

ROOM FOR ME? – AN ANALYSIS OF WHETHER MEDIATION IS A VIABLE SOLUTION TO SCHOOL BULLYING

*Angelique Palmer**

Five-point-seven million, almost 30%, of youth in the United States either bully or are the target of bullying or both.¹ In fact, every seven minutes a child is bullied.² Widespread media coverage of bullying has raised public awareness of this troubling trend. In recent years there have been many instances of severe bullying covered by the media. Vast news coverage has impacted the way that people think about this problem, the way that courts are responding, and the way that lawmakers work to solve this problem in the legislature.³ As a result, and for a variety of other reasons, for the last decade or so bullying is at the forefront of concerns facing third millennial students, parents, educational systems, and communities.

Prior to the 1970s, American society did not consider bullying a significant problem.⁴ At that time, the attitude of most people was that students should toughen up, and that bullying was simply a part of life.⁵ In 1978, Dan Olweus published a study in the United States in the book *Aggression in Schools: Bullies and Whip-*

* Angelique Palmer is an Attorney, Mediator, and Adjunct Professor at The John Marshall Law School in Chicago, IL. Honors B.A., University of Toronto. J.D., Michigan State University College of Law. Angelique Palmer, Esq., has been selected as a 2014 AAA (American Arbitration Association) Higginbotham Fellow. Named after Judge A. Leon Higginbotham, Jr., a prominent African American civil rights advocate, author and federal appeals court judge, the program was created by the AAA to provide training and mentorship for the new generation of alternative dispute resolution professionals who demonstrate promise for an outstanding career as neutrals. I would like to thank my family, Lauren Beckford, and Nicole Dunbar for their support and encouragement.

¹ Jon M. Philipson, *The Kids are Not All Right: Mandating Peer Mediation as a Protective Anti-Bullying Measure in Schools*, 14 CARDOZO J. CONFLICT RESOL. 81 (2012) (citing Leah M. Christensen, *Sticks, Stones, and Schoolyard Bullies: Restorative Justice, Mediation, and a New Approach to Conflict Resolution in Our Schools*, 9 NEV. L.J. 545, 546 (2009) (citing the National Youth Violence Prevention Resource Center's Bully Facts and Statistics)).

² Matthew D. Decker, Comment, *Unexcused Absence: A Review of the Need, Costs, and (Lack of) State Support for Peer Mediation Programs in U.S. Schools*, 2009 J. DISP. RESOL. 485, 490 (2009).

³ Farley Anderson, *Pacifism in a Dog-Eat-Dog World: Potential Solutions to School Bullying*, 64 MERCER L. REV. 753, 757 (2013).

⁴ *Id.*

⁵ *Id.*

ping Boys.⁶ This book helped raise awareness about the problem of bullying in schools, and was the first to set forth a systematic intervention study that discussed the benefits of anti-bullying programming. Since this study, educators have conducted other large-scale intervention programs in schools, with no long-term success as the rate and severity of incidents only continued to raise over time.⁷

Over the past forty years, as a result of cutting-edge research and tragic events such as the Columbine massacre, bullying has been brought to the forefront of America's educational concerns.⁸ "The National Education Association estimates that 160,000 students avoid school every day for fear of being physically or emotionally abused by their peers under the not-so-watchful eyes of school staff."⁹ Bullying occurs not just within the walls of the school, but it can also occur anywhere bullies have access to their intended victims. With the wide spread use of modern communication technologies, bullies are prowling the cyber-world as well, in innovative and disturbing ways to intimidate, harass, and harm their victims anywhere, anytime, and virtually without limits.¹⁰

In light of escalating public attention to bullying and research findings that highlight its prevalence, negative consequences, and risk factors, educators, policy makers, and legal practitioners have focused their attention on the development of policies and programs to address the problem of bullying in our schools, and ultimately in our communities. Alternative dispute resolution practices have expanded beyond their traditional role and are being utilized as a means of deterring violence among students.¹¹

This Article will review recent efforts to utilize mediation as a solution to bullying, and evaluate whether common approaches to its use and implementation have proven to be an effective solution to the bullying epidemic. Part I of this Article provides an overview of bullying and the current state of the problem in America

⁶ *Id.* (citing DAN OLWEUS, *AGGRESSION IN THE SCHOOLS: BULLIES AND WHIPPING BOYS* (1978)).

