and school violence through peer mediation programs."<sup>3</sup> Project Outreach was a rousing success. The program received the ABA Section Officers Conference Meritorious Service Award and has been praised by various local leaders, as well as former Attorney General Janet Reno and Supreme Court Justice Sandra Day O'Connor.<sup>4</sup> Because of this well-publicized support, and many other effective applications of schoolhouse ADR, states should be enacting legislation both requiring and advocating the use of ADR in the elementary and secondary schools within their borders. Sadly, this is not the case.

### II. WHAT IS PEER MEDIATION?

#### A. *Overview of Peer Mediation*

Peer mediation will seem very familiar to those already versed in the methods of ADR. In fact, peer mediation is based upon the classic premise of traditional

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1. See generally David W. Johnson & Roger T. Johnson, *Conflict Resolution and Peer Mediation Programs in Elementary and Secondary Schools: A Review of the Research*, 66 REV. EDUC. RES. 459 (1996).

2. Loren Podwill, Laura Farber, & James Wells, *When it Comes to Public Service and Pro Bono*, *TIPS Walks the Talk*, 37 BRIEF, Summer 2008, at 18, 19.

3. *Id.*

4. *Id.*

mediation that “right may indeed exist on both sides.”<sup>5</sup> Focusing conflict resolution on the equal value of each party’s position—with equal time, respect, and participation for all parties—often achieves a solution that is satisfactory to both sides of a conflict.<sup>6</sup> Peer mediation, as it is applied to schools, seeks to incorporate the tenants of mediation but has students serve as the mediators, instead of teachers, principals, or other authority figures.<sup>7</sup>

Training students to serve as mediators provides for a program that is more inclusive of and relevant to students.<sup>8</sup> Peer mediation accomplishes this goal by being a student-centered approach.<sup>9</sup> With this focus, peer mediation relies upon and reinforces a student’s natural sense of justice and fairness.<sup>10</sup> Students perceive mediation as a fair process, a particularly positive perception since children put a great deal of emphasis upon fairness.<sup>11</sup> Likewise, peer mediation focuses on the repair of damaged relationships; this is, more often than not, exactly what children want.<sup>12</sup> Overall, peer mediation assists students not only in understanding the situation and viewpoint of fellow students, but their own views and values as well.<sup>13</sup>

Peer mediation is about listening, asking questions, and getting students to develop new ways to work out their conflicts.<sup>14</sup> Peer mediation switches the focus from assigning blame, taking sides, or even giving advice, to staying in the middle, being fair, and listening.<sup>15</sup>

Peer mediation is about students helping one another resolve their conflicts.<sup>16</sup> One benefit of peer mediation is that the mediators are not adults.<sup>17</sup> This is productive, in large part, because of how adults often listen to children.<sup>18</sup> Adults tend to listen only enough to apportion blame and to decide who is right and wrong.<sup>19</sup> This results in two counterproductive occurrences. First, this method of listening focuses on taking sides in a conflict.<sup>20</sup> Second, this focus on taking sides results in students and children believing their thoughts, feelings, and opinions are not being heard.<sup>21</sup> This runs counter to a key element of mediation—active listening, which is where the mediator feeds back what the individuals have said without choosing

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5. Kelly Rozmus, *Peer Mediation Programs In Schools: Resolving Classroom Conflict But Raising Ethical Concerns?*, 26 J. L. & EDUC. 69, 72 (1997).

6. *Id.*

7. *Id.* It is interesting to note however, that due to the success that peer mediation has had in preventing and solving numerous disciplinary and peer-to-peer conflicts, some school districts are turning to mediation as a means to solve disputes among faculty, and well as between the parents. *Id.*

8. *Id.*

9. JERRY TYRELL, *PEER MEDIATION: A PROCESS FOR PRIMARY SCHOOLS* 18 (Marian Liebmann ed., Souvenir Press 2002).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 19.

15. *Id.*

16. *Id.* at 18.

17. *Id.*

18. *Id.* at 19.

19. *Id.*

20. *Id.*

21. *Id.*

sides, judging, or adding or taking away to what the individual has said.<sup>22</sup> Teaching children the skills of listening, understanding, and avoiding judgment not only encourages and empowers them to solve their own conflicts while in school, but it also enables them to carry these skills with them into adulthood.<sup>23</sup>

### *B. The Process of Peer Mediation*

Like most mediation programs, participation in peer mediation should be both voluntary and confidential.<sup>24</sup> The process begins with the student mediators' greeting the disputants and making them feel welcome.<sup>25</sup> This is followed by the mediators' checking that both disputants do indeed wish to mediate the conflict and that no undue influence from peers, parents, or teachers has influenced them in attending the peer mediation session.<sup>26</sup> After this, the participants establish ground rules both for the disputants and the mediators.<sup>27</sup> The mediators promise the disputants that they will not take sides; that they will keep the mediation as secret as they are allowed; and that they will not make the disputants do anything they do not want to do or that they feel uncomfortable doing.<sup>28</sup> During mediation sessions, students are encouraged to voice their concerns in a calm manner, which enables them to explain the reasons for their actions.<sup>29</sup> The disputants are then instructed in the rules that will apply to them, which usually include no swearing, no name-calling, no interrupting, and no blaming or accusing one another.<sup>30</sup> If any disputant or mediator violates these rules, everyone is instructed to remind the others of their agreement.<sup>31</sup> As a result, students are taught to resolve disputes in a peaceful manner and to tackle their problems "head on."<sup>32</sup>

Once the ground rules are laid out, the mediation process truly begins. First, one side will present his or her version of the conflict.<sup>33</sup> The mediators will then repeat it back so that the disputant feels that his or her side of the issue has been heard.<sup>34</sup> The other disputant will then repeat this process.<sup>35</sup> Afterwards, both disputants are asked to describe their feelings while being dissuaded from discussing their opinion of the other disputant.<sup>36</sup>

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22. *Id.*

23. *Id.*

24. Simone Marie Freeman, *Upholding Students' Due Process Rights: Why Students Are in Need of Better Representation at, and Alternatives to, School Suspension Hearings*, 45 FAM. CT. REV. 638, 647 (2007). This, however, is almost universally met with the caveat that confidentiality fails if the information revealed pertains to illegal or life threatening matters. *Id.*

25. TYRELL, *supra* note 9, at 20.

26. *Id.*

27. *Id.* at 21.

