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# DISPUTE RESOLUTION: THE FOURTH "R"

ALBIE DAVIS\* AND KIT PORTER\*\*

## I. INTRODUCTION

As late as the 1960's, official rattans for hitting children's wrists and behinds were sold at a Boston school supply store by the gross.<sup>1</sup> At the same time, the official public school citizenship curriculum called for students to memorize a homily which included the words: "the good child obeys out of love, the wicked child out of fear."<sup>2</sup> The child who did not learn to recite this lesson of love and obedience faced the rattan.

In addition to the obvious contradiction, the hidden message these and many other children learned is that by threatening violence, you can influence or force others to behave as you want them to behave. Today those children are adults. The rattans are nuclear bombs, and another generation has learned that violence and power are the way to deal with differences. With modern weaponry, the question now becomes: how often will history have a chance to repeat itself?

Although our schools may have unintentionally contributed to the ethic of violence that threatens our world, there are subtle, but significant, signs that a new ethic based upon the principles of mediation may be developing.<sup>3</sup> As are other schools across the country, the same public school system that once pro-

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1. Author Davis was active in school reform in Boston in the late sixties and early seventies. She learned about rattans from other parents and school personnel.

2. J. LEE, *THE FIVE POINTED STAR OF CITIZENSHIP*, Boston School Committee (in use circa 1960).

3.

Mediation is an alternative to violence . . . it can be defined as a process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. Mediation is a process that emphasizes the participants' own responsibility for making decisions that affect their lives, it is therefore a self-empowering process.

J. FOLBERG & A. TAYLOR, *MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION* 7 (1984).

vided each teacher with a regulation rattan is now training students and teachers in the skills of non-adversarial dispute resolution.<sup>4</sup>

While this development is intriguing, little research has been conducted in this area and schools attempting to develop dispute resolution programs have been doing so in a vacuum. Furthermore, there has been even less discussion about the impact that training students in mediation will have upon society. This paper will present some summary findings based on an initial study of three schools offering programs<sup>5</sup> which train students to mediate school-based disputes. It will also review information about several other school programs with different formats and in various stages of development. Because the field is new and much of the available material is in the goal-setting stage, tentative conclusions can be drawn about the rationales for starting programs and about actual program operations. It is too early to draw definite conclusions about the effects of each program.<sup>6</sup>

What will be the consequences of a public skilled in dealing creatively with conflicts? Will universities and law schools be ready when these students enter their classrooms? Will community violence, particularly juvenile crime, decrease? Will suits cease to be the answer? Will lawyers change their style or go out of style? Will the foundations of our legal system be challenged? Will people who feel confident in handling their personal and community disputes in a non-adversarial manner demand that governments solve international disputes without violence? We do not know the answers to these questions, but the impact of teaching dispute resolution skills to children certainly will be profound.

## II. RATIONALE

The contemporary history of mediation, and other forms of non-litigious dispute resolution, has received considerable attention in the last few years in both professional journals and the popular press. This movement was motivated by alarm over the "litigation explosion," disillusionment with the for-

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4. Charlestown High School, one of the Boston Public Schools, is currently implementing a mediation program.

5. Davis & Porter, *Mediation in American Schools*, in AMERICAN BAR ASSOCIATION UPDATE ON LAW-RELATED EDUCATION 20-28 (Winter 1984).

6. In designing this project, we collected as much information as we could from as many projects as we were aware of. This included evaluation reports, curriculum plans, training manuals, correspondence, news articles, promotional brochures and general reports. We selected the three projects which we felt were among the best established and could provide the most information to study in further detail. We conducted both personal and telephone interviews with directors and compiled the information obtained. We regret that we were unable to conduct on-site interviews in order to more independently consider each program and its effects on individuals, the school, and the community. Some students were interviewed and additional information gathered at a December, 1984 statewide mediation conference in Albany, New York.

mality, expense, delay, and impersonality of judicial proceedings, along with concern about access.<sup>7</sup> The use of mediation in the school setting is a more recent development so there is no body of literature or reserve from which to draw a historical perspective. It is too soon to identify the "first" such project or to trace antecedents. In the last year, however, individuals and organizations with a strong desire to bring mediation into the elementary and secondary schools have begun both informal and formal networking for the purpose of sharing, expanding, and improving the state of the art.<sup>8</sup> An examination of the goals of operating, emerging, and proposed school-based mediation programs shows that there are several consistently stated reasons for promoting mediation. In addition, other reasons appear with enough frequency to deserve attention.

A. *Conflict is a Natural Human State Often Accompanying Institutional Change or Personal Growth and Can be a Constructive Force When Approached with Skill*

John Holt, author of *How Children Learn* and other books about American education writes: "True education doesn't quiet things down, it stirs them up. It awakens consciousness. It destroys myths. It empowers people."<sup>9</sup> A growing number of educators are beginning to believe that children are not truly educated if they are not prepared to deal with the disquieting, but empowering nature of conflict.