⁷ *Id.*

⁸ *Id.* at 758.

⁹ Laurie Bloom, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut's Anti-Bullying Statute*, 7 *CONN. PUB. INT. L. J.* 105, 108 (2007).

¹⁰ John Dayton, Anne Proffitt Dupre & Ann Elizabeth Blankenship, *Model Anti-Bullying Legislation: Promoting Student Safety, Civility, and Achievement Through Law and Policy Reform*, 272 *EDU. L. REP.* 19, 22 (2011) (citing Stacy M. Chaffin, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 *HOW. L.J.* 773 (2008)).

¹¹ Decker, *supra* note 2, at 485.

today. Part II discusses the current legal climate and underlying motivations in legislative change and development. It goes on to offer a synopsis of the state of the law and the scope of its reach to address and remedy the problem of bullying. Part III offers an overview of efforts made by schools to implement programming to respond to and cure the problem of bullying. It also examines the findings and results in research development in response to programming that has been implemented to date, and whether the evidence shows that current efforts are providing an effective solution to the problem of bullying. Part IV assesses the results of empirical research over the last decade and a half and re-visits the question of whether mediation, mainly peer mediation, can still be considered the solution to the problem of bullying. Part V argues that mediation training and curriculum is an essential key to the solution of bullying, and contends for its broader use and implementation on a more uniform basis throughout schools. Part VI offers a brief conclusion.

I. BULLYING

Bullying goes on in almost every school and continues to be difficult for school administrators to control. Unlike normal relational conflict, it's really not conflict at all—it's an abuse of power where there is domination over another.¹² There is general agreement amongst researchers in the definition of bullying. Bullying is defined as:

aggressive behavior that (a) is intended to cause harm, (b) exists in a relationship in which there is an imbalance of power, and (c) occurs repeatedly, over time. The most common forms of bullying include the use of words (taunting, teasing) . . . but bullying also includes physical actions (e.g., hitting, kicking, shoving, or other forms of violence), and more subtle behaviors such as social exclusion or manipulation of friendships.¹³

Research indicates that bullying is a fairly common experience in American schools. In the United States approximately 166,000

¹² Mary Jo McGrath, *The Legal Status of Bullying: Peer Mediation vs. Safe, Responsive Adults*, MCGRATH TRAINING SYSTEMS, <http://www.mcgrathinc.com/Articles/LegalStatuBully2.html> (last visited August 22, 2013).

¹³ Susan P. Limber, *Efforts to Address Bullying in U.S. Schools*, 34 AM. J. HEALTH EDUC. S23 (2003).

children miss school every day to avoid bullying and harassment.¹⁴ That is almost the equivalent of all the students in Oregon and Washington missing school every day simply to avoid being bullied or harassed.

There are countless tragic stories and building empirical evidence of the consequences and ill effects of bullying and the increased violence associated with it.¹⁵ Those who bully are more likely to drop out of school, use drugs and alcohol, as well as engage in subsequent delinquent and criminal behavior.¹⁶ Children who are bullied tend to have higher levels of stress, anxiety, depression, illness, and suicidal ideations.¹⁷ For both groups, the resulting climate of fear becomes an obstacle to learning and self-development, which contributes to the breakdown of civil society.¹⁸ These negative consequences affect school culture, but also have negative spill over for the individuals involved, their families, and society at large.¹⁹

It has been shown that bullying is learned behavior.²⁰ These behaviors may be learned and reinforced in the cultural, societal, school, familial, or individual environment.²¹ But just as these behaviors can be learned, the inverse must also be true—they can be unlearned and healthier attitudes, approaches, and skill sets can be introduced, learned, and adopted.

¹⁴ Mediation Works, *Bullying Articles: Did You Know . . .*, <http://www.mediation-works.org/pg35.cfm> (last visited August 22, 2013).