28. *Id.*

29. Freeman, *supra* note 24, at 647.

30. TYRELL, *supra* note 9, at 21.

31. *Id.*

32. Freeman, *supra* note 24, at 647.

33. TYRELL, *supra* note 9, at 21.

34. *Id.* at 21-22.

35. *Id.* at 22.

36. *Id.* at 23.

The next step is to identify both sides' issues for resolution.<sup>37</sup> This is most often accomplished by both sides listing the individual issues they feel need resolution.<sup>38</sup> Once these issues are identified, each disputant is offered the opportunity to speak privately with the mediators.<sup>39</sup> This could be an opportunity to privately share concerns, but more often than not, students will admit to some fact that they had denied or previously failed to disclose.<sup>40</sup>

Once both disputants have had the opportunity to share with the mediators their feelings and concerns, the mediation resumes with a brainstorming session.<sup>41</sup> Both disputants are encouraged to come up with many possible solutions, without comments on the quality or reasonableness of the suggestions, while the mediator writes the suggestions down.<sup>42</sup> The goal is for the disputants to develop a whole range of possible solutions to their problem.<sup>43</sup> After the brainstorming session, both disputants are entitled to reject solutions until a list that is acceptable to both remains.<sup>44</sup> Next, the disputants will engage in a bargaining process—or a give and take—until a final agreement is reached.<sup>45</sup> While it is possible that no agreement results, the mere fact that the disputants have agreed to mediate makes it more likely that they will continue the process until a suitable solution is found.<sup>46</sup>

The decisions that are rendered at peer mediation sessions are written by the students participating in the mediation.<sup>47</sup> As a result, students are able to better understand their obligations under the agreement, and they will be bound by their agreed-upon terms.<sup>48</sup> Additionally, many peer mediation programs allow for subsequent mediations should one party breach the terms.<sup>49</sup> This places the success of the individual mediation agreement—and as a result, the entire peer mediation program—solely in the hands of the participating students.<sup>50</sup> Peer mediation “empowers the students themselves with peacekeeping skills and decision-making power.”<sup>51</sup> And most importantly, it works.

### III. THE IMPACT OF PEER MEDIATION

#### A. *The Need for Peer Mediation*

Conflict among students is a common occurrence in schools.<sup>52</sup> However, the support for peer mediation programs from the students involved (both as media-

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37. *Id.*

38. *Id.*

39. *Id.* at 24.

40. *Id.*

41. *Id.* at 25.

42. *Id.*

43. *Id.* at 25-26.

44. *Id.* at 26.

45. *Id.* at 26-27.

46. *Id.* at 27.

47. Freeman, *supra* note 24, at 647.

48. *Id.*

49. *Id.*

50. *Id.*

51. MARY MEGGIE ET AL., CONFLICT RESOLUTION: A BLUEPRINT FOR PREVENTING SCHOOL VIOLENCE 99 (2001).

52. See Johnson & Johnson, *supra* note 1.

tors and disputants), from administrators, and from parents has been “overwhelmingly positive.”<sup>53</sup> Clearly, this demonstrates that the introduction of ADR, particularly peer mediation, has the potential to prevent teen violence before it ever occurs.<sup>54</sup>

Students and children within the United States, due to the deteriorating condition of U.S. schools, are at serious risk. Some experts have described U.S. schools as “sports dominated and clique driven, operating in a social culture distorted by the artificial popularity created by cliques and obscuring the educational focus of our nation’s schools.”<sup>55</sup> Such an environment creates feelings of isolation in many youths who do not “fit in.”<sup>56</sup> These feelings of isolation have been identified as one of the commonalities among those implicated in school shootings nationwide.<sup>57</sup> This risk factor and many others are avoidable, but in order to prevent this harm, parents, educators, and governments must take action.

The risks and harms facing millions of children are numerous; the most prevalent are laid out below. While it is true that there are more concerns than just school violence that peer mediation addresses, it is important to keep in mind, “Conflict does not always have to end in violence, but violence always begins with conflict.”<sup>58</sup> So, while it may not prevent all school violence, peer mediation can address much of the underlying conflict that spawns it.

There are currently an estimated 54.8 million students enrolled in pre-kindergarten through grade twelve in the United States.<sup>59</sup> Of these millions of students, the number of lives that peer mediation could touch, and the tragedies and conflicts that it could prevent, are staggering. Currently, crime rates are rising among juveniles.<sup>60</sup> For example, teenagers are now arrested for violent crimes more than young adults.<sup>61</sup> The violent death rate for teens between fifteen and nineteen is sixty-nine per 100,000.<sup>62</sup> Tragically, homicide is the second leading cause of death for people aged fifteen to twenty-four.<sup>63</sup>

From July 1, 2005, to June 30, 2006, there were seventeen school-associated violent deaths among students aged five to eighteen.<sup>64</sup> Additionally, during that time period, students aged twelve to eighteen were the victims of over 1.5 million non-fatal crimes at school, including thefts and violent crimes.<sup>65</sup> Ten percent of male students in grades nine through twelve, or 2.25 million students,<sup>66</sup> reported

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53. Rozmus, *supra* note 5, at 83; *see generally* Johnson & Johnson, *supra* note 1.

54. *Id.*

55. MEGGIE ET AL., *supra* note 51, at 10.

56. *Id.* at 8.

57. *Id.*

58. *Id.* at 98.

59. U.S. DEPT. OF JUST., BUREAU OF JUST. STATISTICS & NAT’L. CENTER FOR EDUC. STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2007 at iv (2008).

