

**FAMILY COURT REVIEW**  
**An Interdisciplinary Journal**

Volume 43, Number 2, April 2005

# FAMILY COURT REVIEW

## An Interdisciplinary Journal

Volume 43, Number 2, April 2005

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## STUDENT NOTES

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### EMPLOYING MEDIATION TO APPROACH TRUANTS

Michael A. Lindstadt

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Truants have been dealt with by state and school officials with heedlessness, suspension, expulsion, and placement under the power of the courts. One problem faced in decreasing truancy is its lack of a common definition. Statistics show high rates of truancy with kids who subsequently drop out of school and there is a strong correlation between drop-out and unemployment, welfare, low salary, and imprisonment. The juvenile justice system does not reach the root of the truant's individual problems or adequately attempt to solve or assist the child and family in its goal to develop constructive and autonomous individuals.

Mediation is an alternative to a punishment-oriented approach to truancy. Mediation is a process in which a neutral third party helps participants reach their own agreement for resolving a dispute. Mediation is adaptable to the many different causes of truancy and can provide multiple benefits to truants and their families. The Ohio Commission On Dispute Resolution & Conflict Management has the most accomplished and consistently progressing truancy mediation program in the nation.

Critics of mediation have scrutinized the process for not placing enough emphasis on mediation's major elements, such as premediation instruction, exploitation of the informality of the process, and a lack of funding, which may render mediation weak and inefficient. Maintaining and emphasizing particular elements will benefit jurisdictions in their utilization of the process.

**Keywords:** *absence; attendance; court; delinquency; drop-out; formality; funds or funding; judge; juvenile; juvenile court; mediation; mediator; neutrality; school; student; truancy; truant*

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In the past election, not surprisingly, both presidential candidates made proposals to improve the education of our country's children.<sup>1</sup> Yet neither presidential candidate mentioned the problem of truancy in their campaign platforms. Minors first need to attend school in order to reap the benefits of an education.<sup>2</sup> For years, scores of American children have wasted available education by not attending school. These minors, deemed truant, have been dealt with by state and school officials with heedlessness,<sup>3</sup> suspension,<sup>4</sup> expulsion,<sup>5</sup> and placement under the power of the courts.<sup>6</sup> Some schools and courts have even gone so far as to place civil and/or criminal liability on the parents of chronically truant children.<sup>7</sup> Statistics show high rates of truancy with kids who subsequently drop out of school and the correlation between drop-out and unemployment, welfare, low salary, and imprisonment is staggering.<sup>8</sup>

By responding in this way, do schools and courts properly address the underlying reason for a student's truancy? Is it purely the student's fault or responsibility to attend school, no matter what the student's personal circumstances may be?<sup>9</sup> What if the student has an undetected learning disability or is persistently being harassed; is involved with the wrong crowd or a gang; is the victim of parental neglect or abuse; is the victim of a teacher who is at fault or abusing his or her responsibilities?

Whatever the cause, the law's current approach to truancy is retributive rather than restorative toward truants.<sup>10</sup> As a result, the juvenile justice system does not reach the root of the truant's individual problems or adequately attempt to solve or assist the child

and family in its goal to develop constructive and autonomous individuals.<sup>11</sup> It simply labels truants as juvenile status offenders or delinquents and presupposes that sanctions and punishment will deter absence from the classroom.<sup>12</sup> Even if these kinds of sanctions get children back in class, is the student then mentally present or just physically present?

There is an alternative to a punishment-oriented approach to truancy: mediation. “Mediation is a voluntary process in which a neutral third party, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute or planning a transaction.”<sup>13</sup> Truancy is a red flag to root out problems from which it stems, encompassing the potential to create greater individual and societal damage.<sup>14</sup> Mediation is adaptable to the many different causes of truancy and can provide multiple benefits to truants and their families. Courts, on the other hand, are difficult places for even adults to have desirable outcomes. Although reformed,<sup>15</sup> the juvenile justice system is still too harsh and illequipped to meet the goals society aims for in its youth.<sup>16</sup> The juvenile justice system is responsible for juveniles with much more severe offenses than truancy.<sup>17</sup> As a resolution to crowded courts and finding the most beneficial method of developing children, mediation can address problems that obstruct students’ paths to obtaining an education, and to resolve dilemmas which normally go undetected and become causes of more tragic outcomes.<sup>18</sup> Many professionals even advocate that mediation itself should be a subject of education, teaching children and families how to effectively communicate, come to agreements, abstain from confrontation and violence, and face problems autonomously.<sup>19</sup>

The next section of this note explains truancy, the effects of truancy on children, and truancy’s effect on the state. Section three describes today’s attempts to combat truancy and explains why juvenile courts are inadequate to address the issue of truancy. Section four illustrates mediation, an alternative dispute resolution device that is progressively being promoted in lieu of the litigation process. This section also builds the framework for why mediation is ideal and better suited than past procedures that dealt with truancy, and also describes Ohio’s *Truancy Prevention Through Mediation Project*. A truancy mediation model, such as Ohio’s, benefits jurisdictions that decide to use truancy mediation and helps maintain the legitimacy of the process.

Mediation has been used in the past to resolve other types of problems that affect children. In some of these instances, critics of mediation have scrutinized the process for not placing enough emphasis on mediation’s major elements, such as premediation instruction, exploitation of the informality of the process, and a lack of funding, which may render mediation weak and inefficient. For peak performance, the general guidelines of mediation must be adhered to, toward fitting the specific circumstances of individual truants.<sup>20</sup> One of mediation’s superior qualities over the traditional justice system is that it can be tailored and modified to fit the issues involved. Section five describes some of the criticisms of mediation and explains the elements of mediation that can be emphasized and modified in order to optimally serve truants.

## BACKGROUND ON TRUANCY

### WHAT IS TRUANCY?

To begin with, one problem faced in decreasing truancy is its lack of a common definition.<sup>21</sup> States and jurisdictions broadly differ in their basis for when a student is deemed

truant. States such as California,<sup>22</sup> Delaware,<sup>23</sup> and New Mexico,<sup>24</sup> consider students truant after three unexcused absences or partial absences.<sup>25</sup> Some states, such as Texas, define truancy more specifically as having three absences in four weeks or ten absences in six months.<sup>26</sup> In Providence, Rhode Island, a student is not deemed truant until twenty-five or thirty absences.<sup>27</sup> The wide variety of definitions “hinder jurisdictions’ comparison of data on absent students.”<sup>28</sup>

The Ohio Commission On Dispute Resolution & Conflict Management,<sup>29</sup> (the Commission) a highly accomplished organization that specializes in alternative dispute resolution, stresses the importance of starting truancy mediation programs early, when the problems of truancy are just beginning.<sup>30</sup> Summary data by the Commission shows that improvements in attendance are more dramatic when mediation takes place in the lower grades.<sup>31</sup> This allows underlying problems to be addressed before students begin slipping academically, making eventual delinquency much more likely.<sup>32</sup>

### CAUSES OF TRUANCY

Research has found that truancy commonly correlates with other factors present in a child’s life, such as:

*Family factors.* Lack of guidance or parental supervision, domestic violence, poverty, drug or alcohol abuse in the home, lack of awareness of attendance laws, and differing attitudes toward education.<sup>33</sup>

*School factors.* Attitudes of teachers, school size, other students,<sup>34</sup> and administrators; schools often have inconsistent procedures in place for dealing with chronic absenteeism and may not have meaningful consequences available for truant youth, for example, out-of-school suspension.<sup>35</sup>

*Economic influences.* Employed students, single-parent homes, high mobility rates,<sup>36</sup> parents who hold multiple jobs, and a lack of affordable transportation and childcare.<sup>37</sup>

*Student variables.* Drug and alcohol abuse, lack of understanding of attendance laws, lack of social competence, mental health difficulties, and poor physical health.<sup>38</sup>

“The community significantly influences the occurrence of truancy as well.”<sup>39</sup> Community factors refer directly to the cultures, people, and circumstances that surround a student, as opposed to social factors, which encompass a greater range of factors, such as economic influences, school factors, and the other factors previously discussed. The causes of truancy are vast, and thus “factors may fold into more than one correlate, for example, economic conditions and differing culturally based attitudes on education also correlate to community.”<sup>40</sup> For instance, truancy is a huge problem in the United Kingdom.<sup>41</sup> Parents face fines for not sending their children to school, in fear of the school’s unsafe environment.<sup>42</sup> Thus, the underlying reason for truancy in this regard may correlate to economic factors, or differing attitudes toward school, other students, or community factors.