Many conflict resolution curriculums discuss this concept. A San Francisco guide says, "Conflict is a natural part of life and is neither good nor bad . . . . The peaceful expression and resolution of conflict is a powerful learning tool . . . ." <sup>10</sup> A Florida curriculum states that "Conflict is a normal part of life. Our goal is not to eliminate conflict but to learn to handle it in a constructive manner."<sup>11</sup> A proposal to the Evanston Township High School encourages the

7. J. FOLBERG & A. TAYLOR, *supra* note 3, at 4.

8. In August of 1984, fifty educators and dispute center staff members from over fifteen states formed a new organization—the National Association for Mediation in Education (NAME)—with the goal of promoting the growth and exchange of information concerning mediation in education. In August, 1985 a second annual conference was held. For further information contact Janet Rifkin, NAME, University of Massachusetts-Amherst Mediation Project, 127 Hasbrouk, Amherst, MA 01003. In addition, the Special Committee on Dispute Resolution of the American Bar Association has published a directory of school-based mediation programs along with a bibliography and a summary of the first NAME conference. For further information contact Pru Kesner, American Bar Association Special Committee on Dispute Resolution, 1800 M Street, N.W., Washington, D.C. 20036.

9. J. HOLT, *FREEDOM & BEYOND* (1972).

10. H. DAVIS, *CONFLICT RESOLUTION FOR YOUTH: AN EXPERIENTIAL APPROACH 1* (1984) (unpublished manuscript).

11. F. SCHMIDT & A. FRIEDMAN, *CREATIVE CONFLICT SOLVING FOR KIDS 1*

administration to see that "conflict is an integral and inevitable part of our society and all its institutions. Conflict can often be valued as constructive; it inevitably accompanies positive change in our institutions and often accompanies and supports individual growth."<sup>12</sup> Promoters of these curriculums believe that once educators view conflict as natural and positive, fear of facing it will diminish and the gains of openly exploring it will emerge as the dominant consideration.

*B. Systems Which are More Appropriate and Effective Than Expulsion, Suspension, Court Intervention, and Detention are Needed to Deal with Conflict in the School Setting*

Mediation can play an important role in expanding the options available to those in charge of school discipline. Prior to the introduction of mediation at one school system, school officials, as are most, were "limited to expulsion, court intervention or suspension in addressing problematic student behavior." The appearance of mediation gave administrators an expanded and more appropriate repertoire of dispute resolution options.<sup>13</sup> The traditional responses such as counseling, suspensions, Family Court PINS petitions, and criminal charges have little impact and are often inappropriate or disruptive.<sup>14</sup> In a successful school-based mediation program, a mediation session often replaces suspension and other traditional school discipline procedures.

*C. The Use of Mediation to Resolve School-Based Disputes Can Result in Improved Communication and Climate in Both The School and Community*

Several programs highlight the need for better communication. Poor communication invariably contributes to violence, truancy, and school drop-out.<sup>15</sup> Mediation programs often grow out of community and school district experiences which indicate that neighborhood disputes, parent and child confrontations, and bus stop incidents spill over into the school environments and serve to disrupt the education process.<sup>16</sup>

Teachers who have been trained as mediators feel more competent dealing with the daily conflicts which used to wear on their patience and spirit. A high school teacher from a large urban school commented, "Mediation train-

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(1983).

12. R. SALEM, PROPOSAL FOR CONFLICT MANAGEMENT PROJECT AT EVANSTON TOWNSHIP HIGH SCHOOL 1 (Oct. 1984) (unpublished manuscript).

13. J. PALENSKI, THE DEVELOPMENT OF MEDIATION IN SCHOOLS: AN IDENTIFICATION OF PATTERNS I (1983) (unpublished manuscript).

14. E. JONAS & C. WHIPPLE, SMART IMPLEMENTATION MANUAL iv (1984) (unpublished manuscript).

15. *Id.* at 5.

16. J. PALENSKI, *supra* note 13, at 6.

ing gave me much more confidence in my classroom and around the school. I work in a rough school and am grateful that I now know how to deal with classroom and hallway confrontations."<sup>17</sup> Elementary teachers report safer and more peaceful playgrounds since the advent of the mediation program.<sup>18</sup> A civics teacher concludes that his students have integrated their mediation training into both their behavior and attitudes and have been instrumental in solving many school problems on an informal basis. He claims that, in general, students have become more patient, objective, sensitive, enthusiastic, committed, and knowledgeable about conflict resolution techniques.<sup>19</sup>

*D. The Use of Mediation As a Conflict Resolution Method Can Result in a Reduction of Violence, Vandalism, Chronic School Absence, and Suspension*

Part of the underlying impetus for many programs is the recognition that mediation is useful for schools troubled by violence, vandalism, truancy, and high drop-out rates.<sup>20</sup> Evaluation reports so far indicate that most schools which have implemented these programs report reductions in all of these troublesome areas.<sup>21</sup>

Suzette Haddock, a 16-year old student mediator from New York, gives some insights into the reason that peer mediation can help reduce the kinds of activities that usually lead to suspension: "Some of these guys are real macho and would rather fight with their fists than sit down and talk They're also afraid that we're going to take sides. We don't. We're impartial. They also realize that suspension is stupid and that it's much better to sit down and mediate than to be kicked out of school for a few days."<sup>22</sup>

*E. Mediation Training Helps Both Young People and Teachers Deepen Their Understanding of Themselves and Others and Provides Them with Lifetime Dispute Resolution Skills*

A school superintendent was so moved by the impact of mediation upon one of his high schools that he suggested the Board of Education should encourage every secondary school principals in the district to establish such projects. The principal reported student comments that mediation training

17. E. JONAS & C. WHIPPLE, *supra* note 14.

18. COMMUNITY BOARD CENTER FOR POLICY AND TRAINING, ANNUAL REPORT AND PROJECTED DIRECTIONS: SCHOOL INITIATIVES PROGRAM 8 (1984) (unpublished manuscript) [hereinafter cited as COMM. BOARD].