60. Rozmus, *supra* note 5, at 82.

61. *Id.*

62. *Id.*

63. *Id.*

64. U.S. DEPT. OF JUST., BUREAU OF JUSTICE STATISTICS & NAT’L. CTR. FOR EDUC. STATISTICS, *supra* note 59, at iv. Of these student deaths 14 were homicides and 3 were suicides. *Id.*

65. *Id.* Concerning the thefts, students were more likely to be the victim of a theft at school than away from school at the rate of 10 more thefts per 1,000 students for 2005. *Id.*

66. All references to the number of students are the calculations of the author, made by applying the percentages found in the statistics cited herein to the total number of students cited *supra*, note 59.

being threatened or injured with a weapon on school property in the past year; six percent of female students, or 1.6 million students reported the same;<sup>67</sup> six percent of students (3.2 million students) admitted to carrying a weapon to school in the past month.<sup>68</sup> Disturbingly, “almost half” of all students (27.4 million students) reported knowing another student they believe is capable of murder.<sup>69</sup> During the 2005-2006 school year, eighty-six percent of public schools reported one or more serious violent incidents, thefts of items valued at ten dollars or more, or other crimes at their school, amounting to an estimated 2.2 million crimes.<sup>70</sup> Finally, in 2005, forty-three percent of males (11.8 million students) and twenty-eight percent of females (7.7 million students) reported being in a fight in the past year.<sup>71</sup> Likewise, eighteen percent of males (9.9 million students) and nine percent of females (4.9 million students) reported getting in a fight while at school.<sup>72</sup>

In addition to the crimes and incidents of violence listed above, another area where peer mediation programs would have a profound impact is bullying. Every seven minutes, a child is bullied.<sup>73</sup> In 2005-2006, twenty-four percent of public schools reported that student bullying was a daily or weekly problem.<sup>74</sup> Twenty-eight percent of students aged twelve to eighteen (15.3 million students) reported being bullied at school during the previous six months.<sup>75</sup> Of those students, fifty-three percent (8.1 million students) said that the bullying happened once or twice during that period; twenty-five percent (3.8 million students) had experienced bullying once or twice a month; eleven percent (1.7 million students) reported having been bullied once or twice a week; and eight percent (1.2 million students) said they had been bullied almost daily.<sup>76</sup>

Often, this bullying goes unseen by adults. One study found that seventy percent of teachers believed they intervene “almost always” in bullying situations, but only twenty-five percent of students agreed with their assessment.<sup>77</sup> This lack of awareness leaves student-led programs such as peer mediation in a unique position to effectively address bullying.

And bullying must be addressed. Children who are bullied are “more likely than other children to be depressed, lonely, anxious, have low self-esteem, feel

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67. U.S. DEPT. OF JUST., BUREAU OF JUSTICE STATISTICS & NAT’L CTR. FOR EDUC. STATISTICS, *supra* note 59, at vii.

68. *Id.* at v.

69. The Ohio Resource Network for Safe & Drug Free Schools & Communities, *Statistics Prevalence*, <http://www.ebasedprevention.org/toolbox/bullying/statistics-prevalence> (last visited Dec. 29, 2009) (citing the U.S. Department of Justice recent crime and safety statistics).

70. U.S. DEPT. OF JUST., BUREAU OF JUSTICE STATISTICS & NAT’L CTR. FOR EDUC. STATISTICS, *supra* note 59, at v. “Serious violent incidents” includes rape or attempted rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon. “Violent incidents” include serious violent incidents plus physical attacks or fights without a weapon, and threats of physical attacks without a weapon. Overall, this figure translates into a rate of 46 crimes per 1,000 students enrolled. *Id.*

71. *Id.* at vii.

72. *Id.*

73. The Ohio Resource Network for Safe & Drug Free Schools & Communities, *supra* note 69.

74. U.S. DEPT. OF JUST., BUREAU OF JUSTICE STATISTICS & NAT’L CTR. FOR EDUC. STATISTICS, *supra* note 59, at vi.

75. *Id.*

76. *Id.*

77. The Ohio Resource Network for Safe & Drug Free Schools & Communities, *supra* note 69.

unwell, and think about suicide.”<sup>78</sup> These children are also at greater risk of depression and other mental health problems.<sup>79</sup> Bullying has also been linked to vandalism, shoplifting, truancy, school dropouts, fighting, tobacco, alcohol, and drug use.<sup>80</sup> Also, eight percent of students (4.3 million) miss one day of class per month for fear of bullies.<sup>81</sup> This translates into approximately 160,000 students missing school each day for fear of bullying.<sup>82</sup> This may be due in large part to the fact that eighty percent of arguments with a bully end up in physical fights and that, when a bullying incident occurs, adults intervene four percent of the time, peers intervene eleven percent of the time, and no intervention occurs in eighty-five percent of bullying incidents.<sup>83</sup> Finally, a study performed by the Secret Service on school shootings found that almost seventy-five percent of the attackers felt persecuted, bullied, threatened, attacked, or injured by others prior to the shooting.<sup>84</sup> Furthermore, revenge against these tormentors was chief among shooters’ motives.<sup>85</sup> The study went on to state that the “[a]ttackers described experiences of being bullied in terms that approached torment . . . of (being the victim of) behaviors that, if they occurred in the workplace, would meet the legal definitions of harassment.”<sup>86</sup> The promise of preventing these incidents lies within peer mediation programs that would greatly improve the health and safety of students.

### B. Research Regarding Peer Mediation

The need for intervention in U.S. schools cannot be denied. Initially, the means to achieving this goal were less than clear. However, research has demonstrated that the application of peer mediation in schools across the country could reduce school violence, prevent bullying, and enable students to perform better academically while also increasing students’ positive attitudes about school and themselves.

