

**Mediation over Prosecution:  
The Right Approach to Increasing School Attendance in Baltimore City**

For decades, schools in Baltimore City have struggled to find the most effective ways to reduce truancy and keep children on a path to graduate. Any progress in education reform or teacher quality is lost on the thousands of students each year who are consistently absent from the classroom.<sup>1</sup> Cities across the country, including Baltimore, are now increasing the number of criminal prosecutions against parents of truant children in the hopes of improving school attendance. In 2011, more than 400 Baltimore parents were charged with violating provisions of Maryland's compulsory attendance law, and twelve were eventually sentenced to time in jail.<sup>2</sup> This law states that parents must ensure their child attends school on a regular basis from the ages of five to sixteen.<sup>3</sup> Alfred Barbour is the court liaison for Baltimore City Schools and is responsible for filing these charges and bringing parents into court. He recently said in an interview that he has the "worst job in Baltimore City," because no one wants to send parents to jail, but he feels that it is necessary in order to convey the importance of school attendance.<sup>4</sup>

Mr. Barbour's underlying rationale behind prosecuting parents makes sense at first glance, because school truancy is a serious problem in Baltimore and one of the

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<sup>1</sup> More than 10,000 Baltimore City high school students missed at least a month of school in 2011. Maryland Report Card-2011, *Attendance Rates---High School*, available at <http://www.mdreportcard.org/AttendanceRate.aspx?PV=183:H:30:AAAA:1:N:0:13:1:1:0:1:1:1:3> (last viewed 5/26/12)

<sup>2</sup> Erica L. Green, *Students Skipping School Land Some Parents in Jail*, Baltimore Sun, April 25, 2011, at 1A.

<sup>3</sup> Md. Educ. Code Ann. § 7-301.

<sup>4</sup> Green, *supra* note 2, at 1A.

earliest indicators that a child will eventually drop out of school.<sup>5</sup> It is essential, therefore, that City officials take any effective measure to intervene when students are consistently absent from the classroom. There is no doubt that prosecuting parents for their children's truant behavior conveys the seriousness of school attendance, but that alone does not make it a successful strategy.<sup>6</sup> Many people, including judges around the country, argue that fining parents or removing them from the home in order to instill proper parenting skills is a misguided tactic.<sup>7</sup> It not only removes accountability from the students, but prosecuting parents also takes money and resources away from families that can least afford it. More importantly, punitive measures are simply not effective in reducing truancy, because they often fail to address the root causes behind a student's decision not to go to school.<sup>8</sup>

Mr. Barbour frequently points out that he views court as a last resort and that only a small fraction of parents are ever forced to appear before a judge.<sup>9</sup> This fact, however, does not justify turning some parents into criminals if the threat of prosecution is not actually helpful in getting students back to school. Last year, more than 5,000 Baltimore City students were habitually truant, meaning they missed at least 20% of the school year without an excuse.<sup>10</sup> This number is unacceptably high, and has dire implications not only for these students, but also for the health of the City in general. With limited

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<sup>5</sup> Clara Daining, Virletta Bryant, and C. David Crumpton, *An Evaluation of the Truancy Reduction Pilot Program of the First Judicial Circuit of Maryland*, A collaboration between: The Maryland Judiciary, The University of Maryland School of Social Work, and Coppin State University, Annapolis, MD.: Administrative Office of the Courts, Court Research and Development Department, 2008, at 18-19.

<sup>6</sup> Editorial, *Truancy and the Courts*, Baltimore Sun, May 1, 2011.

<sup>7</sup> See Virginia Department of Education, *Improving School Attendance: A Resource Guide for Virginia Schools*, August 2005, at 46-48.

<sup>8</sup> *Id.* at 46.

<sup>9</sup> Erica L. Green, *Students Skipping School Land Some Parents in Jail*, Baltimore Sun, April 25, 2011, at 1A.