### CONSEQUENCES LINKED TO TRUANCY

As to the individual, truancy has been linked to many debilitating problems. Much research has found truancy to be a reliable predictor of delinquency.<sup>43</sup> Statistics show high rates of truancy with kids who subsequently drop out of school and the correlation between

drop-out and unemployment, welfare, low salary, and imprisonment is staggering.<sup>44</sup> Silver City, New Mexico found that when truancy referrals to parents were low, delinquency referrals were very high.<sup>45</sup> However, when more referrals for truancy were made, delinquency referrals decreased dramatically.<sup>46</sup> Of all truants in Delaware (the average being a thirteen-year-old male or a female who misses 25 days of school per year), seventy-five percent are later reported to be involved with drugs.<sup>47</sup>

Consequences of truancy, such as loss of federal and state education funding, have a direct impact on the entire community.<sup>48</sup> In turn, the decrease in funds toward educational resources also negatively impacts the educations of students other than those who are truant.<sup>49</sup> States such as South Carolina and New Mexico forfeit federal funds, and new federal laws put more funds and students at risk.<sup>50</sup> To the entire community's detriment, truancy causes both higher taxes and a "stagnant economy due to reduced spending power."<sup>51</sup> Indirectly and perhaps more so, truants negatively impact the economy because they never obtain the education or character necessary to gain employment and be part of the American economy.<sup>52</sup>

Truancy also impairs states and their communities by consuming the time and resources of the family courts and juvenile justice systems.<sup>53</sup> Truancy has a direct impact on the rise in crime rates.<sup>54</sup> Studies show that areas in which truants gather have high rates of crime.<sup>55</sup> In St. Petersburg, Florida, the captain of the Sheriff's Office assigns officers specifically to catch truants, because it is well known among law enforcement officials that youngsters who skip school are more likely to commit crimes.<sup>56</sup>

## APPROACHES TO TRUANCY

### HISTORICALLY

Over one hundred years ago, the juvenile courts were created to recognize the differences between the acts committed by delinquent children and those of criminal adults.<sup>57</sup> Previously, juveniles were tried just as adults were.<sup>58</sup> Despite this recognition, the court system continued to have adverse effects on children under its jurisdiction.<sup>59</sup> Critics of the system argued that children required treatment and rehabilitation, not punishment.<sup>60</sup> The deficiencies of the juvenile court system were noted by the Supreme Court in *In re Gault*,<sup>61</sup> *In re Winship*,<sup>62</sup> and *Breed v. Jones*.<sup>63</sup> These decisions recognized the rights of juveniles, and sparked reform in the juvenile courts which sought to afford youths "diversion, decriminalization, due process and deinstitutionalization."<sup>64</sup> Finally in the 1970s, alternatives to placing children in the juvenile courts were established.<sup>65</sup> The family systems theory, contending that all family members are necessary for solving problems, has also contributed to the development of alternative juvenile programs.<sup>66</sup>

### CURRENT SYSTEMS: SCHOOLS, LAW ENFORCEMENT AND JUVENILE COURTS

Jurisdictions differ in their approaches to truancy. Today, truancy is mostly handled through either school-based intervention (letters and home visits)<sup>67</sup> or state law enforcement (truancy officers and juvenile courts).<sup>68</sup> Some states ignore the court system and respond simply by denying the student class credits,<sup>69</sup> holding a student's grade level back a year,<sup>70</sup> or not allowing the student to attend summer school.<sup>71</sup> Because of each state's differing definitions of truancy, students who would be considered status-offenders in other states may be left unexamined by the courts or schools in their own state.<sup>72</sup>

Most states that handle truancy through courts and state law enforcement vary by district or county.<sup>73</sup> Currently, Delaware is the only state with a statewide truancy court, called the Twilight Program.<sup>74</sup> The Twilight Program was recently given the International Association for Truancy and Drop-out Prevention's annual award in recognition of its achievement in the area of truancy.<sup>75</sup> The magistrate of the Twilight Program is a social worker who shares the bench with a judge.<sup>76</sup> This joint judging approach provides the Twilight Program with the capability of a social worker to determine appropriate social services, and the authorization of a judge to assign these services and to ensure that students follow through with them. In turn, the Twilight Program is able to treat truants on an individual basis, addressing the problems from which the individual's truancy stems, while cutting down on the overall rate of truancy.

Other cities, such as Providence, try to spare truants from the negative effects of the adversarial process by locating the truancy court in the library of the school.<sup>77</sup> Courts in Albuquerque, New Mexico may hold hearings in schools instead of courts, reserving litigation for those who resist lesser sanctions.<sup>78</sup> Some states have created divisions of the family court, aimed specifically toward addressing truancy, that operate in schools and away from the actual courthouse, in order to spare students from the negative aspects of being in court.<sup>79</sup> Yet, kids who fail in the truancy court get moved to the family court, which is busier, more remote, and less attentive to the child's needs.<sup>80</sup>

Many jurisdictions seem overwhelmed and confused, and feel that stronger enforcement of discipline is required to abate truancy.<sup>81</sup> Dallas recently opened its third truancy court in order to shorten the time between filing and adjudicating truants.<sup>82</sup> The last truancy court it opened adjudicated 14,100 truants in only eight months.<sup>83</sup> It intends to have four courts dedicated to truancy, adjudicating 30,000 truants per year.<sup>84</sup> San Francisco contends that it needs twenty-six additional officers just to combat truancy.<sup>85</sup>

Some jurisdictions have intertwined retributive and rehabilitative approaches to truancy. In California, a new truancy program directed its funds toward a district attorney and fifty-one deputies specifically to combat truancy.<sup>86</sup> However, instead of only utilizing court proceedings, the California program utilizes mediation and designates punishments such as probation, community service, and loss of driver's licenses.<sup>87</sup> Thus, designating a punishment or program that fits the particular truant, as opposed to one uniform punishment that is given regardless of the truant's particular circumstances, allows the California program to treat truants on an individual basis and to see what works in what cases.

Among other states, parents in Arizona, New Mexico, Rhode Island,<sup>88</sup> and Texas can face charges for liability of children who are truant from school with sanctions that range from counseling to jail time.<sup>89</sup> Failing initiatives directed at truants in the United Kingdom have caused authorities to "crack down" on parents also.<sup>90</sup> The Prima County Attorney's Office in Arizona conducted a truancy reduction program named ACT Now (Abolish Chronic Truancy), which gave parents of truant youth the option of prosecution for their child's truancy or a prosecution alternative, which necessitated their enrollment in social services and parenting classes to address the problem.<sup>91</sup>

## THE INADEQUACY OF THE JUVENILE COURTS

Although created to recognize the inexperience of juveniles<sup>92</sup> and later reformed,<sup>93</sup> the juvenile justice system is still neither receptive, rehabilitative, nor more beneficial than the

criminal courts towards troubled truants in need of services and programs that rehabilitate and develop them into productive citizens.<sup>94</sup> Experts and scholars contend that the current juvenile court systems that follow a retributive theory<sup>95</sup> are failing terribly and that a new approach of correcting juveniles is desperately needed.<sup>96</sup> In a 2002 article, the President of the Cleveland Bar Association maintained that criminalizing truants is the least effective way to handle the problem.<sup>97</sup> His position was that, although truancy is a complex problem, children involved with the juvenile courts are more likely to become recidivist and adult offenders, and a juvenile court record can prevent one from obtaining a job, entering the military, going to college or holding a state license.<sup>98</sup> He instead asserted that mediation was a much more effective way to combat truancy.<sup>99</sup>