¹⁵ Brenda Morrison, *Restorative Practices E-Forum - Restorative Justice and School Violence: Building Theory and Practice*, CENTER FOR RESTORATIVE JUSTICE, RESEARCH SCHOOL OF SOCIAL SCIENCES, AUSTRALIAN NATIONAL UNIVERSITY, (October 22, 2002), available at http://www.iirp.edu/pdf/morrison_bullying.pdf (last visited July 19, 2014).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Alice M. Frost, *An Abstract of a Dissertation, Bully Prevention, Peer Mediation and Conflict Resolution: Impact of Prevention Programs on Reducing School Suspensions*, DEPARTMENT OF SPECIAL EDUCATION, COUNSELING, AND STUDENT AFFAIRS COLLEGE OF EDUCATION, KANSAS STATE UNIVERSITY, 12 (2012).

²¹ *Id.* (citing D. Newman-Carlson & A. M. Horne, *Bully Busters: A Psychoeducational Intervention for Reducing Bullying Behavior in Middle School Students*, 82 J. OF COUNSELING & DEVELOP'T, 259–67 (2004)).

II. THE LEGAL LANDSCAPE

A. *The Push to Reduce Liability*

Heightened attention to the problems perpetuated by bullies on school grounds and through social media have compelled states to adopt legislation aimed at bolstering school policies. School districts, due to public and political pressure, have essentially been forced to make an effort to end school bullying.²² “States have enacted legislation that requires schools to implement a plethora of policies and procedures designed to end bullying, including cyber-bullying.”²³

There is a push to reduce liability across the country. School districts, administrators, and teachers are seeing an increase in litigation as parents turn to the courts to get relief for their children and demand accountability and punishment on bullies.²⁴ As schools can no longer sit back and passively observe harassment and bullying, schools are revamping policies and states are enhancing anti-bullying legislation to lessen their vulnerability to litigation.²⁵

Evidence is showing that well implemented school policies are those that require training for children and adults, methods for tracking and controlling bullying and harassment, in and outside of schools.²⁶ Additionally, continued implementation of procedures for conveying information on bullying to the public is also likely to help minimize the risks which boost litigation.²⁷ Although the challenge of tightening budgets continues to loom overhead for schools, due to legal mandates to implement anti-bullying policies regardless of resources, states continue to work to develop funding mechanisms to support implementation and compliance with the law.²⁸ The possibility of federal funding may also be available, but to date there is no national comprehensive commitment at the federal level to guarantee funding over the long term.²⁹

²² Leonard J. Dietzen III, *School Bullying and Its Impact on Litigation*, 2012 WLNR 24316488 (Mondaq Ltd., 2012).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Dietzen, *supra* note 22.

²⁹ *Id.*

One of the most important initiatives that a school district can establish with a long term vision and commitment to reduce liability is training.³⁰ The success of ongoing programs is dependent on those that both teach and train staff and volunteers how to recognize bullying, establish prevention programs, and advise them regarding their duty to report incidents and keep detailed records for reporting purposes.³¹ Success, evidenced by reduced incident rates and liability, is dependent on “buy-in” from the top down of all board members and the superintendent through to the individual student and parent.³²

B. *Status of the Law*

Our Nation’s goal is to eradicate bullying in schools. State and Federal governments have made various efforts to prevent bullying in schools. Most states have implemented anti-bullying legislation, and others have prosecuted these cases.³³ Whatever the solution of choice, both states and the federal government are taking action to prevent the bullying epidemic from further growing and continuing on into the next generation.³⁴

Forty-nine states currently have anti-bullying legislation on the books.³⁵ These laws set expectations for districts to develop local policies, and prescribe specific provisions in the school’s bullying policies.³⁶ The result being that currently there are various levels of inconsistent enforcement that range from simply defining bullying in an effort to bring more awareness, through to explicitly prohibiting defined conduct, implementing reporting requirements, and prescribing relief under the law.³⁷ Although commendable in their intent, many statutes provide little guidance for educators seeking to comply with them.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Anderson, *supra* note 3, at 773.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 774; Brenda High, *Bully Police USA*, <http://www.bullypolice.org> (last visited October 1, 2013) (highlighting which states have passed anti-bullying legislations, and states that forty-nine states have passed such legislation).