<sup>10</sup> Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2010-2011*, available at: <http://www.marylandpublicschools.org/NR/rdonlyres/11C79F29-716F-4308-8EAF-EE5C4D8788DA/30816/habtru11.pdf>, last visited 4/26/2012.

resources, schools and Baltimore City officials must ensure that all efforts being taken to reduce truancy are cost-effective and productive. The decision to criminally prosecute a few hundred parents out of thousands who could potentially be investigated, not only fails this test, but is also incredibly arbitrary. Instead, City officials should free up an already crowded District Court docket and divert these resources into developing a citywide truancy mediation program.

Truancy mediations have been instituted on varying scales across the country and are proving to be extremely successful in reducing school absences. There is no reason why this strategy should continue to go relatively ignored in this City or any other school district struggling with attendance. The lack of awareness or bona-fide support for mediation in this area is baffling, because a reliable mechanism to reduce school truancy is staring everyone in the face. Mediations are not expensive and provide school officials and parents with the crucial opportunity to discuss the causes of a student's truancy and what the appropriate solution should be. Leaders in the education and dispute resolution communities should begin developing a comprehensive truancy mediation program immediately, so that some schools could begin taking advantage of the process by next school year.

Part I of this paper discusses the most recent data on school attendance in Baltimore City and the negative impact truancy has on students and the community in general. Part II further explains the compulsory attendance law in Maryland and why prosecuting parents is not an effective use of the judicial system. Finally, Part III provides the reasons why instituting a truancy mediation program in Baltimore City is so important and how the program should be structured and funded.

## I. The Current Truancy Rates and the Importance of Intervention

Schools and researchers frequently separate students into two distinct categories when evaluating poor attendance, those who are “habitually truant” and those who are “chronically absent.” It is important to understand the difference between these terms before moving forward. As mentioned above, a student in Maryland is considered habitually truant if he or she has been enrolled in school for more than 90 days and has been absent at least 20% of the time *without* a valid excuse.<sup>11</sup> A student is considered chronically absent, however, if he or she misses at least twenty days of school during the course of a year, regardless if the absence is excused or not.<sup>12</sup> Maryland and other states began tracking the number of chronically absent children, because it paints a more accurate picture of a school’s level of truancy. These students are still missing valuable learning time and are likely to fall behind the rest of their class, even if there is a valid reason for many of their absences.

The good news for Baltimore City is that recent data indicates more children are staying in school and earning high school diplomas than ever before. The habitual truancy rate in this city has been steadily decreasing from 10.6% of students in 2005 to 7.3% last year,<sup>13</sup> and the chronic truancy rate in Baltimore City middle schools has been nearly cut in half since 2005 from 35% to 16.4%.<sup>14</sup> The greatest achievement, however, has been the dramatic improvements recently in the number of students who have been

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<sup>11</sup> Jane Sundius and Molly Farneth, *Missing School: The Epidemic of School Absence*, Open Society Institute-Baltimore, September 2008, at 2.

<sup>12</sup> *Id.*, at 3.

<sup>13</sup> Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2010-2011*, available at: <http://www.marylandpublicschools.org/NR/rdonlyres/11C79F29-716F-4308-8EAF-EE5C4D8788DA/30816/habtru11.pdf> (last viewed 4/26/2012); Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2005-2006*.

<sup>14</sup> 2011 Maryland Report Card, *Absentee Rates for Baltimore City---Middle Schools*, available at <http://www.mdreportcard.org/AttendanceRate.aspx?PV=183:M:30:AAAA:1:N:0:13:1:1:0:1:1:1:3> (last viewed 5/26/12).

finishing school. Last year's increase in the graduation rate from 65.9% to 71.9% represents the largest single year jump in a decade, and a 20% increase since 2005.<sup>15</sup> Additionally, 4.2% of high school students dropped out of school last year, which represents a significant turnaround from 2005 when 10.3% of teenagers decided to leave school early.<sup>16</sup>