19. Letter from Dan Drameich to Donna Durbin (June 20, 1984).

20. E. JONAS & C. WHIPPLE, *supra* note 14, at 4.

21. *But see* J. PALENSKI, *supra* note 13, at 8 (principals were reluctant to refer vandalism cases to mediation).

22. Quigley, *At Bryant, Speciality is Mediation*, *Newsday*, May 16, 1984, § 2, at 3, col. 1.

programs "made me less biased," "gave me a feeling that I can make a difference in the school and the community," and "made me want to help people for what they are."<sup>23</sup>

There is fairly universal agreement that "the peaceful expression and resolution of conflict is a powerful learning tool with which the individual can acquire greater understanding of himself and those with whom he interacts."<sup>24</sup> A Boston student said that: "Acting as a mediator taught us the skills we need to mediate; playing the role of the disputant helped us to understand the feelings and tensions involved and to be sensitive to them; and finally, being an observer helped us to recognize the mistakes that we all make."<sup>25</sup>

A student who became a mediator after being a party to a dispute herself commented that after her training, "the atmosphere around me changed. Mediation pulled me out of the hole that I was in; I'm a better person. It's helpful with my family and my friends. It even helps me walking down the street."<sup>26</sup>

F. *Mediation Training Encourages a Higher Level of Citizenship Activity Because It Increases Students' Interest in Conflict Resolution, Justice, and the American Legal System*

The contrast of the private, collaborative, and non-judgmental nature of mediation to the public, adversarial, and accusatory qualities of litigation leads students and teachers to question the fundamental principles upon which various dispute resolution systems are founded. When is mediation appropriate? When does the public good call for litigation and traditional recourse to due process? In contrast to a sterile lecture, these questions come alive when students participate in simulations in which they play the role of the parties to a dispute. The issues become even more vibrant when students actually mediate a real case.<sup>27</sup> Frequently, students express an interest in learning more about

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23. M. EZER, SCHOOL MEDIATION IN HAWAII 2 (1984) (unpublished manuscript).

24. COMM. BOARD, *supra* note 18, at 1.

25. Davis, *Evaluation of Boston/Closeup Mediation Project* in 3 COURTS AND THE CLASSROOM app. 2 (1982).

26. Address by student mediators from SMART program, Albany Conference on Mediation (Dec. 1984). Interestingly, these expressions of personal growth coincide with observations on the impact that mediation training could have for attorneys. In discussing the possible benefits of mediation education for lawyers, Leonard Riskin notes that "properly done, mediation training can enhance the learner's awareness of his (her) own emotional needs and value orientations and those of others. It should expand his (her) ability to understand both sides of a case—not just with his (her) head but with his (her) heart as well." Riskin, *Mediation & Lawyers*, 43 OHIO ST. L.J. 58 (1982).

27. Katsh & Rifkin, *Out of Court: A Simulation of Mediation* LEGAL STUD. 5 (1982).

the legal system after they participate in mediation training.<sup>28</sup> When mediation was taught as part of a law and government course, students immediately began to make comparisons between the judicial and mediation processes.<sup>29</sup>

*G. Shifting the Responsibility for Solving Appropriate School Conflicts From Adults to Young Adults and Children Allows Teachers and Administrators to Concentrate More on Teaching and Less on Discipline*

When students are trained to conduct peer mediation, the burden on adults to maintain order is far lighter. A program's presence prevents the escalation of conflicts to the point where an adult must intervene. One principal reported that:

in the few cases where students had been sent to her office for fighting, she called in conflict managers to help untangle the problem. She maintains that where it might take her an hour or two to work with the fighting students, and she would probably have to ask their parents to come to the school for conferences, conflict managers help disputants get to the heart of the problem in a few minutes and construct a resolution.<sup>30</sup>

All too often school disciplinary action does not locate the real problem, which resurfaces over and over again if left untreated.

*H. Recognizing That Young People are Competent to Participate in the Resolution of Their Own Disputes Encourages Student Maturity and Gives Students Skills Such as Listening, Critical Thinking, and Problem-Solving Which are Basic to All Learning*

The consensus among mediation program directors is well-expressed by the San Francisco program in its statement that "given requisite skills, youth can do an excellent job of resolving their own conflicts; they need not rely on adult intervention."<sup>31</sup> A New York program noted that

traditional remedies for settling school-based conflicts depend upon the intervention of adult authority figures to resolve students problems. [We] recognize the need to develop a new, self-help mechanism for resolving intra-stu-

28. Davis, *supra* note 25, app. 3.

29. D. DURBIN, CONFLICT RESOLUTION TRAINING COURSES—FINAL EVALUATION 3 (1984) (unpublished manuscript).

As tomorrow's citizens in a democratic society, today's students need situations in which to test newly acquired skills and notions through important civic work. Student-to-student conflict resolution programs provide just such work—work which helps youth feel needed and useful, work which enables them to develop the intrinsic motivation to voluntarily assume their civic responsibility as adults.