³⁷ *Anti-Bullying Statutes 50 State Compilation*, THE NETWORK FOR PUBLIC HEALTH LAW, http://www.networkforphl.org/_asset/khyyg6/50StateAntiBullyingStatutes41612FINAL.pdf (April 2012) (last visited October 5, 2013).

The reality is that Federal and State laws neither deter bullying nor provide most victims a remedy for psychological or physical injuries.³⁸ The vast majority of victims are bullied for reasons that do not fall under the protection of civil rights.³⁹ Moreover, even when victims do fall into protected categories, the courts set such a high bar for recovery, often resulting in plaintiffs prevailing only in the most horrific cases.⁴⁰ “Even if a victim obtains a legal remedy under state or federal law, such remedy comes long after the harm has been done—after the student has changed schools, dropped out, or is well past eighteen.”⁴¹ Accordingly, traditional legal remedies for victims of serious bullying are often ineffective, because they “view bullying from an incident-based perspective rather than from a school culture perspective.”⁴²

Consequently, policies with the greatest potential of offering students the most protection are those that prevent bullying from happening in the first place, as opposed to those that simply impose consequences after incidents arise.⁴³ Thus, comprehensive and consistent programs and curriculum are necessary to deter bullying and improve overall school climate.

³⁸ Julie Sacks & Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 ALB. L. REV. 147, 149 (2009).

³⁹ *Id.*

⁴⁰ *Id.* (citing *Nabozny v. Podlesny*, 92 F.3d 446, 451–53 (7th Cir. 1996) (allowing victim to prevail under Title IX and the Equal Protection Clause of the Fourteenth Amendment after years of abuse, including: being subjected to a mock rape in front of twenty other students; being kicked in the stomach to the point of internal bleeding and being pelted with steel nuts and bolts)); *K.M. ex rel. D.G. v. Hyde Park Cent. Sch. Dist.*, 381 F. Supp. 2d 343, 348–49 (S.D.N.Y. 2005) (ruling for victim’s mother under Title II and Section 504 after her son, an eighth-grader with a disability, had been hospitalized for psychiatric treatment and withdrawn from school following long-term verbal and physical harassment, including: being held down and hit on the head and back with his own binder; and repeatedly having his school books thrown into the cafeteria garbage).

⁴¹ Sacks & Salem, *supra* note 38, at 150 (citing *Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253, 259 (6th Cir. 2000) (discussing the prevailing plaintiff, diagnosed with depression, had already completed studies at home)); *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952, 961 (D. Kan. 2005) (discussing that the prevailing plaintiff had already dropped out and obtained his GED); *K.M. ex rel. D.G.*, 381 F. Supp. 2d at 349 (discussing that the prevailing plaintiff’s son had been hospitalized and withdrawn from school).

⁴² Christensen, *supra* note 1, at 551.

⁴³ Sacks & Salem, *supra* note 38, at 150 (citing U.S. Dep’t of Educ. Office of Civil Rights & Nat’l Ass’n of Attorneys Gen., *Protecting Students From Harassment and Hate Crime: A Guide for Schools* 5 (1999), available at <http://www2.ed.gov/offices/OCR/archives/Harassment/harassment.pdf> (last visited July 19, 2014)).

III. SCHOOL EFFORTS AND RESEARCH DEVELOPMENTS

The influence of anti-bullying legislation has undoubtedly compelled school administrators to take action. Administrators are recognizing that bullying not only exists, but it is in fact harmful to victims, bystanders, and the entire school.⁴⁴ In turn, many administrators have sought to raise the awareness of staff and students to bullying issues. Schools and educational organizations are striving to develop effective solutions to bullying. These solutions include peer mediation programs, anonymous bullying reporting, team-building instruction, and positive classroom culture activities.⁴⁵