The chief executive officer of Baltimore City Schools, Dr. Andres Alonso, should be given at least partial credit for these recent improvements. Since taking office in 2007, he has made school attendance a priority and has worked diligently with the Baltimore Education Research Consortium (BERC), the Open-Society Institute-Baltimore, and countless nonprofit and community leaders to understand the attendance data and make improvements.<sup>17</sup> One of the most significant policy changes he has made has been to slash the number of school suspensions from more than 26,000 in 2005 to less than 10,000 last year.<sup>18</sup> More importantly, he has put school attendance at the forefront of education reform in Baltimore City, which is exactly where it should be. Dr. Alonso's leadership has led to several important changes in recent years to address this problem, such as sending more letters to truant parents, having more follow-up home visits by school administrators, and providing greater incentives for schools to increase

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<sup>15</sup> Press Release, City Schools Graduation Rate Continues to Climb (Sept. 30, 2011), available at [http://www.baltimorecity.gov/OfficeoftheMayor/NewsMedia/tabid/66/ID/1661/City\\_Schools\\_Graduation\\_Rate\\_Continues\\_to\\_Climb.aspx](http://www.baltimorecity.gov/OfficeoftheMayor/NewsMedia/tabid/66/ID/1661/City_Schools_Graduation_Rate_Continues_to_Climb.aspx), last visited 4/26/12.

<sup>16</sup> 2011 Maryland Report Card, *Dropout Rate for Baltimore City*, available at <http://www.mdreportcard.org/DropoutRate.aspx?PV=29:H:30:XXXX:1:N:0:13:1:2:1:1:1:3>, last visited 4/26/12.

<sup>17</sup> Jane Sundius, *The Importance of Showing Up*, Baltimore Sun, Op-Ed, July 29, 2010.

<sup>18</sup> Erica L. Green, *In Baltimore, More Time in School Means Less Juvenile Crime*, Baltimore Sun, Nov. 14, 2010, at 1A.

attendance.<sup>19</sup> Even though recent changes are helping move school attendance in the right direction, the current statistics are still no cause for celebration.

Baltimore City's habitual truancy rate of 7.3% still dwarfs the state average of 1.9%, and although the dropout numbers have decreased significantly---more than 1,100 students last year chose to leave school without a diploma.<sup>20</sup> Even more staggering is that 17,735 students were absent for at least one month of school in 2010-2011, including 42% of high school students.<sup>21</sup> Additionally, there were sixteen schools in Baltimore City that reported at least 30% of their students were habitually truant.<sup>22</sup> When this many students are missing school, the educational experience of those who actually attend school on a regular basis is also severely diminished.<sup>23</sup> Teachers are frequently forced to slow down the pace of a class so absent children are not lost throughout the rest of the school year.<sup>24</sup> However, there are much larger and damaging implications for those students who are consistently failing to attend school.<sup>25</sup>

The most obvious consequence of skipping a lot of class is that students miss out on learning and consequently fall behind their peers. Dr. Alonso released a report in 2010 that found chronically absent students score 15 to 20 percentage points lower on

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<sup>19</sup> Editorial, *Truancy and the Courts*, Baltimore Sun, May 1, 2011.

<sup>20</sup> Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2010-2011*.

<sup>21</sup> 2011 Maryland Report Card, located at [www.marylandreportcard.org](http://www.marylandreportcard.org), last visited 4/26/12 (calculation was made by adding the total number of chronically truant children in Baltimore City from elementary, middle, and high schools).

<sup>22</sup> Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2010-2011*. (In contrast, Baltimore County reported that it had one school that reported a habitual truancy rate over 15%).

<sup>23</sup> Hedy N. Chang and Mariajosé Romero, *Present, Engaged, and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades*, National Center for Children in Poverty (September 2008), at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *See Id.*, at 6-10.

state assessments tests than students who attended school on a regular basis.<sup>26</sup> Falling significantly behind in school can be extremely frustrating and embarrassing for young people, and it often results in students giving up on learning altogether. One study in 2005 asked 3,000 chronically absent students why they missed so much school and the number one answer provided was that they are “discouraged about being behind in school” and don’t feel that they will ever catch up.<sup>27</sup> It is especially important for children living in Baltimore City to attend school early in their education, because an overwhelming number of students live in poverty and lack the resources to make up for lost instruction.<sup>28</sup> In addition to lower academic achievement, chronic truancy is also one of the most dependable indicators that a child will eventually drop out of school.