Many blame the juvenile court's inability to benefit juveniles and society on the ever growing court docket, which prevents courts from being receptive to minors, who are each individually unique.<sup>100</sup> At any rate, experts perceive status offense cases such as truancy to require handling methods other than the courts<sup>101</sup> and as being a distraction to courts that need to handle more serious offenders.<sup>102</sup>

States have also found the juvenile justice system to be failing and inadequate because it often confuses its two conflicting goals: punishment and rehabilitation.<sup>103</sup> Offenders that require rehabilitation will receive little rehabilitation and too much punishment,<sup>104</sup> and those committing minor offenses receive too little punishment, resulting in a failure to achieve a deterrent effect to the individual and society.<sup>105</sup> Punishments, such as suspension, do not address what the cause of truancy is and, in addition, leave the truant unsupervised and prone to engage in even more negative conduct.<sup>106</sup>

Unfortunately, after unsuccessful attempts at correcting their child's behavior, parents often feel such despair and helplessness that they ask the court to place the child under its custody,<sup>107</sup> further subjecting the child to the court's negative effects.<sup>108</sup> Because of the adversarial nature of the juvenile justice system, parents and children can find their problems escalated or can even become pitted against each other.<sup>109</sup> Conversely, there are alternatives to the court process, such as mediation, that "help parties identify conflict, reduce misunderstanding, vent emotion, clarify priorities, find points of agreement, and explore areas of compromise."<sup>110</sup>

## **MEDIATION IS THE BEST APPROACH TO TRUANCY**

### **WHAT IS MEDIATION?**

"Mediation is a voluntary process in which a neutral third party, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute or planning a transaction."<sup>111</sup> The process systematically leads from issue identification to option generation<sup>112</sup> and focuses on the needs and concerns of each party participant.<sup>113</sup> Mediation services vary with the issues involved, level of crisis, orientation, and identity of the participants.<sup>114</sup> Programs vary with the community served, sponsoring agency, types of cases handled, and the mediator.<sup>115</sup>

All mediators "must maintain a neutral position, assist in productive communication between the two parties, identify needs, and generate options for the parties' mutual gain."<sup>116</sup> Mediators must also assist in "identifying underlying conflicts, reduce misunderstanding, vent emotions, clarify priorities, find points of agreement and explore areas of compromise."<sup>117</sup>

States such as New York and New Jersey have established rules that govern qualifications and training for mediators and dispute resolution authorities.<sup>118</sup> Although mediation should not be seen as therapy,<sup>119</sup> by concentrating on the interest of the subject and seeking the underlying problem, it has been found to have a therapeutic effect.<sup>120</sup>

### ADVANTAGES OF MEDIATION

While the *Gault* court concluded that juveniles require rehabilitation and treatment,<sup>121</sup> other courts such as the New Jersey Supreme Court have gone so far to hold that the family court is responsible for accommodating juveniles with social plans that address the unique problems faced by juveniles.<sup>122</sup> However, “courts are not designed” to address the problems that children face in our ever changing society.<sup>123</sup>

Mediation enables students and authorities to pinpoint problems and begin attempts towards solving them.<sup>124</sup> Mediation can uncover problems in an individual or family such as drug abuse, the need for mental health treatment, educational support, and other large problems that mediation alone cannot solve.<sup>125</sup> Because there are many causes for truancy which require a variety of solutions,<sup>126</sup> mediation is best suited to unveil underlying causes and help minors, their parents, and teachers produce the most effective solutions.<sup>127</sup> Thus, it is important to remember that mediation in itself is not the cure to truancy but the detection of its cause.<sup>128</sup>

Mediation is also better suited to handle truancy than the court process because it consists of characteristics that promote autonomy. Mediation has the ability to help families reach agreements that are viewed reasonably by all on issues such as “attendance and performance in school, curfew violations, social life, privacy, and family interaction patterns.”<sup>129</sup> Additionally, mediation lacks the delays inherent to the court system.<sup>130</sup> Persons will be more likely to participate in mediation over the court system because it is a less formal and more local setting.<sup>131</sup> “Active involvement in the decision-making process promotes positive and lasting results for parents and children.”<sup>132</sup> Because of characteristics such as autonomy, informality and confidentiality, one can infer that problems will be unveiled which normally may not have been because a student may have felt afraid or uncomfortable discussing them to authorities.<sup>133</sup>

Additionally, mediation’s requirement of neutrality creates another benefit which the court system lacks.<sup>134</sup> Neutrality is necessary and beneficial because it allows issues and concerns of the child to be heard, thus revealing the underlying conflict and causes for the truancy.<sup>135</sup> Without neutrality, the child may feel suppressed by the usual authority of adults and parents, keeping the child’s conflicts hidden and his trust diminished.<sup>136</sup> Because mediators seek to improve communication and family functioning,<sup>137</sup> it should come as no surprise that mediation is found to be more appropriate than courts, especially in cases concerning “stubborn and runaway children.”<sup>138</sup>

Another benefit of mediation is its ability to be designed and tailored to a variety of problems.<sup>139</sup> With juveniles, mediation is flexible enough to deal with family disputes, school-peer disputes, criminal offenses, or a combination of each.<sup>140</sup> This trait is also helpful in that it adapts to families who may differ culturally, philosophically, or in other ways.<sup>141</sup> Mediation can also be applied narrowly, such as New Jersey’s juvenile automobile-theft program.<sup>142</sup>

Proponents of mediation for juveniles are also bolstered by the family systems approach, which “recognizes that the problems of one family member often affect, and are affected by, those of other family members.”<sup>143</sup> Thus, problem solving requires the participation of all family members.<sup>144</sup> Mediation inherently teaches better and more productive methods for dealing with conflict.<sup>145</sup> A competent mediator can recognize family patterns that

encourage conflict.<sup>146</sup> The likelihood that truancy may stem from a parent–child conflict only increases the value of such a benefit.<sup>147</sup>

Advocates even maintain that by relieving the court of issues such as truancy, the use of mediation will greatly enhance the state juvenile justice system by allowing more time for cases that require adjudication.<sup>148</sup> In a study of victim–offender mediation by the U.S. Department of Justice, it was concluded that mediation reduced recidivism, rehabilitated, and was fair to the offender.<sup>149</sup> Further, mediation is a cost-effective alternative<sup>150</sup> and states fund these programs through a variety of sources, such as government, nonprofit organizations, and religious organizations.<sup>151</sup>

Schools and courts have already implemented mediation to approach adolescents.<sup>152</sup> Some have even applied mediation to truancy.<sup>153</sup> Mediation programs have a higher degree of success than court affiliated programs.<sup>154</sup> The use of mediation to resolve juvenile issues has been recommended in some jurisdictions,<sup>155</sup> and in 1996, roughly twenty-four states had juvenile dispute resolution programs.<sup>156</sup> Juvenile mediation programs across the nation have reported positive results.<sup>157</sup> Areas, such as Florida, have reported substantial savings benefits for using alternative dispute resolutions over the court process.<sup>158</sup> Expectantly, truancy mediation will also increase accountability for one’s actions, as it did for offenders during victim–offender mediation.<sup>159</sup> The U.S. Department of Justice’s studies on juvenile victim–offender mediation have shown that mediation of juvenile offenses “provides all parties involved with a higher degree of satisfaction.”<sup>160</sup>

#### **OHIO’S MODEL: THE TRUANCY PREVENTION THROUGH MEDIATION PROJECT**

The Ohio Commission On Dispute Resolution & Conflict Management, (the Commission), a statewide effort in cooperation with the Ohio Supreme Court’s Dispute Resolution Section, school districts, and local courts, appears to have the most accomplished and consistently progressing truancy mediation program in the nation.<sup>161</sup> The Commission was formed by the Ohio legislature in 1989 and worked with the Ohio Department of Education since 1994 to create school-based conflict management programs that teach nonviolent dispute resolution techniques.<sup>162</sup>