“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.”⁴⁶ In 1996, educational psychologists David Johnson and Roger Johnson examined both urban and suburban primary and secondary school students to address a series of nine questions about peer mediation and conflict resolution.⁴⁷ The findings indicated that “students were engaged in conflicts daily.”⁴⁸ The Johnson and Johnson study also looked at how students managed their conflicts prior to being trained in mediation and prior to having mediation integrated into their course curriculum.⁴⁹ Johnson and Johnson found that before training, students generally “resolved conflicts by attempting to ‘win’ the confrontation by forcing the other disputant to concede. 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.”⁵⁰ Johnson and Johnson also found that students were readily able to learn new peacemaking skills, and apply them to conflicts, both at school and in non-school and non-classroom situations.⁵¹ Further, Johnson and Johnson learned that given the option to engage in

⁴⁴ Limber, *supra* note 13.

⁴⁵ Anderson, *supra* note 3, at 782.

⁴⁶ Decker, *supra* note 2, at 491.

⁴⁷ *Id.*

⁴⁸ *Id.* at 492 (citing RICHARD J. BODINE & DONNA K. CRAWFORD, *THE HANDBOOK OF CONFLICT RESOLUTION EDUCATION: A GUIDE TO BUILDING QUALITY PROGRAMS IN SCHOOLS* 103 (Jossey-Bass 1998)).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*; Frost, *supra* note 20, at 26–27.

either a “win-lose” conflict situation or the new skills developed via conflict resolution training, the majority of students trained applied their new skills when given the opportunity, whereas untrained students almost always relied on the old “win-lose” model.⁵² Moreover, Johnson and Johnson found that when mediation was integrated into students’ daily study (e.g. students learning mediation skills while studying a novel in English literature), and then applied conceptually to better understand the relationships between characters, that after completing the novel and going through a series of tests, “students who were taught mediation alongside the novel not only tested better upon completion of the novel, but also retained the information much better than students who spent the same amount of time studying the novel without learning mediation.”⁵³ The Johnson and Johnson studies found that conflict resolution training that incorporated peer mediation and mediation curriculum, led to more positive attitudes about conflict and how to approach it from the entire school.⁵⁴ Other research in Ohio, Nevada, Chicago, New York, and New Mexico also support that the incorporation of peer mediation and conflict resolution in schools reduces interpersonal conflicts and increases conflict management skills, communications skills, self-esteem, and assertiveness.⁵⁵

Beyond the schoolyard, studies have found that students who received conflict resolution and peer mediation training were able to use those skills in spontaneous situations or in non-school conflicts in the home.⁵⁶ It has also been shown that even with observation of mediators’ conflict resolution skills, students were able to learn new knowledge, attitudes and skills that aided them in resolving future conflicts.⁵⁷ Thus, it is clear that peer mediation can be commended with resolving conflicts and altering students’ conflict resolution behavior.⁵⁸

Despite the positive results that peer mediation and other conflict resolution programs provide, state legislatures continue to be resistant to create statewide programs providing and/or requiring implementation of such programs.⁵⁹ Support for such programs is

⁵² Decker, *supra* note 2, at 491; Frost, *supra* note 20, at 26–27.

⁵³ Decker, *supra* note 2, at 492; BODINE & CRAWFORD, *supra* note 48.

⁵⁴ Decker, *supra* note 2, at 493; Frost, *supra* note 20, at 26–27.

⁵⁵ Decker, *supra* note 2, at 493–95; Philipson, *supra* note 1, at 90.

⁵⁶ Philipson, *supra* note 1, at 91.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Decker, *supra* note 2, at 496.

often unfunded, resulting in varied programming instead of effective, comprehensive, consistent, and uniform peer mediation programs nationwide.⁶⁰

Evidence continues to demonstrate that students are responding well to positive reinforcement and unique lessons that they can apply to their everyday lives.⁶¹ This signpost indicates that the solution to bullying may lie in more holistic methods and approaches to conflict resolution as opposed to legislation of traditional paths of legal recourse.