Studies indicate that eventual dropouts tend to show a gradual pattern of chronic absenteeism early in their education and then a more consistent level of truancy shortly before deciding to drop out. More than half of dropouts in Baltimore City miss at least one month of school in each of the three years prior to ending their education.<sup>29</sup> The devastating effects of not finishing high school have been well documented: dropouts are eight times more likely to go to jail,<sup>30</sup> three times more likely to be on welfare, and twice

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<sup>26</sup> Sarah D. Sparks, *Spurred by Statistics, Districts Combat Absenteeism*, Education Week (online), March 23, 2012, available at [http://www.edweek.org/ew/articles/2010/10/01/06absenteeism\\_ep.h30.html](http://www.edweek.org/ew/articles/2010/10/01/06absenteeism_ep.h30.html), last viewed 4/26/12.

<sup>27</sup> Washoe County, NV School District, *Truancy: A Serious Problem for Students, Schools, and Society*, Day 4: Legal Intervention Tackling Some of the Hardest Cases, located at [http://www.washoe.k12.nv.us/edcollab/\\_drug/onlineevents/truancy/id42.htm](http://www.washoe.k12.nv.us/edcollab/_drug/onlineevents/truancy/id42.htm), last visited 4/26/12.

<sup>28</sup> Faith Connolly and Linda S. Olson, *Early Elementary Performance and Attendance in Baltimore City Schools’ Pre-Kindergarten and Kindergarten*, Baltimore Education Research Consortium, March 2012, at 1.

<sup>29</sup> Martha Able and Mac Iver, *Gradual Disengagement: A Portrait of the 2008-09 Dropouts in the Baltimore City Schools*, Baltimore Education Research Consortium, August, 2010, at 6.

<sup>30</sup> Robert Balfanz, Joanna Horing Fox, John M. Bridgeland, and Mary McNaught, *Grad Nation: A Guidebook to Help Communities Tackle the Dropout Crisis*, America’s Promise Alliance, Feb. 2009, located at <http://www.americaspromise.org/~media/Files/Our%20Work/Dropout%20Prevention/Grad%20Nation%20Guidebook%20052809.ashx>, last visited 4/26/12.

as likely to be unemployed.<sup>31</sup> However, Dr. Alonso learned early on that keeping children in school is not only critical for the future of these students, but also for the safety and health of Baltimore City.<sup>32</sup>

If young people are in the streets instead of in school, they are likely to find themselves in trouble sooner than later. The Baltimore City Health Department conducted a study from 2002-2007 and found that 92% of youths involved in crimes during that period had a history of being chronically absent.<sup>33</sup> There is no question that keeping students in school makes the streets of Baltimore a safer place, and city officials are now taking notice of how strong that correlation is. As previously mentioned, the number of high school dropouts has been reduced by more than 50% since 2006, and the number of habitually truant and chronically absent students has also fallen substantially.<sup>34</sup> During this same period, juvenile shootings have gone down more than 67% and juvenile arrests have similarly decreased by 58%.<sup>35</sup> Researchers and members of the Baltimore City Police Department have agreed with Dr. Alonso that, “the fact that these things are coming together is no illusion.” In addition, high school dropouts are estimated to cost society over \$800,000 over the course of their lifetime in criminal justice costs, lost tax revenue, and social welfare programs.<sup>36</sup> Overall, the research is clear---either schools or

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<sup>31</sup> Dana Mitra, *Pennsylvania's Best Investment: The Social and Economic Benefits of Public Education*, located at [http://www.elc-pa.org/Employment\\_and\\_Crime\\_Sections\\_06.11.pdf](http://www.elc-pa.org/Employment_and_Crime_Sections_06.11.pdf), last visited 4/26/12.

<sup>32</sup> Erica L. Green, *In Baltimore, More Time in School Means Less Juvenile Crime*, Baltimore Sun, Nov. 14, 2010, at 1A.