The truancy mediation program works as follows:

The participating school identifies a child who has a specified number of unexcused absences or tardiness and sends the parent or guardian warning letters. If the problem continues, the school schedules a mediation session at the school and ensures that the parent and teacher, and, if appropriate, the child attend. The job of the mediator, a third-party neutral, is to explain to the parent what the state and local attendance requirements are and the legal consequences of habitual and chronic truancy. The mediator then tries to help the parties identify the issues that are keeping the child away from school and attempts to get an agreement on what steps will be taken by the school and the home to resolve those issues and assure the child’s attendance. If an agreement is reached, the mediator crafts the agreement on the spot and the parties sign it. If the parents don’t show up for the mediation or no agreement is reached or the agreement is substantially breached, the matter is referred to the pupil personnel office for “fast-tracking” to the Juvenile Court. If there is part-compliance with the agreement, the parties may agree to re-mediate the matter. If there is full compliance, the file is closed.<sup>163</sup>

To fully understand what a truancy mediation session looks like, it is important to note the difference in using mediation in elementary school, middle school, and high school.<sup>164</sup> In the lower grades, typically only the parent(s) and teacher participate in the mediation.<sup>165</sup>

It can also be helpful for a school counselor, social worker, or school nurse to provide input.<sup>166</sup> In middle and high school programs, the students almost always participate with the parents.<sup>167</sup> Summary data by the Commission shows that improvements in attendance are more dramatic when mediation takes place in the lower grades.<sup>168</sup>

*Standards of Practice:* The Commission's standards of practice are consistent with the fundamental values of mediation, helping mediators and program coordinators in maintaining focus and quality in the practice of truancy mediation.<sup>169</sup> Truancy mediators are instructed to respect and encourage mediation as a voluntary process.<sup>170</sup> If it appears that a party was coerced into an agreement, such as the threat of a court referral for refusing to attend, the mediator is instructed to withdraw from the process.<sup>171</sup> Mediators are to respect and encourage self determination; voluntary resolutions designed by the parties themselves.<sup>172</sup> The Commission even states that the invitation to mediate should come from the school, not from the courts or a social service agency.<sup>173</sup>

The mediator's main function is to guide the parties through the dispute, but not to make decisions for the parties.<sup>174</sup> Truancy mediators are required to explain the process and the role of the mediator to all parties at the beginning of the process.<sup>175</sup> "Training in basic mediation and truancy mediation is a necessary foundation, but becoming a successful truancy mediator requires experience."<sup>176</sup>

Impartiality and neutrality are important to the process and "mediators must be aware of and guard against responding to parties in a manner which reflects impressions based on parties' personal characteristics, background or mannerisms during the mediation."<sup>177</sup> It is often helpful to remind the parties in opening statements that the shared goal of mediation is to help the student have a full and complete educational opportunity, lessening the various participants concern for power.<sup>178</sup>

Ohio law<sup>179</sup> mandates a mediator to maintain the confidentiality of information acquired in the mediation process.<sup>180</sup> However, confidentiality is not to limit or prohibit the effective monitoring, research, or evaluation of mediation programs.<sup>181</sup> If required, mediators may report to schools, courts, or law enforcement authorities, whether the parties appeared at a scheduled mediation, and whether a full, partial, or no agreement was reached, but may not report the details of the agreement.<sup>182</sup>

*Evaluation of the Truancy Prevention Through Mediation Project:* An evaluation of the *Truancy Prevention Through Mediation Project* (the Project) shows truancy mediation as a productive way to increase attendance and reduce tardiness.<sup>183</sup> During the 1998–99 school year, twelve schools in three counties participated in the project. "All parties in the mediation (mediators, school representatives and parents) were asked to complete surveys prior to and immediately following the mediation." After mediation, the average number of absences and tardies decreased in all three counties.<sup>184</sup>

During the 2000–01 school year, fifty-eight elementary and middle schools in seven different counties conducted more than 1,700 mediations.<sup>185</sup> An individual evaluation found that unexcused absences by chronic truants dropped between forty-six and ninety-one percent in six of the seven counties.<sup>186</sup> Additionally, the study found that ninety percent of the students were less tardy after the mediation than before and that ninety percent of the teachers, school officials, and parents that participated in the mediation felt favorably about the process and would consider it again to facilitate other disputes.<sup>187</sup> Because of the enormous success, Ohio planned to conduct truancy mediation programs in seventy-five additional schools during the 2001–02 school year.<sup>188</sup>

The Program was utilized in eight counties and ninety elementary, middle, and high schools during the 2001–02 school year.<sup>189</sup> In total, over 900 mediations were evaluated for

the 2001–02 school year. In each of the counties, a significant reduction in the number of absences and tardies was demonstrated for those students and families that participated in the program.<sup>190</sup> Furthermore, the program participants felt extremely satisfied with the mediation results validated during the mediation process, and recognized mediation as a viable tool for resolving similar issues in the future.<sup>191</sup>

In 2002, the Commission inquired into “whether families and students that had taken part in mediations continued to benefit from the problem solving, solution identifying model of the program . . . into the next year, keeping attendance from slipping into the premediation absences.”<sup>192</sup> The school year attendance of 186 random students, from six different counties, was recorded<sup>193</sup> and contrasted with the previous year (2001–02), the year in which the truancy mediation took place.<sup>194</sup> In two of the six counties, the average number of absences for the students sampled continued to decline after significant declines in the year previous.<sup>195</sup> For example, in Delaware County, after declining from an average of 13.17 absences per student to 3.42 absences after mediation, the average number of absences per student further fell to 2.88 the subsequent year.<sup>196</sup> In one county, although truancy did not decline after mediation, it did decline in the year following mediation.<sup>197</sup> In two other counties, after significant declines in absences after mediation, absences raised very slightly the subsequent year (Ross County, after falling from 15.38 to 1.27, raised only to 2.11).<sup>198</sup> From these findings, the Commission emphasized “the importance of starting this program in the elementary grades, when the problems of truancy are just beginning, allowing the underlying problems to be addressed before the student begins slipping academically, making teenage truancy and eventual delinquency more likely.”<sup>199</sup>

In 2002–03, the Program made note that it “required families, schools, juvenile courts and social service agencies to work collaboratively.”<sup>200</sup> “Over 1,900 mediations were evaluated for the school year. Independent evaluation reports for the 2002–03 school year indicated that in all, but one, of the counties, a significant reduction in the number of absences or tardies was demonstrated for those students/families that participated in the program.”<sup>201</sup> In five of the eight counties, the county’s decline in unexcused absences for the average truant ranged from 6.7 to 13.75 absences per year. In one of the eight counties, the average truant declined 2.9 unexcused absences per year, and in another county the average truant declined 1.5 per year.<sup>202</sup>

School districts without special intervention programs, like the Project, have no alternative after truant are warned and parents are notified, besides handing these families over to the courts.<sup>203</sup> The courts either charge the parent as negligent or the child as unruly.<sup>204</sup> The Project is able to gain the parents’ attention through the authority of the court, yet keep the matter outside of it.<sup>205</sup> This allows for resolution in the friendlier environment of a school and with the facilitation of a neutral third party towards cooperation and nonconfrontation.<sup>206</sup>

## **CRITICISMS AND PROPOSALS FOR EMPHASIS AND MODIFICATION**

Although truancy mediation is being utilized more in the United States and other parts of the world, there are many jurisdictions that do not use mediation at all or use it very little.<sup>207</sup> Their reasons for maintaining traditional juvenile justice practices and/or other attempts towards resolution vary.<sup>208</sup> Reasonable modifications and emphasis of the general guidelines of mediation address these criticisms and complete this thesis’ proposal that mediation is a better method of addressing truancy than those methods used by most jurisdictions today.