IV. IS MEDIATION THE SOLUTION TO BULLYING?

Four out of every ten students are not able to cope with simple, everyday conflicts. Reason? They come from dysfunctional, stressed families.⁶² Mediation and conflict resolution techniques are common strategies used by school personnel to address aggressive behavior among school children.⁶³ In fact, peer mediation is considered one of the most popular alternative discipline approaches, and is a standard form of mediation in which the students act as neutral third parties facilitating conflict resolution between disputing peers.⁶⁴ Though widely celebrated for its success in changing school climate and reducing conflict⁶⁵, it is not without its critics.

More recently, experts have questioned the effectiveness of these programs. Many question the inconsistency in form and implementation of mediation programs across schools, the lack of true conflict resolution results due to the students' intellectual and emotional immaturity, and the appropriateness of mediation when bullying is defined by domination and control rather than interpersonal conflict.⁶⁶ Critics of peer mediation contend that research shows that although such approaches may be appropriate to resolve conflicts between peers of relatively equal power, these tools

⁶⁰ *Id.*

⁶¹ Anderson, *supra* note 3, at 782.

⁶² Karen Vagiste, Section: Letter to the Editor – *Dealing with Bullies*, 1993 WLNR 5275102, *GLOBE AND MAIL* (Dec. 29, 1993).

⁶³ Limber, *supra* note 13.

⁶⁴ Philipson, *supra* note 1, at 83–84 (2012); Kelly Rozmus, *Peer Mediation Programs in Schools: Resolving Classroom Conflict but Raising Ethical Concerns?* 26 *J.L. & EDUC.* 69, 72 (1997).

⁶⁵ Frost, *supra* note 20, at 22–23.

⁶⁶ Philipson, *supra* note 1, at 83–84.

are inappropriate when used to resolve situations that involve victimization, such as bullying.⁶⁷ Researchers have found that conflict resolution and mediation strategies run the risk of sending inappropriate messages to the victims and bullies that such behavior is justified, or better yet that no party is at fault.⁶⁸ It is also suggested that the mediation setting may further victimize a child who has been bullied because of the imbalance of power that exists between the two parties.⁶⁹ Therefore, it has been argued that peer mediation does not resolve bullying conflict and is not recommended as an appropriate method for resolving acts of violence or more serious offenses.⁷⁰ Nevertheless, it is fair to say that mediation may not be the perfect fit for all situations, but it does play a significant role in changing school climate, attitude, and in bullying prevention.

V. EFFECTIVE USE OF MEDIATION AS A SOLUTION TO BULLYING

It is important to learn conflict resolution and effective communication skills at an early age.⁷¹ Evidence has shown that the most effective prevention strategy is to give the youth tools to manage conflict and the skills to communicate in a more effective way.⁷² The best way to learn mediation is to be immersed in it, involved in it, and to do it.

Schools are an appropriate target because they capture a large portion of the population base.⁷³ They not only capture children in their formative years, but they also capture parents in their most influential years with their children, as well as other members of a child's community of support, such as grandparents, friends, teach-

⁶⁷ Limber, *supra* note 14; Philipson, *supra* note 1, at 83–84.

⁶⁸ Limber, *supra* note 14; Philipson, *supra* note 1, at 83–84.

⁶⁹ Limber, *supra* note 14; Philipson, *supra* note 1, at 83–84.

⁷⁰ Philipson, *supra* note 2, at 97; Lawrence T. Kajs et al., *The Use of Peer Mediation Programs to Address Peer-to-Peer Student Conflict in Schools: A Case Study*, 146 EDUC. LAW REP. 605 (2000).

⁷¹ Susan K. Theberge & Orv. C. Karan, *Six Factors Inhibiting the Use of Peer Mediation in a Junior High School*, 7 PROF'L SCH. COUNSELING 283, 289–90 (2004) (“[C]onflict resolution and mediation skills need to be taught and encouraged in elementary school, beginning with the primary grades, a time when students are more open to learning common strategies for interacting with peers.”).

⁷² Gail Nugent, *Words Work: Teaching Youth Words that Work*, 18 DISP. RESOL. MAG. 20 (June 2012).