COMM. BOARD, *supra* note 18, at 2.

30. COMM. BOARD, *supra* note 18, at 8.

31. *Id.*



dent and parent-child conflicts non-violently and without the intervention of adults. Students must be given the skills to solve their own problems and the problems experienced by their peers.<sup>32</sup>

*I. Mediation Training, With its Emphasis Upon Listening to Others' Points of View and the Peaceful Resolution of Differences Assists in Preparing Students to Live in a Multicultural World*

Several mediation programs have been designed specifically to bring together students of diverse backgrounds to further multicultural understanding. The results have been positive and students report growth in their ability to understand other peoples' points of view.<sup>33</sup> A New York teacher believes that "racial problems are inherited. Students hear things from the time they are young. Fears create an attitude. In group situations such as peer mediation, students get to know each other in a very nice way. They develop a common bond. At the same time, they solve serious problems."<sup>34</sup> Many school-based programs use two students as mediators and tend to "mirror" the disputants so that where the dispute is among people of different backgrounds, young mediators have the opportunity to act as role models by demonstrating positive conflict resolution behavior.

*J. Mediation Provides a System of Problem-Solving That is Uniquely Suited to The Personal Nature of Young Peoples' Problems; Therefore, Students Frequently Use It for Problems They Would Not Take to Parents, Teachers, or Principals*

When asked why she thought fourth-grade student mediators could help their peers solve a problem in considerably less time than it might take her, a principal responded, "Because they speak the same language."<sup>35</sup> Educators and administrators involved in other programs report similar experiences. "Student mediators will generally have a better perspective of the human dynamics at work than some of the adults."<sup>36</sup> Our conversations with students, teachers, and program administrators indicate that young people feel more comfortable bringing their problems to their peers. What may seem trivial to an adult is often critical to a child or an adolescent.<sup>37</sup>

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32 E. JONAS & C. WHIPPLE, *supra* note 14, at 5.

33. Davis, *supra* note 25, at app. 5.

34. E. JONAS & C. WHIPPLE, *supra* note, 14, at app. 5.

35. COMM. BOARD, *supra* note 18, at 8.

36. MEDIATION SERVICES OF MAUI, HIGH SCHOOL MEDIATION PROJECT 2 (1984) (unpublished manuscript).

37. A breakdown of the kinds of cases handled by the SMART program during a one-year program include:

GENERAL HARASSMENT (37 Disputes): Name-calling, insults, taunts, or threats, either at one particular time or on an ongoing basis. Often malicious and un-

## III. START-UP

The program operations section of this study concentrates on three school-based mediation programs; in San Francisco; in New York City; and a cluster of programs in Hawaii. These programs train students—from fourth grade through high school—to be dispute resolvers. The training is similar to adult training in community mediation programs and law school alternative dispute resolution courses. In gathering our data, we posed uniform questions to each of the three programs which we thought would be of interest to educators and dispute resolution practitioners. The programs in this study would not have started without the interest, imagination, and dedication of specific indi-

provoked, comments were directed at appearances (race, ethnicity, handicaps, weight problems, clothing, make-up), school performance, behavior towards the opposite sex, and attitudes in general.

**UNREASONABLE BEHAVIOR (10 Disputes):** Behavior, not necessarily involving verbal interchanges, which is offensive to another person and leads to a dispute. Category includes a student not liking the way another student treats a friend or relative, and students disagreeing with the behavior of their classmates (disturbing the class, telling others what to do, refusing to open door for someone who wants to enter classroom).

**PROPERTY (9 Disputes):** Mishandling or misappropriation of a student's property. Included students taking each other's typing paper, lunch tickets, cigarettes, magazines, photographs, costumes for school play, or gym things either without permission or in such a manner that they caused a dispute.

**POOR SPORTSMANSHIP (9 Disputes):** Disputes that occurred in gym class when teammates ignored or insulted each other, or did not perform up to the standards expected of them.

**GOSSIP (7 Disputes):** Rumor allegedly started by a third party out of jealousy, spite, or the need for attention. Students referred to gossip as "he say, she say", listened to it all too often, and allowed it to ruin many friendships.

**HORSEPLAY (7 Disputes):** Aggressive behavior, usually among males, which led to a fight or was misinterpreted by school authorities as fighting.

**SPACE ENCROACHMENT (7 Disputes):** Students pushing or bumping into each other without saying excuse me, butting into line, or letting doors swing into another student, whether purposefully or accidentally.

**JEALOUSY (6 Disputes):** Problems between boyfriends and girlfriends, two females trying for the attention of the same male, or a male bothering a female, allegedly because he likes her.

**PHYSICAL HARASSMENT (5 Disputes):** Touching, hitting, or throwing things at another student in a manner which provoked a physical or verbal dispute, or both.

**MONEY (5 Disputes):** Includes the disappearance of cash from a student's wallet, locker, or home, and borrowed money which was never paid back or not returned promptly.