## CRITICISMS

*Informality:* Although informality is often seen as an advantage of mediation over adjudication, some see it as a deficiency.<sup>209</sup> Critics point to a lack of rules, counsel, and an authority of review as debilitating, especially when dealing with youth, a group shown to lack knowledge of dispute resolution and the ability to properly evaluate what is in their best interest.<sup>210</sup> This lack of formality and rules can lead the truant to make an agreement that he or she is not able to comply with. For example, a student may sign an agreement to comply with attendance rules or face particular sanctions and punishment, but that student may not be aware or informed of the services he or she needs in order to comply with the agreement. An important safeguard against this criticism is to ensure complete pre-mediation instruction,<sup>211</sup> informing truants of the purposes of mediation, the options available to participants, that others, including counsel, with the consent of all parties, may accompany parties during mediation,<sup>212</sup> and identifying societal programs that may be of guidance to them.<sup>213</sup>

*Lack of Resources:* Others advocate that, unless certain resources such as rehabilitation for alcohol, drug, gambling, psychological and/or occupation rehabilitation are available to the parties, mediation may be futile.<sup>214</sup> Yet, this criticism applies whether cases are resolved in mediation or the court system.<sup>215</sup> How you resolve a dispute does not create resources to help families.<sup>216</sup> It only creates a greater willingness to use those resources because the solution is self-determined.<sup>217</sup> Although mediation does not cure truancy, but detects its cause,<sup>218</sup> mediation teaches the parties better and more productive methods for dealing with conflict.<sup>219</sup> Additionally, mediation is cost-effective<sup>220</sup> and often funded through a variety of sources, such as government, nonprofit, and religious organizations.<sup>221</sup>

*Long-Term Effectiveness:* Some believe that the true impact and long term effectiveness of mediation and agreements created through mediation have yet to be explored. However, this argument is no longer valid. Mediation programs are growing all over the nation in many different concentrations.<sup>222</sup> The growth and improvement of these programs have been tracked through participant surveys and correlative statistics, enabling us to note what works and what doesn't.<sup>223</sup> Additionally, the more various concentrations and fields utilize mediation, the more other concentrations will be able to recognize mediation's adaptability to their own utilization.<sup>224</sup>

Moreover, the impact and long-term effects of the courts on juveniles have been analyzed by experts and found to be harmful. Children involved with the juvenile courts are more likely to become recidivist and adult offenders.<sup>225</sup>

*Mediator Quality:* Much criticism derived from the view that the quality of mediators often decides the outcome of the case at hand. For example, adversaries of mediation contend that a mediator's own emotional baggage can creep into his or her session.<sup>226</sup> While this may be true, the process should not be penalized for a hazard that is equally so for all professions, concentrations, and fields. Although a judge is accountable to the public to some extent, particularly if elected, the quality of a judge can affect the outcome of a truant's case in court as well. More importantly though, mediator quality can be ensured and practiced through licensing, training, set standards of practice, apprenticeships and preliminary periods set for observing mediation at different levels and types.<sup>227</sup> Truancy mediators must have a comprehensive understanding of child abuse and neglect<sup>228</sup> and be well skilled in mediation.<sup>229</sup> Programs must provide mediators with comprehensive training, reserve attention to mediator performance<sup>230</sup> and monitor the mediator's subsequent performance.<sup>231</sup> Mediators should be trained in the use of caucus.<sup>232</sup> A proposal to ask parties of

mediation to offer party feedback about the experience may be beneficial so long as it is voluntary and does not harm the process.

*Voluntariness:* One criticism is that nearly all mediation programs have an inherently coercive element, especially for juveniles because they are more likely to feel powerless.<sup>233</sup> The truant may fear that a decision not to participate will result in a court order or sanction.<sup>234</sup> The truant can even experience moral pressure.<sup>235</sup>

Safeguards can be instituted to preserve the rights of the truants to participate and to ensure the effectiveness of the mediation.<sup>236</sup> Including a discussion of this element in the premediation instructions can comprise one such safeguard.<sup>237</sup> In a premeeting, the mediator explains the process, the advantages and disadvantages of participating or not participating in the mediation.<sup>238</sup> This can ensure that an informed choice is made by the student.<sup>239</sup> Safeguards should also be made to ensure the truant's voluntariness into contract agreements.<sup>240</sup> It should also be included in the premediation meeting that the truant is not required to make any concessions or agreements.<sup>241</sup> It is a responsibility of the mediator to make sure the truant is not coerced in any way to settle.<sup>242</sup>

### PROPOSALS FOR EMPHASIS AND MODIFICATION

While truancy mediation is still being studied and refined, maintaining and emphasizing particular elements will benefit jurisdictions in their utilization of the process.

*Stricter Definitions of Truancy:* The earlier truancy is approached, the more likely restorative attempts are successful, and the less likely truants will become delinquent.<sup>243</sup> Because of broadly varying definitions of truancy, students considered status-offenders in other states are left unexamined in their own state. A program may propose to create levels for their truancy cases.<sup>244</sup> Mentioned earlier, levels of truancy may be established in order to better correlate treatment to the degree of truancy, level of crisis, identity of the participants (gang or group conflict), or community served.<sup>245</sup> It may be a concern to a community not to down play critical cases or blow out of proportion small cases.<sup>246</sup> States that define truancy as three unexcused absences or partial absences within a set time period send a message to students that school attendance is important, leave less students unexamined, and have a greater chance of solving problems that link to truancy.

*Proper Forms of Notification and Conscientious Efforts:* Although it seems as though many truancy cases are approached from the understanding that there may be problems at home, the ability of parents to guide their children should not be forgotten.<sup>247</sup> Many parents probably do not know how many times their child has missed school because it is kept from them by the child and school notifications may not be timely enough or given at all.<sup>248</sup> This too is affected by the definition of truancy in the jurisdiction; in one state a parent may be notified after three absences, whereas in another, after fifteen.

*Premediation Instruction and meeting:* Instruction should consist of explaining what mediation is through a description of its elements: confidentiality, neutrality, problem identification, possible drafting of an agreement, and recognizing outside sources. Both parties must fully understand the mediator's neutrality before the mediation begins.<sup>249</sup> Neutrality is necessary and beneficial because it allows the child to be heard and his or her concerns to surface, which possibly are causes of the truancy or reveal the underlying conflict.<sup>250</sup> The mediator will most often work between adults and minors, and so it is easy for the adult(s) to feel an alliance to the mediator and the minor to feel adverse simply because of the mediator's age.<sup>251</sup> Although it is equally important for the mediator to assure the parents understand that the mediator is not siding with the child or undermining the adults'

parenting skills.<sup>252</sup> In order to promote the use of mediation, it must be instructed that a guideline of mediation is that any information involved in the mediation session can not be offered as evidence against any party in subsequent court proceedings.<sup>253</sup>

Young persons can often be intimidated in conferences with adults, may not have the vocabulary to express themselves adequately, and may not understand phrases or concepts raised by adults.<sup>254</sup> Thus to maintain the mediation's effectiveness, mediators should utilize at least one meeting with the individual parties before the actual mediation effort to assess the youth's communication and assertiveness skills.<sup>255</sup> Prior meetings with the youth can also help get out issues that would often be private or not raised by young people.<sup>256</sup> Additionally, rehearsal can help the youth convey points of interest clearly.<sup>257</sup> These last two points are particularly relevant in extreme or high conflict cases, such as truancy attributable to gangs.

*Formality:* For truancy mediation, the absence of procedural guidelines inherent to the adversarial process is beneficial to its flexibility, maintains the parties' desire to participate, and promotes a free exchange.<sup>258</sup> The National Standards for Court-Connected Mediation Programs counsels against creating a universal model in order to preserve the flexibility of mediation as a process.<sup>259</sup> However, informality cannot be allowed to take away from the adherence to fundamental principles and guidelines that maintain the quality of mediation.<sup>260</sup> Although a beginning truancy mediation program is not instructed to follow a strict, rigid model, it should be instructed to follow an initial model, such as Ohio's Program. Flexibility in mediation allows a given program to adapt to the particular participants and community. Yet critical elements, such as a standard definition of truancy, impartiality of the mediator, promotion of participant autonomy, available social programs for referral, and methods of collecting data should be adhered to in order to have an effective truancy mediation program.