David Johnson and Roger Johnson examined the effectiveness of the Teaching Students to Be Peacemakers program.<sup>87</sup> This program heavily employs the use of peer mediation, and its results make a strong case for peer mediation and other conflict resolution education in U.S. schools.<sup>88</sup>

The Johnson and Johnson studies examined both urban and suburban primary and secondary students to address a series of nine questions about conflict resolution and peer mediation. The first of these questions dealt with how often students

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78. *Id.*

79. N.C. DEP’T OF JUVENILE JUST. AND DELINQUENCY PREVENTION—CTR. FOR THE PREVENTION OF SCH. VIOLENCE, SELECTED SCHOOL AND YOUTH VIOLENCE STATISTICS 7 (2007).

80. *Id.*

81. *Id.*

82. MELINDA LINCOLN, CONFLICT RESOLUTION COMMUNICATION: PATTERNS PROMOTING PEACEFUL SCHOOLS 62 (2002).

83. Ohio Resource Network for Safe & Drug Free Schools & Communities, *supra* note 69.

84. N.C. DEP’T OF JUVENILE JUST. AND DELINQUENCY PREVENTION—CTR. FOR THE PREVENTION OF SCH. VIOLENCE, *supra* note 79, at 7.

85. LINCOLN, *supra* note 82, at 63 (citing Sandra G. Boodman, *Teaching Bullies a Lesson*, WASH. POST, June 5, 2001, at HE-12).

86. *Id.*

87. RICHARD J. BODINE & DONNA K. CRAWFORD, THE HANDBOOK OF CONFLICT RESOLUTION EDUCATION: A GUIDE TO BUILDING QUALITY PROGRAMS IN SCHOOLS 103 (Jossey-Bass 1998).

88. *Id.*



engage in conflict and what the common sources of conflict are.<sup>89</sup> The findings indicated that “students were engaged in conflicts daily.”<sup>90</sup> The source of these daily conflicts involved possession of and access to resources, preferences over what to do, playground issues, taking turns, and physical and verbal violence.<sup>91</sup>

Johnson and Johnson also looked at how students managed their conflicts prior to being trained in mediation.<sup>92</sup> Before training, students generally “resolved conflicts by attempting to ‘win’ the confrontation by forcing the other disputant to concede.”<sup>93</sup> This would be accomplished by either attempting to overpower the other disputant or by having a third party, such as a teacher, resolve the conflict for them.<sup>94</sup> Johnson and Johnson further found that not only were students readily able to learn these new peacemaking skills, but students were also able to apply them to conflicts, both at school and in non-school and non-classroom situations.<sup>95</sup>

Johnson and Johnson also learned that given the option to engage in either the old “win-lose” conflict resolution or the new skills developed by their training in conflict resolution, the majority of students trained in conflict resolution applied their new skills when given the new opportunity, whereas untrained students would almost always rely on the old “win-lose” method.<sup>96</sup>

When mediation was integrated with a unit in English literature during the Johnson and Johnson studies, students learned mediation skills while studying a novel and then applied the skills to better understand the relationships between the characters.<sup>97</sup> After completing the novel, the students were tested and then re-tested again several months later.<sup>98</sup> The results indicated that the students who were taught mediation skills alongside the novel not only tested better following the completion of the novel, but also retained the information much better than the students who spent the same amount of time studying the novel without learning mediation.<sup>99</sup>

The Johnson and Johnson studies found that the application of peer mediation had a huge impact on student discipline problems.<sup>100</sup> First, the number of discipline problems that required a teacher’s involvement decreased by approximately sixty percent.<sup>101</sup> Second, and very encouragingly, the number of referrals made to school principals dropped by about ninety-five percent.<sup>102</sup>

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89. *Id.* at 104.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* Peer mediation advocates DeCecco and Richards found that students perceived over 90 percent of the conflicts they reported were either unresolved or resolved destructively. *Id.* at 103 (citing JOHN P. DECECCO & ARLENE K. RICHARDS, GROWING PAINS: USES OF SCHOOL CONFLICT (1974)).

95. This includes not only playground, lunchroom, and hallway conflicts but also conflicts at home. *Id.* at 104-105

96. *Id.* at 105.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

Finally, the Johnson and Johnson studies found that conflict resolution training led to more positive attitudes about conflict from the entire school community.<sup>103</sup> While those students who were untrained had resoundingly negative attitudes towards conflict, once trained, the students had much more positive attitudes.<sup>104</sup>

Even more encouraging, though, was the reaction from parents, teachers, and administrators. Across the board, they viewed the conflict resolution training as both helpful and constructive.<sup>105</sup> In fact, many parents whose children did not initially receive the training asked that their children receive it the following school year; some parents even went so far as to request the training for themselves so they could use it to improve conflict resolution within their own families.<sup>106</sup>

Other research also supports peer mediation and conflict resolution. For example, the Ohio School Conflict Management Demonstration Project indicated that most students who were trained in peer mediation improved their attitudes toward conflict, increased their understanding of nonviolent problem solving methods, and enhanced their communication skills.<sup>107</sup>

After initiating peer mediation and conflict resolution procedures, the Clark County Social Service School Mediation Program in Nevada saw a "reduction in the amount of conflict at the participating elementary schools and that the existence of the program helped prevent fights among the students."<sup>108</sup> Peer mediators at the school resolved eighty-five percent of conflicts successfully during the first year it was implemented.<sup>109</sup> Additionally, the peer mediators increased their conflict management skills, self-esteem, and assertiveness.<sup>110</sup> Finally, the number of teachers who spent less than one-fifth of their time on discipline decreased by eighteen percent after the program began.<sup>111</sup>

A mediation program instituted in a suburban Chicago high school also had positive results.<sup>112</sup> There, researchers found that peer mediation "is more effective than traditional discipline in reducing the number of interpersonal conflicts."<sup>113</sup> Also, peer mediation left a "majority of student mediators and disputants highly satisfied with all aspects of the mediation."<sup>114</sup>

The Resolving Conflict Creatively Program (RCCP) was established in four diverse school districts in New York City.<sup>115</sup> Researchers noted that "eighty-four

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 107 (citing TERRENCE WHEELER ET AL., CONFLICT MANAGEMENT IN SCHOOLS: SOWING SEEDS FOR A SAFER SOCIETY (1994)).