**DIRTY LOOKS (2 Disputes):** Scowls, faces, stares, or glances resulting from bad moods or anger which are perceived as dirty looks by another student, whether or not they are intentionally directed at that student.

viduals.<sup>38</sup> None of them began as the result of state law, court order, or school board directive. All three schools formed alliances with a neighborhood justice center. The role of the neighborhood justice center ranged from administering the program to assisting with training. In addition, some programs joined with institutions of higher education.<sup>39</sup>

In San Francisco, the roots of the School Initiatives Program reach back to the beginning of the Community Boards of San Francisco. Community Boards, which was founded in 1977 by Ray Shonholtz, a professor at the University of San Francisco Law School, is one of the oldest dispute resolution centers in the United States. This organization commands special attention because of its well-articulated philosophy and its ability to attract sizable funding from private foundations; in fact, it now operates in twenty-two San Francisco neighborhoods. Community Boards sees itself as the "court of first resort," because unlike most neighborhood justice centers, it does not deal with cases that come from the formal justice system. Rather, along with the mediation function, it trains community members to seek out cases, perform intake, carry out follow-up, and participate in training, management, and evaluation. Continuous outreach and education programs are conducted to develop the skill-building of community members which is considered so vital to the success of the program.<sup>40</sup> This emphasis on community education made it a logical step for Community Boards to design an education program in conjunction with the schools.

The School Mediators' Alternative Resolution Team (SMART) was started in the fall of 1983 by the Victim Services Agency (VSA), which operates two of the largest dispute resolution centers in the state of New York. VSA is a relatively young agency which was established in 1978 by the Mayor

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38. We wish to express appreciation to the following people for providing us with information and participating in interviews. Helena Davis, Director, School Initiatives Program, Community Boards, San Francisco, California; Emily Jonas, former Director, SMART Program, Queens, New York; Mel Ezer, Professor of Education, University of Hawaii at Manoa. Unless otherwise noted, the information in the remainder of this article is based on interviews as follows:

San Francisco—telephone interviews with Helena Davis (Dec. 7, 1984, Dec. 15, 1984)

New York—telephone interviews with Chris Whipple (Jan. 4, 1985), Judith Thompson-Rubel (Dec. 8 & Dec. 22, 1984), Emily Jonas (Sept. 24, 1984)

Hawaii—telephone interviews with Mel Ezer (Dec. 3, Dec. 5, 1984, Jan. 11, 1985).

39. An interesting example of this is the Law and Public Service Magnet High School which is a cooperative venture of the Cleveland Public Schools and the Cleveland State University, Cleveland-Marshall College of Law.

40. R. SHONHOLTZ, *A JUSTICE SYSTEM THAT ISN'T WORKING AND ITS IMPACT ON THE COMMUNITY* (undated); R. SHONHOLTZ, *NEIGHBORHOOD JUSTICE FORUMS: AN EXPRESSION OF NEIGHBORHOOD GOVERNANCE* (1983) (from the Community Board Program, San Francisco).

of New York City for the purpose of providing assistance to victims of crime. In 1981 VSA moved into the field of dispute resolution when it established the Brooklyn Mediation Center. A year later VSA opened another center in Queens County. The combination of its involvement with mediation programs, its experience conducting educational programs in the schools, and its participation in the Mayor's Inter-Agency Task Force on School Safety, led the agency to consider mediation as a means of alleviating some of the problems of crime, vandalism, violence, truancy, and drop-outs which were facing New York City high schools.

The Hawaii mediation program started in 1981 as a cooperative venture between the University of Hawaii and the Honolulu Neighborhood Justice Center. Mel Ezer, a professor of education at the University of Hawaii was instrumental in founding the program to alleviate problems of school violence which were facing Hawaiian schools. The use of mediation seemed promising to both the university and the neighborhood justice center.<sup>41</sup>

#### IV. SELECTION OF SCHOOL SITES

Often educational planners choose to place pilot programs in small, safe settings prior to implementing them in larger more problematic sites; however, this was not the case with the school mediation programs we investigated. All three programs are located in urban areas in relatively large schools where school administrators were concerned about violence and racial strife. It is noteworthy that each of the schools selected to initiate these programs were fortunate to have an administration which was willing to face, rather than hide, its problems.

In San Francisco, the program director decided to begin by working in two schools where the principals showed strong interest in the program. In one school, the principal had been a party in a mediation case; in the other, the principal was a neighborhood mediator.

The William Cullen Bryant High School in Queens was selected because of its size (just under 3,000) and the diverse ethnic background of its student body.<sup>42</sup> Additionally, the principal's strong interest and her willingness to include mediation as an official part of the school's discipline system were seen as key factors.

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41. In 1979, while attending an institute on juvenile delinquency sponsored by the School of Public Administration at the University of Southern California, Mel Ezer heard the Director of Conflict Management of the Los Angeles Unified School District talk about a unique program which had been initiated to address youth gangs and violence in the schools. The program, which capitalized on the energy of gang leaders to a positive end by training them to be "facilitators" in resolving conflicts, had resulted in a decrease in the number of students hurt and killed.

42. 42% White, 29% Hispanic, 17% Black, 12% Asian, 1% American Indian. E. JONAS & C. WHIPPLE, *supra* note 14, at forward.

The selection of Farrington High School as the pilot site for the Hawaii mediation project was prompted by the administration's concern about ethnic hostility and racial tension. Farrington is in Kahili, an area historically populated by Hawaiians that has attracted an increasing number of Phillipine and Samoan immigrants during the last fifteen years. In addition, the area contains small numbers of Koreans, Japanese, Chinese, and Caucasians. The school administration was interested in mediation as a method of dealing creatively with the tension which inevitably stems from rapid social change. As in San Francisco and New York, the Hawaiian administration was very cooperative.