*Legislation and Funding:* In the study of victim-offender mediation by the U.S. Department of Justice, it was noted that a problem of mediation programs is a lack of funding.<sup>261</sup> "Official statutory support breaks down institutional barriers to mediation, provides necessary guidelines for mediators and secures financial support by the government; all of which are crucial for long-term stability of a mediation program."<sup>262</sup> The Ohio Program provides educational and financial assistance to courts who implement the Dispute Resolutions Program and as a result several courts adopted juvenile victim-offender mediation programs.<sup>263</sup>

It is critical to remember that mediation is not a replacement for therapy aimed at changing chronic behavior, mending emotions, or changing personality patterns.<sup>264</sup> Thus, funds are necessary in order to provide these resources, if necessary, while the causes of the truant's problems are known and treatable. Assistance in issues of difficulty (e.g., indigent, lack of clothing, babysitter, food, rehabilitation) may be necessary and could result in extreme progress of a particular child's school habits. Mediation can not, alone, solve these problems.

## CONCLUSION

As a resolution to crowded courts and finding the most beneficial method of developing children, truancy mediation has the ability to weed out problems that obstruct students' paths to obtaining an education, and to resolve dilemmas which normally go undetected and become causes of more tragic outcomes.<sup>265</sup> First, states need to create stricter definitions of truancy that continually examine students who are not attending school. Mediation itself can also act as a subject of education, teaching kids and families how to effectively communicate, come to agreements, abstain from confrontation and violence, and face problems autonomously.<sup>266</sup> The Ohio Commission's truancy mediation model can benefit

jurisdictions that choose to begin their own truancy mediation programs. Future uses of truancy mediation programs should not exploit the informality of mediation and need to secure funding in order not to render mediation weak and inefficient. Through its continued use and the discovery of its benefits, the increased funding of mediation to combat truancy can benefit society and its youth.

## NOTES

1. AM, *President Bush Launches Education Platform*, at <http://www.abc.net.au/am/s237235.htm> (last visited Feb. 16, 2004); John Kerry.com, *World Class Education for All*, at <http://www.johnkerry.com/issues/education/> (last visited Jan. 15, 2005).

2. Many cities across the country report increasingly intense problems with the rate of truancy. "In 1998, truancy accounted for 26 percent of all formally handled status offense cases, representing an 85-percent increase in truancy cases in juvenile court since 1989." U.S. DEP'T OF JUSTICE, *Truancy Reduction: Keeping Students in School* (September 2001), at <http://www.ncjrs.org/pdffiles1/ojdp/188947.pdf> (last visited Jan. 20, 2005) [hereinafter FED. TRUANCY REDUCTION]. In South Carolina, truants constitute one-third of the children in custody at the Department of Defense of Juvenile Justice. *State Must Tackle Truancy*, GREENVILLE NEWS, July 9, 2003, at 6A. In the 2002–03 school year, 25 percent of the students in Baltimore were absent twenty days or more. *New City Center Hopes to Curb Truancy; Multi-agency Effort Aims to Aid Students, Cut Crime*, BALT. SUN, November 5, 2003, at 5B. In San Francisco, out of 18,000 students, 5,000 miss at least one day of school a week. Heather Knight, *Grand Jury Calls S.F. Lax on Truancy; District Misses Out on Funding*, S.F. CHRONICLE, June 12, 2003, at Bay Area, A25.

3. Rachel Spaethe, *Survey of School Truancy Intervention and Prevention Strategies*, 9 KAN. J. L. & PUB. POL'Y 689, 689 (2000). A Kansas judge saw "offenders aged fourteen to sixteen who had not been to school since they were ten, and no one had noticed that they were missing." *Id.* In Providence a student is not deemed truant until twenty-five or thirty absences. Katherine Boas, *Truancy Court to be Held in School Library*, PROVIDENCE JOURNAL-BULLETIN (Rhode Island), August 29, 2003, at C-01. Schools in San Francisco lose \$10 million worth of state funds a year due to their lax policy toward absences. Knight, *supra* note 2.

4. Spaethe, *supra* note 3, at 696.

5. See FED. TRUANCY REDUCTION, *supra* note 2.

6. Spaethe, *supra* note 3, at 692.

7. The California Supreme Court validated legislative efforts to impose civil and criminal liability on the parents of truants in *Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993). See also Janet Stroman, *Holding Parents Liable For Their Children's Truancy*, 5 U.C. DAVIS J. JUV. L. & POL'Y 47, 52 (2000); Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 SANTA CLARA L. REV. 621, 629–32 (1997); Howard Davidson, *No Consequences-Re-examining Parental Responsibility*, 7 STAN. L. & POL'Y REV. 23, 26 (1995–96).

8. Stroman, *supra* note 7, at 47.

9. Truancy implies conduct for which the child is responsible. Len Biernat & Christine Jax, *Limiting Mobility and Improving Student Achievement*, 23 HAMLIN L. REV. 1, 18 (1999).

10. Stephanie A. Beauregard, *Court-Connected Juvenile Victim-Offender Mediation: An Appealing Alternative for Ohio's Juvenile Delinquents*, 13 OHIO ST. J. ON DISP. RESOL. 1005, 1006, 1009 (1998).

11. Government found the juvenile justice system to be failing and inadequate because it often confuses its two conflicting goals: punishment and rehabilitation. Marianne McConnell, *Mediation—An Alternative Approach for the New Jersey Juvenile Justice System?* 20 SETON HALL LEGIS. J. 433, 446–47 (1996).

12. See Spaethe, *supra* note 3, at 693. "No method has been as effective as taking truants to court." *Id.*

13. Glenda L. Cottam, *Mediation and Young People: A Look At How Far We've Come*, 29 CREIGHTON L. REV. 1517, 1518 (1996) (quoting LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYER* 91 (1987)).

14. Much research has found truancy to be a reliable predictor of delinquency. FED. TRUANCY REDUCTION, *supra* note 2.

15. The deficiencies of the juvenile court system were noted by the Supreme Court in *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970); *Breed v. Jones*, 421 U.S. 519 (1975). See also McConnell, *supra* note 11, at 436; Dean Rojeck & Maynard Erickson, *Reforming the Juvenile Justice System*, L. & SOC'Y REV., 16(2) at 242 (1981–82).