⁷³ Morrison, *supra* note 15.

ers, instructors, and coaches.⁷⁴ As schools represent a microcosm of society, they have the developmental potential to successfully nurture and integrate individuals into society.⁷⁵

Whole school approaches to a dialogue that confronts bullying, with the involvement of parents and teachers, show reductions of bullying up to 50%.⁷⁶ Research to date suggests that comprehensive bullying prevention efforts which involve the entire school community hold the most promise for changing the norms of behavior and the prevalence of bullying in schools.⁷⁷ For policies to bring about consistent change and yield results, they should mandate a curriculum that promotes constructive action and prevention. To the extent possible, curriculum and policies must go beyond asserting negative prohibitions and punishments for conduct after the fact.⁷⁸ "They should incorporate positive and constructive approaches to preventing bullying, such as instruction on ethics, morality, building a culture of civility, and preventing and treating the causes of bullying."⁷⁹ Moreover, students need to be positively instructed on what to do to improve their school culture, environment, and the quality of life of all students, as opposed to simply warning them about the negative consequences of their behavior.⁸⁰ Students and all school staff should be provided with conflict resolution skills, and age-appropriate civility and anti-bullying lessons which are thoroughly and where possible seamlessly integrated into the curriculum and school culture at all grade levels.⁸¹

A number of common themes have emerged in review of comprehensive bullying prevention programs that have been developed, incorporate mediation knowledge, skills and technique, and have been found to be effective in changing school climate and reducing bullying incidents. Although not explicitly stated in all programs, the following themes are at least implicit components of most comprehensive programs:

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ John Braithwaite, *Education, Truth, Reconciliation: Comment on Scheff*, 67 REV. JUR. U.P.R. 609 (1998) (citing Denise Gottfredson, *School-Based Crime Prevention, in Preventing Crime: What Works, What Doesn't, What's Promising: A Report to the United States Congress* (Lawrence Sherman, et al eds. 1996), also citing, Dan Olweus, *Annotation: Bullying at School: Basic Facts and Effects of a School Based Intervention Program*, 35 J. CHILD PSYCHOL. & PSYCHIATRY 1171-90 (1993)).

⁷⁷ Limber, *supra* note 13.

⁷⁸ Dayton, *supra* note 10, at 29 (citing OKLA. STAT. § 24-100.1 (2007)).

⁷⁹ *Id.*; Frost, *supra* note 20, at 25-26.

⁸⁰ Frost, *supra* note 20, at 25-26.

⁸¹ *Id.* at 30; MINN. STAT. § 120(B).22 (2007).

- (a) approaches should focus on prevention of bullying and intervention in specific bullying incidents;
- (b) effective bullying prevention requires changing the norms and climate of the school;
- (c) prevention of bullying requires that the school work together as a community and should include administrators, teachers, non-teaching staff, students, and parents;
- (d) adults within the school must take the lead in efforts to change the climate and norms of the school with regard to bullying, but students also play important roles as bystanders in this process;
- (e) bullying prevention requires a long-term commitment of a school community; and
- (f) although bullying prevention efforts require approaches that are distinct from other violence prevention efforts (e.g., [mediation,] conflict resolution), bullying prevention activities should be coordinated with other prevention and intervention programs within the school.⁸²

Thus, the goal must be to instill character education and anti-bullying lessons into the daily fabric of school curriculum and life. By teaching students conflict resolution skills as part of a systematic and comprehensive program, schools may help stem the formation of a bullying culture, which can only be established by providing an incubator for repetitive action and implementation.⁸³ Therefore, mediation training and curriculum can be used for proactive prevention as opposed to reactive intervention.⁸⁴

As there are yet no financial projections for the cost of implementing comprehensive mediation based anti-bullying programming and curriculum, we can look to existing data on the costs of implementing peer mediation programs to provide context to the overwhelming cost-effectiveness and benefit of implementing said programming on a uniform basis. 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.⁸⁵ Due to the pressure of tightening budgets, the prospect of spending over \$40,000 on additional programming may sound daunting to school administrators when

⁸² Limber, *supra* note 13.

⁸³ Philipson, *supra* note 1, at 99.