## V. GENERAL PROGRAM DESIGN

With few guideposts to point the way, the three programs developed both similar and unique approaches to implementing mediation in the school setting. While two programs chose to start at the high school level and expand to the lower grades, the third program took the opposite course. All three shared the goal of using peer mediators which required the development of curriculum and training of students. In some instances, the amount of funding available, and in others a conscious philosophy, determined whether the program would depend more on school personnel and/or volunteers or on an outside administrator.

The San Francisco program, which operates in four elementary schools, has three major components—a conflict resolution course at the high school and both a classroom meeting program and a Conflict Manager program at the elementary level. In designing the Conflict Manager program, Helena Davis settled on the fourth and fifth grades as the earliest ages at which students could absorb conflict resolution training in both theory and practice. She designed a model which called upon students to settle disputes in the playground at recess. The management of the school program mirrors the Community Boards program. There is a strong emphasis on capacity building at each school site and special attention is paid to training students and teachers in both conflict management skills and to be trainers themselves. Although outside funding was available for start-up costs, Community Boards is aware that continuation funds will be more difficult to obtain and has tried to infuse the program into the schools.

Although the SMART program in Queens was funded and administered by an agency external to the school, it was physically located within the school and was soon perceived as part of the school discipline system. This on-site presence allowed the director to conduct continuous outreach to both students and teachers. Within a year over half of the student body was exposed to mediation through forty-five different in-class seminars. SMART receives funding from both the New York City Youth Bureau and a private foundation which funds the salary of a full-time director to manage the project. The presence of an energetic, full-time, on-site director appears to have resulted in

rapid expansion, impact, and acceptance of the program.

School mediation in Hawaii, which started at Farrington High School, quickly spread to twelve other sites. Neighborhood justice centers and the University of Hawaii often cooperate to introduce the concept to local schools. The University requires a tangible commitment of resources from a school before it will agree to conduct training and provide technical assistance. Principals and vice principals are urged to participate in the training on the theory that once they go through training and understand mediation, they will become advocates. Some teachers are released part-time to manage the programs and the use of parents in coordination roles is being explored. The Hawaiian mediation projects do not depend upon large amounts of external funding. Rather, these projects depend upon in-kind contributions from the University of Hawaii, neighborhood justice centers, and the participating schools.

## VI. SELECTION OF STUDENTS

All three programs have come to rely on students with leadership qualities. Since each of the three programs is housed in a school with racially and ethnically diverse student bodies, each has consciously sought a mix of mediators which reflects that diversity. Some interesting selection techniques have evolved.

In San Francisco, fourth and fifth graders are selected by their peers based on what the program director calls negative or positive leadership ability, which is defined as, "showing the ability to think well on ones feet, liking to try new things, and being trusted or followed." Care is taken to see that the group of students selected represents the sex and racial/ethnic identity of the school as a whole. Students in the program enjoy increased status. In fact, a "phantomon conflict resolver"—a third grader unable to wait until he can become an official mediator in the fourth grade—has been seen on the school yard with a hand printed conflict manager tee shirt and clip board.

Initially in New York, anyone who wanted to become a mediator was invited to join a training session. The main vehicles for recruiting student mediators were the outreach seminars, which were given with the cooperation of teachers in lieu of regularly scheduled classes, and an on-campus "media" campaign consisting of posters and "GET SMART" buttons provided by the school's art department. This open enrollment policy attracted what the director described as "reforming trouble-makers," "doers," and "joiners." Once they became mediators students who were not doing well in their classes, were encouraged by the director to improve academically and were prohibited from mediating if their attendance records did not improve. Last year, the advisability of adding criteria such as passing grades, writing an essay, or providing references has been discussed. Sophomores and juniors are most apt to take part in the program, perhaps because ninth graders feel too new and seniors are thinking about moving on. Students receive school service credit for their work as mediators and many find it useful for college applications.

In Hawaii, student mediator candidates are chosen by having the entire school—students, staff, custodians—name three people they perceive to be leaders. The students who are chosen are assembled, the program is explained, and students decide whether to take part in the program. A group of students which represents the ethnic population of the school, as well as a mixture of grade levels, is selected from those students who wish to participate. At one point, students received grades and credit for their work as mediators. Credit was removed from the program after the advent of the back-to-the-basics movement. However, students are still attracted to the program and membership gives a student special status at the school.

## VII. TRAINING

In two of the three programs, the training for the student mediators resembles very closely the kind of training given to adult mediators in the same community. In the elementary school program a completely new approach and training system was produced, tested, and refined. All three programs developed training manuals and role plays appropriate for the school setting. Training was intensive—over a weekend or during a two-week period—rather than over a long period of time. This time frame is considered appropriate for the nature of this kind of training, but it caused scheduling problems.

San Francisco fourth graders receive fifteen hours of training before donning their orange Conflict Manager tee shirts and being placed on the playground. The training is designed to build skills in active listening, problem-solving, critical thinking, teamwork, assertiveness, open communication, and the conflict management process. A day-to-day conflict resolution curriculum is laid out in a 135-page teacher training manual.<sup>43</sup> Teachers are trained by Community Boards staff so that they can eventually train students. After a period of experience as a Conflict Manager, students help train their fellow students.