108. *Id.* (citing J. CARPENTER, CLARK COUNTY SOCIAL SERVICE SCHOOL MEDIATION PROGRAM EVALUATION REPORT (1994)).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (citing E.R. TOLSON ET AL., PEER MEDIATION AMONG HIGH SCHOOL STUDENTS: A TEST OF THE EFFECTIVENESS (1990)).

113. *Id.*

114. *Id.*

115. *Id.* (citing METIS ASSOCIATES, THE RESOLVING CONFLICTS CREATIVELY PROGRAM: 1988-89 SUMMARY OF SIGNIFICANT FINDINGS (1990)).

percent of teachers reported positive changes in classroom climate following the adoption of RCCP.”<sup>116</sup> Seventy-one percent of teachers also reported moderate or great decreases in physical violence at school, sixty-six percent reported less name calling or verbal putdowns, and ninety-eight percent said that the mediation gave students an important tool in dealing with conflicts.<sup>117</sup> Educators also reported “spontaneous use of conflict resolution skills on the part of children, increased self-esteem, a sense of empowerment, increased awareness of feelings and verbalizing of feelings, increased ability to see a situation from more than one perspective, more willingness to cooperate, greater acceptance of differences,” and an overall increase in “caring behavior.”<sup>118</sup>

Project S.M.A.R.T. (School Mediator Alternative Resolution Team) was used in several New York City high schools as a means of conflict resolution training.<sup>119</sup> The results of this included a decrease in suspensions for fighting from forty-six to seventy percent at each of the schools involved during the program’s first year.<sup>120</sup>

An evaluation report published by the New Mexico Center for the Dispute Resolution Mediation in Schools program found that teachers in schools adopting the mediation program in question reported “less violence and hurtful behavior” than teachers at schools that did not adopt the program.<sup>121</sup> The program also reported that teachers adopting the program were more likely to use “positive, non-coercive strategies” (particularly mediation) than were teachers who did not use the program.<sup>122</sup> As the program developed, the mediations became more student centered such that out of the 2,300 mediations resulting from the program, only 250 required adult intervention of some type.<sup>123</sup> Benefits gained by students trained in the program included a clearer definition of mediation; more understanding of conflict resolution strategies and skills; better understanding of the “win-win” goals; more specific and creative conflict resolution strategies; and higher levels of self-esteem, confidence, and positive feelings about school.<sup>124</sup> The program also reduced the amount of time school officials spent dealing with conflicts, as well as the number of violent incidents among students.<sup>125</sup>

The International Center for Cooperation and Conflict Resolution of Columbia Teachers College in New York performed research by training students at one of New York City’s alternative high schools.<sup>126</sup> Students at the school trained in conflict resolution improved in their conflict managing skills, increased social support, and experienced less victimization from others.<sup>127</sup> This led to increased

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116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* (citing JULIE A. LAM, *THE IMPACT OF CONFLICT RESOLUTION PROGRAMS ON SCHOOLS: A REVIEW AND SYNTHESIS OF THE EVIDENCE* (2d ed. 1989)).

120. *Id.*

121. *Id.* at 108 (citing S. CARTER, *EVALUATION REPORT FOR THE NEW MEXICO CENTER FOR DISPUTE RESOLUTION: MEDIATION IN THE SCHOOLS PROGRAM, 1993-94 SCHOOL YEAR* (1994)).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 108 (citing MORTON DEUTSCH ET AL., *THE EFFECTS OF TRAINING IN COOPERATIVE LEARNINGS AND CONFLICT RESOLUTION IN AN ALTERNATIVE HIGH SCHOOL* (1992)).

127. *Id.*

self-esteem and positive feelings of well-being, as well as decreased feelings of depression and anxiety.<sup>128</sup> “The higher self-esteem . . . led to a greater sense of personal control over their own fates, while the sense of personal control and well-being led to improved academic performance.”<sup>129</sup> The study also provided some indirect evidence suggesting that the students participating in the program performed better at work and were better prepared to enter the job market.<sup>130</sup>

The American Bar Association (ABA) Section of Dispute Resolution established the Lawyers Adopt-a-School Program at several schools in Montgomery County, Maryland.<sup>131</sup> Following one year of the program, the number of students referred to the principal’s office or other school authorities was “reduced from 384 to [sixty-seven], suspensions for disruptive behavior were reduced from [fifty-four] to [fourteen], and fights were reduced from [fifty-two] to [nine].”<sup>132</sup> As a result of this program’s success, it is being repeated nationwide.<sup>133</sup>

Further research demonstrates that students who are trained in the use of conflict resolution strategies, such as mediation, take their skills with them and apply these skills to all conflicts they encounter.<sup>134</sup> Participants in peer mediation programs have long advocated the benefits of peer mediation later on in life.<sup>135</sup> When programs are well run and adequately supported, many of them are successful as much as ninety-three percent of the time.<sup>136</sup> Additionally, research indicates that peer mediation programs result in improvements in the school environment and lower suspension rates.<sup>137</sup> Also, research suggests that the use of peer mediation results in an increase in positive attitudes towards resolving school discipline issues, a decrease in physical fights, and an increase in the self-esteem of the students participating in peer mediation.<sup>138</sup>

The ABA praises peer mediation because it “allows all parties to share in the responsibility for the conflict and the solutions.”<sup>139</sup> Also, while schools vary as to the types of incidents they allow to be handled by peer mediation, one of the key benefits is that it often allows schools to avoid serious discipline problems, including those leading to a student’s suspension or expulsion.<sup>140</sup> This is due, in large part, to the fact that peer mediators are called upon most often to handle instances of arguing, teasing, rumors, ongoing animosity between students, bullying, and conflicts between couples.<sup>141</sup> These are situations that when allowed to simmer,

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128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 110 (citing J. DABSON, INTERNAL REPORT: YOUTH AT RISK (American Bar Association 1994)).