16. See McConnell, *supra* note 11, at 433; see also Rojeck & Erickson, *supra* note 15, at 242 (the juvenile justice system should only be used as a last resort).
17. See Cottam, *supra* note 13, at 1525–26; see also GREENVILLE NEWS, *supra* note 2.
18. McConnell, *supra* note 11, at n.155; see also Cottam, *supra* note 13, at 1530.
19. See Cottam, *supra* note 13, at 1527.
20. All mediators hold in common certain tasks. Yet mediation services may vary due to the issues involved. *Id.* at 1519.
21. FED. TRUANCY REDUCTION, *supra* note 2.
22. CAL. EDUC. CODE § 48260 (Lexis 2004).
23. DEL. CODE ANN. tit. 14 § 2702 (2003).
24. N.M. STAT. ANN. § 27-2B-9 (2003).
25. Stroman, *supra* note 7, at 48; Nancy E. Lynch, *System Keeps Kids In School*, THE NEWS JOURNAL, (Wilmington, Delaware), October 29, 2003, at p.13X; Steve Terrell & Diana Heil, *Governor Calls For Harsher Penalties For Truancy*, SANTA FE NEW MEXICAN, June 14, 2003, at B-1.
26. Tawnell D. Hobbs, *Funding for Third Truancy Court OK'd; County Hopes to Shorten Time to Get Cases Heard*, DALLAS MORNING NEWS, May 7, 2003, at 2B. In other parts of California, truancy is also defined more specifically, such as six unexcused fall day absences. Dean Flippo, *Truancy Program Steers Students Back to School*, THE CALIFORNIAN (Salinas, California), September 29, 2003, at 6A. San Francisco defines truancy as ten unexcused absences, and also defines unexcused as thirty-minute absences or tardinesses. Knight, *supra* note 2.
27. Boas, *supra* note 3.
28. Thursday Edition: Truancy Rates, at <http://www.poynter.org/column.asp?id=2&aid=64430> (last visited Nov. 7, 2004).
29. Ohio Commission On Dispute Resolution & Conflict Management, at <http://disputeresolution.ohio.gov/Brochures/truancybrochure.htm> (last visited Feb. 17, 2003).
30. Truancy Mediation's Continuing Benefits, at <http://disputeresolution.ohio.gov/cc%5Ctmlong.pdf> (last visited Jan. 15, 2005) [hereinafter Continuing Benefits].
31. *Id.*
32. *Id.*
33. FED. TRUANCY REDUCTION, *supra* note 2.
34. Bullies have also contributed to the problem of truancy. Spaethe, *supra* note 3, at 691.
35. FED. TRUANCY REDUCTION, *supra* note 2.
36. Spaethe, *supra* note 3.
37. FED. TRUANCY REDUCTION, *supra* note 2.
38. *Id.*
39. *Id.*
40. *Id.*
41. Ananova, *First Parents in Court Under New Truancy Law*, at [www.ananova.com/news/story/sm\\_754840.html?menu=](http://www.ananova.com/news/story/sm_754840.html?menu=) (last visited Feb. 17, 2004).
42. *Id.*
43. FED. TRUANCY REDUCTION, *supra* note 2; see also THE NATIONAL DROP-OUT PREVENTION NETWORK CONFERENCE INITIAL REPORT, *Truancy Mediation—A Model Approach*, at <http://www.specialistschoolstrust.org.uk/inclusion/conference/report12p.html> (last visited Feb. 13, 2004) [hereinafter NATIONAL DROP-OUT]; GREENVILLE NEWS, *supra* note 2.
44. Stroman, *supra* note 7, at 47.
45. Terrell & Heil, *supra* note 25.
46. *Id.*
47. Lynch, *supra* note 25.
48. FED. TRUANCY REDUCTION, *supra* note 2. Other parts of California break down their loss from absences to anywhere from \$22–28 a day per absence. Knight, *supra* note 2. See also Flippo, *supra* note 26.
49. See Knight, *supra* note 2.
50. GREENVILLE NEWS, *supra* note 2; see also Terrell & Heil, *supra* note 25.
51. NATIONAL DROP-OUT, *supra* note 43.
52. Interview with Andrew Shepard, Professor of Law, Hofstra University School of Law, in Hempstead, NY (Dec. 4, 2004).
53. GREENVILLE NEWS, *supra* note 2.
54. NATIONAL DROP-OUT, *supra* note 43; see also GREENVILLE NEWS, *supra* note 2; Terrell & Heil, *supra* note 25.

55. Terrell & Heil, *supra* note 25.
56. Josh Zimmer, *Sheriff's Official Makes Truancy His Top Priority*, ST. PETERSBURG TIMES, August 29, 2003, at p. 3.
57. McConnell, *supra* note 11, at 436.
58. *Id.* at 439.
59. *See* Gault, 387 U.S. 1 (1967).
60. McConnell, *supra* note 11, at 439.
61. Gault, 387 U.S. at 1.
62. Winship, 397 U.S. at 358.
63. Breed, 421 U.S. at 519.
64. Gault, 387 U.S. at 1; *see also*, McConnell, *supra* note 11, at 436; Rojeck & Erickson, *supra* note 15, at 242.
65. McConnell, *supra* note 11, at 437.
66. *Id.* at 439.
67. *See* Spaethe, *supra* note 3, at 692.
68. *Id.* *See also* NATIONAL DROP-OUT, *supra* note 43; GREENVILLE NEWS, *supra* note 2.
69. Spaethe, *supra* note 3, at 692.
70. *Id.*
71. NATIONAL DROP-OUT, *supra* note 43; *see also* GREENVILLE NEWS, *supra* note 2.
72. *See* Spaethe, *supra* note 3, at 689.
73. Lynch, *supra* note 25.
74. *Id.*
75. International Association for Truancy and Drop-out Prevention, at <http://www.iatdp.org> (last visited Feb. 17, 2004).
76. Lynch, *supra* note 25.
77. Boas, *supra* note 3.
78. Susie Gran, *Lawyer Named to Head Truancy Court*, ALBUQUERQUE TRIBUNE, November 6, 2003, at A3.
79. Boas, *supra* note 3.
80. *Id.*
81. Spaethe, *supra* note 3, at 693 (the community must understand that there is a zero-tolerance for truancy).
82. Hobbs, *supra* note 26.
83. *Id.*
84. *Id.*
85. Knight, *supra* note 2.
86. Flippo, *supra* note 26.
87. *Id.*
88. Boas, *supra* note 3.
89. Gran, *supra* note 78; *see also* Terrell & Heil, *supra* note 25; Hobbs, *supra* note 26.
90. Guardian Unlimited, *Truancy Initiatives a Failure, Say Tories*, at <http://education.guardian.co.uk/truancy/story/0,12751,964217,00.html> (last visited Feb. 17, 2004).
91. Fed. Truancy Reduction, *supra* note 2.
92. McConnell, *supra* note 11, at 436.
93. Gault, 387 U.S. 1 (1967); *see also* McConnell, *supra* note 11, at 436; Rojeck & Erickson, *supra* note 15.
94. *See* McConnell, *supra* note 11, at 446–47.
95. The retributive theory of justice contends that the offender restores society through the execution of his punishment. Beaugard, *supra* note 10, at 1009, n.24. The restorative justice theory asserts that unlawful conduct is the responsibility of all and that while we are to restore the victim, we must also restore the offender to be able to function lawfully in society. *Id.*
96. *Id.* at 1006, 1009 (the juvenile justice system in Ohio is struggling with over-crowded dockets, untimely dispositions, and increasing rates of juvenile delinquency and recidivism).
97. FROM THE PRESIDENT, *Tackling Truancy* (Feb. 2002), at <http://www.clevelandbar.org/new/president/pres0202.html> (last visited Jan. 18, 2005).
98. *Id.*
99. *Id.*
100. McConnell, *supra* note 11, at 446.
101. Cottam, *supra* note 13, at 1525.
102. *Id.* at 1525, n.59.