The New York program contracted Conflict Management Resources, Inc. (CMR) to design and implement the training for their program.<sup>44</sup> Three times during the school year CMR conducts training for students, school personnel, and parents. Although the training manual uses examples of disputes that occur in the high school setting, the conflict resolution skills closely duplicate those that are taught to adult mediators. Twenty-five participants take part in the training which usually runs a total of twenty hours during afternoons within a two week time frame.

In the Hawaii program, students, teachers, administrators, counselors, and parents are trained side-by-side in a fast-moving, two day course which

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43. H. DAVIS, *THE CONFLICT MANAGERS PROGRAM IMPLEMENTATION AND TRAINING MANUAL* (1983) (unpublished manuscript).

44. J. STULBERG, *MEDIATING THE SMART WAY*, (1984) (unpublished manuscript).

gives each person multiple opportunities to act as both a mediator and a party to a dispute. The thirteen-page manual developed by Mel Ezer contains two concise pages of mediation philosophy and an easy-to-read outline format which is complimented by oral presentations and numerous simulations.<sup>45</sup>

### VIII. GUIDELINES FOR MEDIATION

The way in which mediation is adapted to various school sites and age groups is worthy of considerable research. Numerous questions arise. At what age can students comprehend concepts generally considered basic to mediation such as confidentiality, voluntariness, suspending judgment, empathic listening, reality testing, developing agreements that are satisfactory to all parties, and attending to the future? When should administrators intervene in student disputes and when is it suitable to let students settle on their own? How much and what kind of adult supervision is in order? Although adaptations and accommodations apparently were based the on age of the students, the authority relationship of the students to teachers and administrators, and the time-frame in which students must conduct their mediations, the spirit of mediation seems to be intact.

In San Francisco, all fourth and fifth grade Conflict Managers must follow these guidelines: 1) Whether or not to talk to the Conflict Managers is a student's personal choice; but if a student decides to accept help from the Conflict Managers, he or she must agree to work intensely to solve the problem. 2) Conflict Managers are helpers, not police; therefore, Conflict Managers do not get involved in physical fighting. 3) The Conflict Manager's job is not to solve problems for other students, but to help other students think of ways to solve problems for themselves.<sup>46</sup>

Students who become Conflict Managers agree to: 1) wear Conflict Manager tee shirts only when on duty. 2) report for duty on time, 3) make up any missed class work, 4) fill out a written report on each conflict the day it happens, 5) attend all meetings with the Conflict Manager Coordinator, and 6) remain a Conflict Manager until the end of the school year.<sup>47</sup>

The specific conflict resolution process developed for playground use is broken down into fourteen stages. Condensed, these stages flow as follows: If you see a conflict brewing, introduce yourself and ask both parties if they want to solve their problem. If both parties want help, go to the area designated for solving problems. Explain and get agreement to the four basic rules: 1) agree to solve the problem, 2) no name calling, 3) do not interrupt each other or the Conflict Manager, and 4) tell the truth. After deciding who will talk first, ask that person what happened and how he or she feels and repeat back what is

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45. M. EZER, TRAINING MANUAL FOR SCHOOL MEDIATION (1984) (unpublished manuscript).

46. H. DAVIS, *supra* note 43, at 58.

47. *Id.* at 59.



said using active listening skills. Do the same with the other party. Then ask the first party and, next, the second party, for alternative solutions. Work with the students to get a solution that satisfies both of them. After the agreement, congratulate both parties and fill out a Conflict Manager Report Form.<sup>48</sup>

As are their adult counterparts in community mediation programs, the student Conflict Managers are trained to look for agreements that meet certain criteria. To do this, Conflict Managers ask such questions as, Will the resolution solve the problem? For good? Can both disputants really do what they promise? Is the agreement specific enough? Does it tell when, where, how, and who? Is it balanced? Do both disputants share responsibility for making it work?<sup>49</sup>

New York student mediators are trained to work in teams of two, but they often work alone due to the difficulty of getting two mediators available at the same time. The director found that mediation worked best if it was offered as close to the break-out of an incident as possible. Therefore, most mediations are not scheduled and take place on short notice. Student mediators fill out class schedules so that they can be easily reached if needed. Most mediations take about forty-five minutes, which happens to coincide with the length of a class period. Perhaps this reflects the mediators' and participants' response to an internalized school clock.

The New York program accepts both verbal disputes as well as disputes that involve physical fighting (unless the fights are extremely serious or involve weapons).<sup>50</sup> When serious fights result in suspension, disputants are often given the option of attending a mediation session. This encourages the parties to face each other in mediation in order to avoid a more unpleasant situation later.<sup>51</sup>

The training manual, *Mediation the SMART Way*, outlines some of the gentler qualities of the mediator—patience, non-judgmental listening, understanding, impartiality, kindness, respectfulness, and trustworthiness. The manual also points out that a mediator must be firm, persuasive, knowledgeable, analytical, and articulate. The chapter headings include topics which could be found in labor or community mediation manuals such as, “What Has to Happen For This to be Solved to Your Satisfaction,” “Mediator as Persuader,” “Develop Trade Offs,” “Have the Disputants Focus on the Future, Not the Past,” and “Remind the Disputants of the Costs of Not Resolving Their Dispute.”<sup>52</sup>

The Hawaii manual informs students that they will help resolve cases involving fights, near fights, rumors, outsiders, teachers, students, boyfriends,

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48. *Id.* at 60.