132. *Id.*

133. *Id.*

134. See Johnson & Johnson, *supra* note 1.

135. Rozmus, *supra* note 5, at 83.

136. Freeman, *supra* note 24, at 647.

137. *Id.*

138. Rozmus, *supra* note 5, at 81.

139. Freeman, *supra* note 24, at 647 (citing ABA & Melinda Smith, *Mediation & the Child: Conflict Resolution for Children, Youth, & Families*, 3 DISP. RESOL. MAG. 11, 14 (1996)).

140. Janet Stidman Eveleth, *Teaching Children About the Law*, 39 MD. BAR J. 10, 15 (2006).

141. Linda Mealey-Lohmann & Eduardo Wolle, *Pockets of Innovation in Minnesota’s Alternative Dispute Resolution Journey*, 33 WM. MITCHELL L. REV. 441, 460 (2006); Rozmus, *supra* note 5, at 76.

can boil over into full-scale disciplinary problems, often erupting into violence if left unchecked.<sup>142</sup>

The research symposium conducted by the U.S. Department of Education and the Conflict Resolution Education Network in 2000 found that conflict resolution programs such as peer mediation created many positive results.<sup>143</sup> These include an increase in academic achievement, positive attitudes towards school, assertiveness, cooperation, communication skills, healthy interpersonal and intergroup relations, constructive conflict resolution at home and school, and self-control.<sup>144</sup>

Another strong example of the successes of peer mediation within a school comes from East Hartford High School in East Hartford, Connecticut. In the first year of implementation of peer mediation, the school's detentions and suspensions dropped from 2,570 to 1,438, a forty-four percent decrease.<sup>145</sup> This decrease came in the face of a seventy-five percent increase in the overall student body.<sup>146</sup> This in turn led to a school climate at East Hartford High that was described as safe and conducive to learning; additionally, students reported a greater sense of belonging, improved peer acceptance, improved anger management skills, and enhanced self-esteem.<sup>147</sup>

As these numerous studies indicate, peer mediation could address most, if not all, of the problems facing schools in regards to violence, academic success, and bullying. However, states have been slow to adopt these potentially beneficial procedures.

#### IV. PREVALENCE OF PEER MEDIATION

Due to the various levels, such as state, county, district, or even individual schools, at which peer mediation programs may be instituted, it is quite difficult to pinpoint the exact number of conflict resolution or mediation programs in existence nationwide or even how many states have schools participating in such a program.<sup>148</sup> Some studies suggest, though, that around 15,000 to 20,000 such programs are currently implemented in U.S. schools.<sup>149</sup> With about 130,400 primary and secondary school in the United States, this means that no more than fifteen percent of schools make peer mediation available to their students.<sup>150</sup>

Despite the positive results that peer mediation and other conflict resolution programs provide, state legislatures are still resistant to create statewide programs providing and/or requiring the implementation of such programs. A survey of statutes and administrative policies currently in existence supporting peer mediation shows that such support is often unfunded, resulting in scattershot programs instead of effective peer mediation programs nationwide. What follows is a com-

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142. Rozmus, *supra* note 5, at 70.

143. TYRELL, *supra* note 9, at 233.

144. *Id.*

145. MEGGIE ET AL., *supra* note 51, at 94.

146. *Id.*

147. *Id.*

148. Freeman, *supra* note 24, at 647.

149. *Id.*

150. U.S. Dep't of Educ., Inst. of Educ. Scis., *Fast Facts*, <http://nces.ed.gov/fastfacts/display.asp?id=84> (last visited Nov. 18, 2009).

prehensive list of those states and territories that offer some modicum of support for peer mediation programs.

Alabama has neither a statute providing direct funding nor mandates directed at providing peer mediation to students within its borders. However, one caveat of the Children's Trust Fund created from tobacco revenues is that it can be used as grant money for the implementation of peer mediation programs.<sup>151</sup> Likewise, the Alabama Supreme Court has established the Alabama Center for Dispute Resolution, Inc.<sup>152</sup> The Center is required to provide materials for school conflict resolution and peer mediation, including details about setting up such programs and the necessary curriculum and development resources.<sup>153</sup> The Center also is required to make presentations on peer mediation to school faculties, boards, and other interested groups.<sup>154</sup> The Center is tasked with training teachers, coordinating ADR programs with the Alabama Department of Education, and maintaining current information regarding conflict resolution and peer mediation strategies.<sup>155</sup> Finally, the Center must conduct conflict resolution and peer mediation programs at Alabama juvenile detention centers.<sup>156</sup>

Alaska provides no clear funding for establishing peer mediation programs. However, peer mediation or other conflict resolution programs and policies for implementing such programs are required for every school in Alaska.<sup>157</sup>

Arkansas requires that school discipline policies include provisions on prevention, intervention, and conflict resolution provisions, but it makes no specific mention of peer mediation.<sup>158</sup> Arkansas has also established the Arkansas Youth Mediation Program, based out of both University of Arkansas law schools.<sup>159</sup> The program is responsible for operating pilot projects offering mediation for disputes in schools and also for providing training and technical assistance to the primary and secondary schools that establish and operate their own mediation programs and incorporate conflict resolution education into the curriculum.<sup>160</sup>

California has multiple statutes dealing with peer mediation and conflict resolution.<sup>161</sup> Under the School Safety and Violence Prevention Act, for example, California provides a minimum of \$5,000 per school or \$10,000 per district, whichever is greater, to teach students non-violent conflict resolution and peer mediation techniques and to establish and support such programs in California schools.<sup>162</sup>

Colorado has created a law-related education program that strongly encourages schools in the state to instruct their students in various topics related to the law, including the use of mediation and conflict resolution.<sup>163</sup>

151. ALA. CODE § 41-15B-2.2 (West, Westlaw through end of 2009 1st Reg. and 1st Special Sess.).

152. ALA. R. OP. OF ALA. CTR. FOR DISPUTE RESOLUTION III (LexisNexis 2009).

153. *Id.* § B1.