<sup>33</sup> *Id.*

<sup>34</sup> 2011 Maryland Report Card--- Dropout and absentee statistics for Baltimore City, located at [www.marylandreportcard.org](http://www.marylandreportcard.org), last visited 4/26/12

<sup>35</sup> Erica L. Green, *In Baltimore, More Time in School Means Less Juvenile Crime*, Baltimore Sun, Nov. 14, 2010, at 1A.

<sup>36</sup> National Center for School Engagement, *Truancy*, located at <http://www.schoolengagement.org/index.cfm/index.cfm/Truancy>, last visited 4/26/12.

city officials effectively intervene when students begin missing school, or society will pay for it later when they become criminals or a drain on the economy.

## **II. Sending Parents to Jail is Not the Right Strategy to Reduce Truant Behavior**

The compulsory attendance law in Maryland states that, “each child who resides in this State and is 5 years old or older and under 16 shall attend a public school regularly during the entire school year.”<sup>37</sup> The penalty provision of this law provides that any legal guardian who “fails to see that the child attends school or receives instruction under this section is guilty of a misdemeanor” and subject to a fine no greater than \$100 per day of unlawful absence and jail time not to exceed 30 days.<sup>38</sup> The students themselves cannot be criminally prosecuted under the compulsory attendance requirements, nor does the police department have the authority to take children to school if they see them in public during school hours.<sup>39</sup> The Office of Attendance and Truancy (“Truancy Office”) in Baltimore provides schools with a list of preliminary steps to follow when a student begins missing school, which primarily entails sending multiple letters home and having meetings with the student.<sup>40</sup> Once a child has fifteen or more unexcused absences, the school may choose to file a complaint with the Truancy Office that then determines if prosecution is appropriate.<sup>41</sup>

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<sup>37</sup> Md. Educ. Code Ann. § 7-301(a)(1)

<sup>38</sup> Md. Educ. Code Ann. § 7-301(e)(1). Punishment listed here is for a second conviction. For a first conviction a parent is subject to a fine no greater than \$50 per unlawful absence and jail time not to exceed 10 days.

<sup>39</sup> June Kronholz, *The Challenges of Keeping Kids in School*, Education Next 11(1), Jan. 2011, at 4.

<sup>40</sup> Baltimore City Public Schools---Office of Attendance and Truancy, *Protocols and Procedures*, located at <http://www.baltimorecityschools.org/Page/16595>, last visited 4/26/12.

<sup>41</sup> Erica L. Green, *When Students Don't go to School, Parents go to Jail*, Baltimore Sun, April 24, 2011.

The number of cases filed against parents of truant children has dramatically increased from roughly 65 in 2007 to more than 400 in the last two years.<sup>42</sup> There has also been far more convictions recently than in previous years. Only three parents were sentenced to jail during the 2009 and 2010 school years combined, but twelve parents were sent to jail in 2011 alone.<sup>43</sup> One of these parents was Barbara Gaskins, who received headlines last May in the *Baltimore Sun* after she was sentenced to ten days in jail by a district court judge.<sup>44</sup> The upswing recently in prosecutions and convictions of parents seems to represent a concerted effort by the City to use the judicial system more than it has in the past to reduce truancy. The obvious question then is does spending the time and money for court hearings and prosecutions actually result in more students going to school? Research suggests that the answer to this question is “no,” and that prosecutions only lead to further disruption in families and a greater divide between parents and schools.

For the last several years, the County Solicitor-General of DeKalb County, Georgia has taken a similar approach as Baltimore’s Truancy Office by prosecuting over 300 parents of truant children during the 2007-2008 school year.<sup>45</sup> By the Solicitor-General’s own admission, this program has “seen small results,” as a sharp increase in parental prosecutions produced only 2-3% increase in school attendance.<sup>46</sup> These figures would not be surprising to many prominent researchers like Barry Krisberg, former

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<sup>42</sup> Email Communication with Dr. Tanya Williams, Coordinator of the Baltimore City Office of Attendance and Truancy, March 20, 2012.