49. *Id.* at 63.

50. New York City School Board policy mandates automatic “superintendent’s suspension” when weapons are involved.

51. E. JONAS & C. WHIPPLE, *supra* note 14, at 13.

52. J. STULBERG, *supra* note 44, at 9, 10-13.

girlfriends, money, property, and family tensions. It also makes clear that they will *not* handle disputes which involve weapons, drugs, or assaults because such cases are referred to the police.<sup>53</sup> Although students conduct the mediation sessions, all agreements are reviewed by the on-site coordinator to make sure that the terms do not violate school policy, district policy, or state law. So far, all agreements have been upheld by the administration.

#### IX. EVALUATION AND IMPACT

All three programs conduct internal evaluations. In varying degrees, they collect and analyze data regarding caseload, mediator attitudes about training and practice, disputant attitudes about the process, and impact upon the school. Information from evaluations is used to shape the programs and to influence policymakers.

The San Francisco program requires that teachers and students evaluate both their own training and the design of the program as a whole. Toward the end of the year, the entire school-site staff is asked to complete an evaluation form to ascertain the overall impact of the program on participating students, the student body at large, and the staff. Conflict Managers also are asked to comment on the perceived impact of the program on themselves and their school.

The results indicate that student mediators feel pride in their accomplishments and place a high value on being able to express and resolve their conflicts peacefully. Without prompting from adults, many try out their skills in contexts other than the schoolyard. Teachers report that as students begin experiencing success in this social arena, they begin to feel more confident in their ability to succeed academically.<sup>54</sup>

The first director of the SMART program documented every aspect of the program thoroughly by maintaining a summary of each case and its outcome, as well as an analysis of the kind and frequency of cases which came to mediation. The SMART program has served as a model for several emerging programs.<sup>55</sup>

After implementation of the SMART program, mediation emerged as the primary means by which the school administration responded to all but the most serious intra-student incidents;<sup>56</sup> therefore, it clearly achieved the goal of

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53. M. EZER, *supra* note 45, at 4.

54. COMM. BOARD, *supra* note 18, at 7.

55. Emily Jonas, director of the SMART program, made a comprehensive presentation at the NAME conference on August of 1984. *See supra* note 8. As a consequence of her workshop, several programs have been initiated influenced by the SMART model. We are aware of such programs in Connecticut, San Diego, and Boston.

56. Some of the accomplishments noted at the end of the first year of operation included:

providing the administration with a new mechanism for addressing student conflict.<sup>57</sup>

The data from Hawaii comes from several schools. The evaluation information about the original mediation program at Farrington High School (which became an informal training center for other schools wishing to start programs), deals primarily with the impact that the program had on the attitudes and values of both the mediators and the disputants. Mediation Services of Maui, which has developed several school based mediation programs on its island, reports that the first school in which they instituted mediation mediated seventy-six cases and reached sixty-three agreements. The same school reported that its caseload of reported fights dropped from eighty-three in 1981-82 to nineteen in 1982-83.<sup>58</sup>

## X. CONCLUSION

Certain characteristics emerge as essential to the development of a successful, school-based mediation program. Someone who is committed, caring, capable, and available for sufficient periods of time must be responsible for coordinating the program. The active support of school administrators is a necessity. It is advisable to pilot a program in combination with careful evaluation and documentation prior to implementing a system-wide program. Training must be an intricate and ongoing aspect of the program. It is critical for the entire school to become knowledgeable about the program and its goals so that they can use it wisely. It is also advisable for the community, particularly parents, to gain an understanding of the program. Most importantly, conflict resolution skills must be transmitted with expertise. Neighborhood justice centers have proven themselves to be invaluable in this regard.

The kinds of ethical issues which face the field of mediation as a whole will surface at the school level. In addition, issues which are unique to the school setting must be recognized and addressed in the future. The back-to-basics movement increases the competition for time in the school curriculum. Local and federal funding limitations necessitate creative support strategies.

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-Over 2,000 students participated in classroom seminars on mediation  
39 student, 12 staff members, and one parent completed the training  
134 cases were referred to mediation  
116 cases were mediated  
93 written agreements were reached  
90 incidents involving physical fighting were referred to mediation  
Principal-ordered suspensions for fighting dropped from 63 in the 1982-83 school year to 34 in 1983-1984.

57. C. WHIPPLE, VICTIM SERVICE AGENCY SCHOOL MEDIATION PROGRAM SUMMARY 3, 4 (1984) (unpublished manuscript).

58. Letter from Michael M. Hazama, Executive Director, Mediation Services of Maui, Inc., to Project for the Advancement of School-Related Mediation (Aug. 7, 1984).

School schedules make it difficult to arrange times for mediation and mediation training and some administrators and teachers view mediation as a threat to their authority. Additionally, parental approval and the legal status of minors may create problems.

As a growing number of communities actively explore the use of conflict resolution programs and curriculums, it is useful to remember that our schools are training the decision-makers of the future. What would happen if all these decision-makers were mediators?