154. *Id.* § B2.

155. *Id.* §§ B3-5.

156. *Id.* § B8.

157. ALASKA STAT. § 14.33.120(a)(7) (West, Westlaw through 2009 1st Reg. Sess. and 1st Special Sess.).

158. ARK. CODE ANN. § 6-18-502(c) (West, Westlaw through end of 2009 Reg. Sess.).

159. ARK. CODE ANN. § 9-31-404(a) (West, Westlaw through end of 2009 Reg. Sess.).

160. *Id.* § 9-31-404(b).

161. *See, e.g.*, CAL. EDUC. CODE §§ 32228-32228.5 (West, Westlaw through 2009 Reg. Sess.).

162. *Id.* § 32228.2(a).

163. COLO. REV. STAT. ANN. § 22-25-104.5(b) (West, Westlaw through 2009 Reg. Sess.).

Delaware provides grants to schools for the assistance of disruptive and troubled students to establish a variety of beneficial programs at the schools discretion.<sup>164</sup> Peer mediation programs are specifically mentioned as a possibility.<sup>165</sup>

Louisiana allows any public elementary or secondary school to instruct its students in peer mediation.<sup>166</sup> This instruction must be developed and approved by the state's Board of Elementary and Secondary Education.<sup>167</sup> Likewise, the Louisiana legislature permits teachers to refer students to peer mediation for disciplinary infractions.<sup>168</sup>

Maine instructs the Commissioner of the Department of Education to provide technical assistance to school administrators, teachers, and students for training that must emphasize peer mediation or conflict resolution.<sup>169</sup>

Mississippi requires its state Board of Education to develop a list of recommended peer mediation programs.<sup>170</sup> Additionally, local school boards are required to include at least one peer mediation program for teachers within their districts.<sup>171</sup>

The Basic Education Program requires the North Carolina State Board of Education to develop a list of recommended materials, models, and curricula that includes instruction in peer mediation.<sup>172</sup> Likewise, local school boards are encouraged to do the same.<sup>173</sup>

Peer mediation is a required part of the sixth grade curriculum in Pennsylvania schools.<sup>174</sup>

As a part of its Schools Against Violence in Education Act, Tennessee requires that peer mediation programs be included as an appropriate violence prevention mechanism.<sup>175</sup> Additionally, the Tennessee School Safety Center, established by the Tennessee Department of Education, is allowed to establish grants for local education agencies to develop peer mediation programs.<sup>176</sup>

Vermont requires that public and approved independent schools adopt and implement comprehensive plans to respond to student misbehavior.<sup>177</sup> These plans are required to include the manner in which the school will provide information and training to students in peer mediation.<sup>178</sup>

In order to prevent school violence and crime, school boards in Virginia are required to work with various parties in the community to develop such a program. The statute lists acceptable activities for the program, including peer medi-

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164. DEL. CODE ANN. tit. 14, § 1605(7)(b)(8) (West, Westlaw through 2009).

165. *Id.*

166. LA. REV. STAT. ANN. § 17:286 (West, Westlaw through 2008 Reg. Sess.).

167. *Id.*

168. LA. REV. STAT. ANN. § 17:416(b) (West, Westlaw through 2008 Reg. Sess.).

169. ME. REV. STAT. ANN. tit. 20-A, § 262 (West, Westlaw through 2009 1st Reg. Sess.).

170. MISS. CODE ANN. § 37-11-54 (West, Westlaw through end of 2009) (pending repeal in 2010).

171. *Id.*

172. N.C. GEN. STAT. ANN. § 115C-81(a4) (West, Westlaw through 2009 Reg. Sess.).

173. *Id.* § 115C-81(h1).

174. 22 PA. CODE § 4.83 (West, Westlaw through Nov. 2009).

175. TENN. CODE ANN. § 49-6-805 (West, Westlaw through end of 2009 1st Reg. Sess.).

176. TENN. CODE ANN. § 49-6-4302(c)(1) (West, Westlaw through end of 2009 1st Reg. Sess.).

177. VT. STAT. ANN. tit. 16, § 1161a(a) (West, Westlaw through 2009-10 1st Sess. & 1st Special Sess.).

178. *Id.* § 1161a(a)(2).

ation.<sup>179</sup> Also, Virginia has established the Virginia Center for School Safety.<sup>180</sup> Among its various duties, the Center is to serve as a resource and referral center for Virginia schools by conducting research, sponsoring workshops, and providing information regarding school safety issues; it specifically mentions peer mediation.<sup>181</sup>

The U.S. Virgin Islands have perhaps the strongest commitment to establishing peer mediation in their schools. The legislature established peer mediation in all schools in the U.S. Virgin Islands.<sup>182</sup> The approach the U.S. Virgin Islands adopted is known as the “Peaceable School” approach, which applies conflict resolution strategies to every part of the school.<sup>183</sup> One of the key requirements of this approach is the use of peer mediation to settle conflicts; it also follows the Illinois Institute for Dispute Resolution’s six-stage implementation approach regarding peer mediation programs within the school community.<sup>184</sup>

The Washington State Bar Association, the Office of the Superintendent of Public Instruction, and the Office of the Attorney General are required to work together to develop a volunteer-based conflict resolution and mediation program for use in public schools and various community groups.<sup>185</sup> The program uses lawyers to train students in peer mediation, who in turn train other students and work as mediators in a peer mediation program within their school or group.<sup>186</sup>

The West Virginia Board of Education has laid out a specific peer mediation plan, which it allows to function as a means of preventative discipline required under West Virginia law.<sup>187</sup> Additionally, in 1995, West Virginia studied the costs related to the implementation of statewide peer mediation, leading to the development of the Board’s optional peer mediation plan.<sup>188</sup>

## V. IMPLEMENTING PEER MEDIATION

There is really no excuse for the overwhelming lack of state support for peer mediation programs. Not only are peer mediation programs easy to implement, they are cost effective, as well. In order to implement a peer mediation program, a school must hire and pay a coordinator, train staff and students, and pay operating and evaluation costs.<sup>189</sup> The costs to implement a peer mediation program range from a few hundred dollars to well over \$40,000, depending on factors such as resources already available and the possibility of sharing expenses or personnel among a district or nearby schools.<sup>190</sup>

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179. VA. CODE ANN. § 22.1-279.9 (West, Westlaw through end of 2009 Special Sess. D).