<sup>43</sup> Erica L. Green, *Students Skipping School Land Some Parents in Jail*, *Baltimore Sun*, April 25, 2011, at 1A.

<sup>44</sup> *Id.*

<sup>45</sup> Tristan Smith, *Parents of Truant Kids Can Face Jail Time*, CNN Justice Online Article, located at [http://articles.cnn.com/2008-10-24/justice/truancy.arrests\\_1\\_anti-truancy-programs-parenting-classes-school-engagement?\\_s=PM:CRIME](http://articles.cnn.com/2008-10-24/justice/truancy.arrests_1_anti-truancy-programs-parenting-classes-school-engagement?_s=PM:CRIME), last visited 4/26/12.

<sup>46</sup> *Id.*

president of the National Council on Crime and Delinquency, who have been outspoken about the ineffectiveness of punishing parents for the acts of their children.<sup>47</sup> Krisberg makes the argument that “parental responsibility laws” tend to fail because legislatures hope they will provide a cheap fix to a particular problem when they should be investing money and energy into finding the real sources of delinquent behavior.<sup>48</sup>

One of the most convincing studies illustrating that punitive consequences for parents do not actually reduce truancy was completed by the University of Wisconsin-Milwaukee in 1992. The research surrounded a law passed in Wisconsin entitled “Learnfare,” which denied monthly welfare grants to qualified families if their child missed more than twenty days of school in a given semester.<sup>49</sup> The objective of the law was to ensure that more teenagers receiving financial aid graduated high school, and the federal government required the State of Wisconsin determine the law’s impact on school attendance. The results of the mandated six-year study were staggering. Not only did school attendance not improve as a result of significant financial sanctions, it actually became worse among the 50,000 students followed.<sup>50</sup> Obviously, there are important differences between parents facing monetary losses as a result of their child’s truant behavior and facing criminal charges, but the results strongly indicate that punishing parents does not help the problem.

Alfred Barbour frequently defends Baltimore City’s decision to prosecute parents by claiming that 14% of truants improve their attendance after charges are filed and 43%

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<sup>47</sup> Alison Cordova, *California Penal Code S 270.1: A Constitutionally Impermissible Attempt to Combat Truancy*, 39 Hastings Const. L.Q. 539, 560-61 (2012).

<sup>48</sup> Lynn Smith, *Can We Really Legislate Good Parenting?*, Los Angeles Times, Jan. 18, 1995, located at [http://articles.latimes.com/1995-01-18/news/ls-21287\\_1\\_parental-responsibility](http://articles.latimes.com/1995-01-18/news/ls-21287_1_parental-responsibility), last visited 4/26/12.

<sup>49</sup> Alison Cordova, *California Penal Code S 270.1: A Constitutionally Impermissible Attempt to Combat Truancy*, 39 Hastings Const. L.Q. 539, 561-62 (2012)

<sup>50</sup> *Id.*

improve after a parent's first court appearance.<sup>51</sup> However, he never cites any study to corroborate those statistics, nor does he explain what "improve" actually means. Multiple efforts to contact the Baltimore City Office of Attendance and Truancy to get a clarification for these numbers have been unsuccessful. Until concrete evidence is produced that shows criminal prosecutions are actually helping increase school attendance in Baltimore City, officials should believe the findings of respected researchers and studies pointing in the opposite direction. Additionally, going through the court system takes an excessive amount of time. Months go by after a case is opened before a parent is actually forced to stand before a magistrate judge and answer questions. In fact, there are currently six cases that are scheduled to go to trial in May that were opened back in January of this year.<sup>52</sup> Every day of school a child misses sets him further behind his classmates, and waiting so long to address a student's truancy problems is far too inefficient a response for the seriousness of this issue.