⁸⁴ *Id.*

⁸⁵ Decker, *supra* note 2, at 499 (citing RICHARD COHEN, STUDENTS RESOLVING CONFLICT: PEER MEDIATION IN SCHOOLS 82–83 (2d ed. 2005)).

the numbers are considered in light of current federal and state education budgets. There are approximately 130,400 public and private elementary and secondary schools in the United States. Assuming today 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.⁸⁶ In perspective, this is just a drop in the bucket when considered in relation to the fact that the state, federal, and local governments spent over \$508.2 billion on pre-primary through secondary education in the fiscal year of 2008.⁸⁷ When the cost is compared to the potential savings associated with implementing effective mediation programs (e.g. the savings connected with reducing costs associated with the growing trend of bullying and criminal behavior), it becomes apparent that there really is no barrier to ensuring that these programs are more prevalent.⁸⁸ Although these estimates don't account for the costs accompanied with integrating mediation curriculum as part of a comprehensive anti-bullying program approach to learning and skill adaptation throughout the school environment, it is reasonable to anticipate that the cost of said curriculum would pale in comparison to the economic and societal costs and toll currently being suffered.

Mediators study how grievances escalate to disputes, how violence erupts, and what social control mechanisms in healthy societies are effective in maintaining order and health.⁸⁹ From that research, students, schools, and administrators can adopt and adapt this knowledge to learn how to reduce conflict and bullying in our schools.

Mediation isn't a magical cure-all. It requires commitment from all parties in order to work, where it is deemed an appropriate vehicle to get resolution.⁹⁰ But when successful, mediation does more than just resolve disputes. The process also teaches children crucial communication and conflict resolution skills, which may be more difficult to learn and adapt to later in life.⁹¹ These

⁸⁶ *Id.* at 500; *Fast Facts*, U.S. DEP'T OF EDUC., INST. OF EDUC. SCIS., <http://nces.ed.gov/fastfacts/display.asp?id=84> (last visited August 25, 2013) [hereinafter *Fast Facts*].

⁸⁷ Decker, *supra* note 3, at 500; *Fast Facts*, *supra* note 87.

⁸⁸ Decker, *supra* note 3, at 500; *Fast Facts*, *supra* note 87.

⁸⁹ Juliana Birkhoff, *Reducing Citizen and Child Mass Shootings in the United States Using the Best Knowledge, Experience, and Practices from Conflict Resolution*, <http://www.mediate.com/mobile/article.cfm?id=9554> (Dec. 2012) (last visited Sept. 30, 2013).

⁹⁰ Wendy Bonnie, *Conflict Resolution: Mediation Teaches Lasting Lessons on How to Resolve Disputes*, WINNIPEG FREE PRESS, 2006 WLNR 9654746 (Manitoba, CA) (2006).

⁹¹ *Id.*

life-long skills equip children to make better choices throughout the rest of their lives.

VI. CONCLUSION

The research is clear—the decision to use mediation as a means of resolving bullying issues depends on situational factors. There is no clear evidence to date that shows that mediation plays no role in the solution to the problem of bullying. In fact, it is a crucial ingredient in creating the “anti-bully”, by way of introducing a necessary branch of knowledge, skill, and technique in staff, students, and the community both inside and outside the walls of the school. Mediation should be incorporated and does play a fundamental role in establishing a pro-active, comprehensive, and effective conflict resolution plan. However, mediation requires a universal, uniform, and long term commitment if it is to succeed; otherwise, we risk the danger that the pre-existing imbalance in power will simply re-assert and re-insert itself into the school culture and climate.

Mediation programs that are fused into school life empower and encourage students to take responsibility for themselves and their own learning both inside and outside of the school walls. Such programs teach students, at a crucial time in their development, how to participate more effectively in society in a meaningful and beneficial way. What may have started out as a child or adolescent facing a conflict with limited comprehension of how to approach or resolve the difficulty, with the effective integration of mediation programs and curriculum, will soon give way to students learning and implementing fundamental concepts, practice, and tools to be better equipped to deal with challenges they may face in conflict and in life for years to come.