103. McConnell, *supra* note 11, at 446–47.
104. *Id.*
105. *Id.*
106. *Id.* at n.155.
107. Cottam, *supra* note 13, at 1525.
108. FROM THE PRESIDENT, *supra* note 97.
109. Cottam, *supra* note 13, at 1526.
110. *Id.* at 1519.
111. *Id.* at 1518 (quoting RISKIN & WESTBROOK, *supra* note 13).
112. *Id.*
113. *Id.*
114. *Id.* See also Beauregard, *supra* note 10, at n.52.
115. Cottam, *supra* note 13, at n.18.
116. *Id.* at n.17.
117. *Id.*
118. McConnell, *supra* note 11, at n.182.
119. Cottam, *supra* note 13, at n.7.
120. McConnell, *supra* note 11, at 454.
121. Gault, 387 U.S. 1 (1967).
122. McConnell, *supra* note 11, at 441; see also, State v. H.B., 259 N.J. Super. 603 (Sup. Ct. Essex County, 1992).
123. McConnell, *supra* note 11, at 459.
124. See *Id.* at n.155.
125. Cottam, *supra* note 13, at 1530.
126. Stroman, *supra* note 7, at 50; see also FED. TRUANCY REDUCTION, *supra* note 2.
127. Cottam, *supra* note 13, at 1530.
128. *Id.* at 1545.
129. *Id.* at 1526–27.
130. *Id.* at 1542.
131. McConnell, *supra* note 11, at 462.
132. Cottam, *supra* note 13, at 1529; see also Beauregard, *supra* note 10, at 1017.
133. See Cottam, *supra* note 13, at 1542.
134. See McConnell, *supra* note 11, at 454.
135. *Id.*
136. *Id.* at n.154.
137. Cottam, *supra* note 13, at 1526.
138. See *id.*; see also Mark S. Umbreit, *Mediation of Youth Conflict: A Multi-System Perspective*, 8 CHILD & ADOLESCENT SOC. WORK J. 141, 142 (1991).
139. See McConnell, *supra* note 11, at 462.
140. *Id.*
141. Cottam, *supra* note 13, at 1526.
142. McConnell, *supra* note 11, at 459.
143. *Id.* at 439.
144. *Id.* at 438.
145. ROBERT A. BARUCH BUSH, *MEDIATION INVOLVING JUVENILES: ETHICAL DILEMMAS AND POLICY QUESTIONS* 11 (1991).
146. Cottam, *supra* note 13, at 1527.
147. Bush, *supra* note 144.
148. See McConnell, *supra* note 11, at 435; see also Cottam, *supra* note 13, at 1542.
149. See McConnell, *supra* note 11, at 460.
150. Cottam, *supra* note 13, at 1542.
151. McConnell, *supra* note 11, at n. 171.
152. Beauregard, *supra* note 10, at 1015; see also McConnell, *supra* note 11, at 460.
153. Ohio Commission on Dispute Resolution & Conflict Management, *Big Reductions in Truancy/ Tardiness Prompt State To Expand Parent/School Mediation Program*, at <http://disputeresolution.ohio.gov/cc/truancypressrelease.htm> (last visited Feb. 13, 2004) [hereinafter Ohio Commission].
154. McConnell, *supra* note 11, at 462.

155. *Id.* at 453 (mediation was recommended in a 1988 report on the juvenile justice system by the Association of Children of New Jersey).

156. *Id.* at 457.

157. *Id.* at 455 (schools with mediation programs in Cleveland, Chicago, and Houston found that suspension and violence decreased by seventy-five percent).

158. *Id.* at 458 (while the cost connected with a juvenile who goes to court averaged \$1,200, the cost of the arbitration-mediation program is \$300 per child).

159. *Id.* at 455.

160. *Id.* at 462.

161. Ohio Commission On Dispute Resolution & Conflict Management, *supra* note 29.

162. Ohio Commission, *supra* note 153.

163. FROM THE PRESIDENT, *supra* note 97.

164. *See* Continuing Benefits, *supra* note 30.

165. Ohio Commission On Dispute Resolution & Conflict Management, *supra* note 29.

166. *Id.*

167. *Id.*

168. *See* Continuing Benefits, *supra* note 30.

169. Ensuring Competence and Quality Standards of Practice for Truancy Mediation, at <http://disputeresolution.ohio.gov/cc/competence.pdf> (last visited Feb. 17, 2004) [hereinafter Competence].

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. Competence, *supra* note 168.

176. *Id.*

177. *Id.*

178. *Id.*

179. OHIO REVISED CODE § 2317.023.

180. Competence, *supra* note 169.

181. *Id.*

182. *Id.* Exceptions may apply when the mediator learns of actual abuse, and when the mediator or school official is required to report under other regulations and rules.

183. The Commission retained an independent third party, Luminesce Consulting, to document all its findings. Ohio Commission On Dispute Resolution & Conflict Management, *Truancy Prevention Through Mediation Program: An Overview*, at <http://disputeresolution.ohio.gov/truancyoverview.htm> (last visited Feb. 13, 2004) [hereinafter Ohio Commission Overview]. *See also* Continuing Benefits, *supra* note 30.

184. Ohio Commission Overview, *supra* note 183.

185. Ohio Commission, *supra* note 153.

186. *Id.*

187. *Id.*

188. *Id.*

189. Ohio Commission On Dispute Resolution & Conflict Management, *Truancy Prevention Through Mediation Program Executive Summary For School Year 2001–2002*, at <http://disputeresolution.ohio.gov/cc/truancyes2001.htm> (last visited Feb. 13, 2004) [hereinafter Ohio Commission 2001–02].

190. *Id.*

191. *Id.*

192. Continuing Benefits, *supra* note 30.

193. *Id.* (Seven counties were surveyed, and since one had a small number of students in the random sample, they were excluded from the final analysis. Of the remaining six counties, 242 students were randomly selected using an accepted selection tool. After eliminating those who had moved, were home schooled, or for other reasons were not available or appropriate, 186 students were tracked for the number of days absent.)

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Continuing Benefits, *supra* note 30.

199. *Id.*
200. Truancy Prevention Through Mediation Program 2002–2003 Program Evaluation, at <http://disputeresolution.ohio.gov/pdfs/exec.pdf> (last visited Feb. 17, 2004) [hereinafter Ohio Commission 2002–03].
201. *Id.*
202. *Id.*
203. Ohio Commission, *supra* note 153.
204. *Id.*
205. *Id.*
206. *Id.*
207. *See* Spaethe, *supra* note 3, at n.11.
208. *Id.* at 694–96.
209. Beauregard, *supra* note 10, at 1019–20.
210. *Id.* at 1020.
211. *See id.* at 1015–16; *see also* Cottam, *supra* note 13, at 1518.
212. Debra Baker, *Juvenile Mediation: Innovative Dispute Resolution or Bad Faith Bargaining*, 27 U. Tol. L. REV. 897, 919–20 (1996).
213. *See* McConnell, *supra* note 11, at 436.
214. *See* McConnell, *supra* note 11, at n.198.
215. Schepard, *supra* note 52.
216. *Id.*
217. *Id.*
218. Cottam, *supra* note 13, at 1545.
219. *See* McConnell, *supra* note 11, at n.155.
220. Cottam, *supra* note 13, at 1542.
221. McConnell, *supra* note 11, at n.171.
222. *See id.* at 457.
223. Ohio Commission 2002–03, *supra* note 200.
224. *See* Beauregard, *supra* note 10, at 1007.
225. *Id.*
226. Bush, *supra* note 144.
227. *Id.*
228. Cottam, *supra* note 13, at 1534.
229. *Id.*
230. Beauregard, *supra* note 10, at 1020.
231. *Id.*
232. *Id.* A caucus is a private meeting between the mediator and a party that is short in duration and used to build trust and rapport between the two.
233. *Id.* at 1016.
234. *Id.* at n.67.
235. *Id.* at 1016.
236. *See id.* at 1015–16; *see also* Cottam, *supra* note 13.
237. *See* Beauregarde, *supra* note 10, at 1016.
238. *Id.* at 1015.
239. *See id.*
240. *Id.* at 1017.
241. *Id.*
242. *Id.*
243. Ohio Commission 2001–02, *supra* note 189.
244. Ken Reid, *Strategic Approaches to Tackling School Absenteeism: The Traffic Lights Scheme*, 55(3) EDUC. REV. (2003).
245. Cottam, *supra* note 13, at 1519.
246. *See* Reid, *supra* note 244.
247. Ohio Commission 2001–02, *supra* note 189.
248. *Id.*
249. Cottam, *supra* note 13, at 1529.
250. McConnell, *supra* note 11, at 454.
251. Cottam, *supra* note 13, at 1526; *see also* Bush, *supra* note 145.

252. Cottam, *supra* note 13, at 1529; *see also* Bush, *supra* note 145.  
253. Cottam, *supra* note 13, at 1533.  
254. *Id.* at 1529.  
255. *Id.*  
256. *Id.*  
257. *Id.*  
258. McConnell, *supra* note 11, at 462.  
259. Beauregard, *supra* note 10, at 1014–15.  
260. *See id.* at 1020.  
261. McConnell, *supra* note 11, at n.198.  
262. *Id.* at 436.  
263. Beauregard, *supra* note 10, at 1007.  
264. Cottam, *supra* note 13, at 1526.  
265. McConnell, *supra* note 11, at n.155; *see also* Cottam, *supra* note 13, at 1530.  
266. *See* Cottam, *supra* note 13, at 1527.

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