Putting research and time delays aside, it makes sense logically that subjecting parents to multiple court hearings and punitive responses is not a good method to increase school attendance. The primary reason judicial proceedings are likely to fail is because courts are not designed to find out or address the reason a student is not going to school. A large majority of truant children face significant challenges in their lives that make attending school much more difficult than many teachers and administrators realize.<sup>53</sup> There are a number of family, personal, or school related issues that could be causing the

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<sup>51</sup> Erica L. Green, *Students Skipping School Land Some Parents in Jail*, Baltimore Sun, April 25, 2011, at 1A.

<sup>52</sup> Maryland Judiciary Case Search, located at <http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp>, last viewed 4/26/12. Search cases for Alfred Barbour to find parents who are being charged under the compulsory attendance law.

<sup>53</sup> National Center for School Engagement, *Pieces of the Truancy Jigsaw: A Literature Review*, Colorado Foundation for Families and Children, Jan. 2007, at 3-4.

truant behavior. Some of the most common determining factors are: health problems, poverty, substance abuse among family members, transportation difficulties, poor self-esteem, feelings of academic incompetence, fear of school violence, and boredom with the school curriculum.<sup>54</sup> An individual student may be missing school for a combination of these reasons and sending his or her parent to court does relatively nothing to identify or fix these underlying problems. A family judge in Louisville, Kentucky who has been at the forefront of truancy reduction in her state, calls judicial intervention a “waste of time” and “the dance of truancy,” because of its minimal effects on school attendance.<sup>55</sup>

### **III. Baltimore City Should Institute a Citywide Truancy Mediation Program**

Truancy mediation is a process that brings students, parents, and school teachers together to discuss the causes of a student’s poor attendance and find solutions to the problem.<sup>56</sup> A trained mediator facilitates the discussion, defines the main issues, and helps the parties brainstorm about potential agreements for how to move forward.<sup>57</sup> The mediator is always a neutral person who does not take sides, but rather ensures that everyone present at the meeting has the opportunity to speak and be heard.<sup>58</sup> If an agreement is reached, all parties are then asked by the mediator to commit to its terms by signing the agreement and setting times to review the student’s progress. Truancy mediations are held at a student’s school and are confidential in order to create a safe environment for everyone involved to speak openly about what is truly preventing a

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<sup>54</sup> *Id.*

<sup>55</sup> American Bar Association, *Truancy, Literacy and the Courts: A User’s Manual for Setting Up a Truancy Intervention Program*, ABA: Washington DC (2011), at 1.

<sup>56</sup> Utah Administrative Office of the Courts, *2006-07 Annual Report Truancy Mediation Program*, Alternative Dispute Resolution Department, at 3.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

student from attending school. Only when the root cause of a child's truant behavior is fully understood can parents and school administrators begin correcting the problem.

Mediation has the potential to pinpoint problems facing a student or family that the punitive approach to truancy usually fails to uncover.<sup>59</sup> Children and parents are far more likely to admit personal difficulties in a non-judgmental and informal setting than they would be during a confrontational meeting with authority figures at a particular school.<sup>60</sup> Reducing school truancy requires a group effort, and mediations are inherently designed to get the right people together to actively listen to each other and problem solve. Sending parents to court, on the other hand, only creates more conflict among family members and between parents and schools. Those directly involved in truancy mediations have seen firsthand how the unique and collaborative structure of these proceedings can result in life-changing resolutions.

Mary Williams, coordinator of a truancy mediation program in Charlotte, North Carolina, has found that mediation sessions are often the first time parents have actually stepped inside their child's school and expressed concern about school attendance.<sup>61</sup> She says that "many parents who have had bad experiences in school themselves make efforts to distance themselves from school administrators when their own children are involved... The mediation program creates a safe environment where parents can break that silence and come, talk, and realize the vital role they play in their child's education."<sup>62</sup> Ms. Williams has witnessed hundreds of examples of how mediations have

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<sup>59</sup> Michael A. Lindstadt, *Employing Mediation to Approach Truants*, 43 Fam. Ct. Rev. 303, 304 (2005).