180. VA. CODE ANN. § 9.1-184(A) (West, Westlaw through end of 2009 Special Sess. I).

181. *Id.* § 9.1-184(A)(2).

182. V.I. CODE ANN. tit. 17, § 761 (West, Westlaw through 2008 Reg. Sess.).

183. V.I. CODE ANN. tit. 17, § 763 (West, Westlaw through 2008 Reg. Sess.).

184. V.I. CODE ANN. tit. 17, § 767 (West, Westlaw through 2008 Reg. Sess.). *See also* V.I. CODE ANN. tit. 17, §§ 761-767 (West, Westlaw through 2008 Reg. Sess.).

185. WASH. REV. CODE ANN. § 28A.300.280 (West, Westlaw through end of 2009).

186. *Id.*

187. W. VA. CODE ANN. § 18A-5-1 (West, Westlaw through end of 2009).

188. W. VA. CODE ANN. § 18-2-5d (West, Westlaw through end of 2009).

189. RICHARD COHEN, STUDENTS RESOLVING CONFLICT: PEER MEDIATION IN SCHOOLS 82-83 (2d ed., Good Year Books 2005).

190. *Id.*



While the prospect of spending over \$40,000 on additional programming may sound daunting to a school administrator, it is important to consider these numbers in context. There are roughly 130,400 public and private elementary and secondary schools in the United States.<sup>191</sup> Let us assume that every single school will need to establish a peer mediation program and that the programs cost \$50,000 to implement. This would result in a total cost of roughly \$6.5 billion to implement a new peer mediation program in every school in the United States.<sup>192</sup> In perspective, such a sum is just a drop in the bucket. For example, state, federal, and local governments spent over \$508.2 billion on pre-primary through secondary education in fiscal year 2008.<sup>193</sup> Put another way, the costs to implement peer mediation nationwide would cost approximately \$119 per student.<sup>194</sup> Finally, schools are eligible to receive rather substantial public and private grants and other assistance in order to help pay for, if not cover entirely, the costs of peer mediation programs.<sup>195</sup>

Additionally, when the cost is compared with the potential savings provided by implementation, it seems ridiculous that peer mediation programs are not much more prevalent than they currently are. The most striking instance of these savings arises from the reductions in bullying and criminal behavior that peer mediation can bring about. Sixty percent of male bullies, compared to twenty-three percent of non-bullies, will be convicted of a crime by the age of twenty-four.<sup>196</sup> Even more startling is that forty percent of bullies, compared to ten percent of non-bullies, will have been convicted of at least *three* crimes by the age of twenty-four.<sup>197</sup> When this is combined with the fact that prevention of this criminal behavior would save the country between \$1.7 and \$2.3 million *per offender*, it seems possible that peer mediation could very well pay for itself.<sup>198</sup>

## VI. CONCLUSION

While achieving a peer mediation program in every school is an attainable goal, it is one that requires much more support from state governments. As demonstrated above, while several states (and at least one U.S. territory) encourage

191. U.S. Dep't of Educ., Inst. of Educ. Scis., *supra* note 150.

192. Bear in mind that costs for most all programs would drop significantly during the following years once initial start-up costs are invested.

193. Christopher Chantrell, *Federal State Local Public Spending United States 2008*, <http://www.usgovernmentspending.com/#usgs302> (last visited September 14, 2009).

194. This seems a pittance when considered with the fact that even the lowest total amount spent by a state (Arizona) each year per student is \$5346. The highest is the District of Columbia with \$17,449. NAT'L EDUC. ASS'N, RANKINGS & ESTIMATES (2008), available at <http://www.nea.org/home/29402.htm>.

195. This includes federal funds such as "No Child Left Behind" as well as many bar associations, such as the ABA, Kansas, Alabama, and Arkansas Bar.

196. JAMES ALAN FOX ET AL., BULLYING PREVENTION IS CRIME PREVENTION: A REPORT BY FIGHT CRIME: INVEST IN KIDS 10 (2003).

197. *Id.*

198. N.C. DEP'T OF JUVENILE JUST. AND DELINQUENCY—CTR. FOR THE PREVENTION OF SCH. VIOLENCE, *supra* note 79, at 11. With over 2.3 million individuals incarcerated and 7.3 million people either incarcerated, on probation, or on parole these savings could indeed be quite significant over time. See generally U.S. DEPT. OF JUST., BUREAU OF JUST. STATISTICS, PRISONERS IN 2007 (2007), available at <http://ojp.usdoj.gov/bjs/pub/pdf/ppus07st.pdf>.

some form of peer mediation or even directly help fund such programs, more often than not, states do nothing.

In order to reap the many benefits of peer mediation, states should not only provide funds to pay for the implementation of such programs but should mandate them as a part of the curriculum in every school within their borders. This mandate needs to be specific to peer mediation, instead of the broad conflict resolution and violence prevention statutes that currently exist. This direct support and demand for programs by state government sends the message to educators, administrators, parents, and students that peer mediation is something worth doing. Then, and only then, can the benefits that peer mediation promises be made available to students across the United States; they, as well as the rest of society, would all reap the rewards.

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