<sup>60</sup> *Id.*

<sup>61</sup> Mary Williams, *CRC's Truancy Mediation Program Helps Keep Kids on Track*, The Quarterly Newsletter of the Charlotte-Mecklenburg Community Relations Committee, Summer 2008.

<sup>62</sup> *Id.*

been successful<sup>63</sup>---below are just two of these cases where the problem was identified and an effective remedy was put in place:

Student 1

Problem Identified---A child took the bus to school everyday but then went to the local shopping center to hang out with friends instead of attending class. He would then go back to school at the end of the day, get on the bus home, and tell his father he had a great day at school.

Remedy---After the issue was identified during mediation, school administrators and the child's father created a daily communication plan to ensure the boy was actually in school. The school resource officer and the father agreed to pick him up from the shopping center if he was ever absent. However, the child did not miss another day of school the rest of the year.

Student 2

Problem Identified---A young boy rarely went to school because one of his classmates consistently bullied him during recess. The school never knew about this problem because the student was afraid to tell his teacher about the abuse.

Remedy---After the issue was identified during mediation, the teacher agreed to move the child's classroom seat away from the bully and incorporate lessons about bullying in her curriculum. The bullying and attendance rates improved significantly after the issue was properly addressed.<sup>64</sup>

These types of truancy problems are common, and mediation provides the opportunity for parents and teachers to fully understand the issues and work together to create a solution.<sup>65</sup> Truancy mediations have already been initiated in Baltimore City by the Center for Dispute Resolution (C-DRUM) located at the University of Maryland Francis King Carey School of Law. The Center received a grant in 2006 to fund mediations at local schools through its B-SMART program (Baltimore Students: Mediation About Reducing Truancy), which has been extremely successful thus far.<sup>66</sup> During the 2009-2010 school year, C-DRUM reported that 76% of all cases resulted in significantly higher school attendance rates.<sup>67</sup> However, the program is still developing

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Stacy Smith, *What the Numbers Don't Say*, The C-DRUM News 4(1), Fall 2010, at 6-7.

<sup>67</sup> *Id.*

and because of few resources, mediations only took place in six Baltimore City schools last year.<sup>68</sup>

Other states, like Utah, have been more committed to using truancy mediations to combat school attendance problems. During the 2006-2007 school year, mediations were taking place in over eight school districts and forty-nine schools in Utah.<sup>69</sup> Trained volunteer mediators conducted 216 mediations that year, 211 of which resulted in a signed agreement by the school and a parent.<sup>70</sup> The success of this expanded program is strikingly similar to the results of the B-SMART program. The Administrative Office of the Courts in Utah found that 77% of mediations resulted in significantly increased attendance among truant students.<sup>71</sup> The high success rate from mediations is largely derived from the inherent collaborative nature of the process. Statistics in Utah found that not only did almost all parents (98.1%) find mediation helpful, but an overwhelming majority of school personnel found the process helpful as well (96.5%).<sup>72</sup> When parents and teachers work together in a safe place and with a unified goal, positive changes will happen more often than not.

The truancy mediations in Utah have been extremely successful, but the most prominent and expansive mediation program over the last decade has taken place in Ohio. The Ohio Commission on Dispute Resolution & Conflict Management (the

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<sup>68</sup> University of Maryland Francis King Carey School of Law, *BSMART Truancy Mediation Program*, located at <http://www.law.umaryland.edu/programs/cdrum/initiatives/bsmart/index.html>, last visited 4/26/12.

<sup>69</sup> Utah Administrative Office of the Courts, *2006-07 Annual Report Truancy Mediation Program*, Alternative Dispute Resolution Department, at 4.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*, at 3.

<sup>72</sup> *Id.*, at 4.

Commission)<sup>73</sup> was formed by the state legislature in 1989 and the Truancy Prevention Through Mediation program was started the same year.<sup>74</sup> In 1989, twelve schools in three different counties participated in the program and the number of absences decreased across the board.<sup>75</sup> Because the program was doing so well, it continued to expand throughout the state.<sup>76</sup> By 2000, fifty-eight schools were participating in the program and more than 1,700 mediations were conducted in that year alone.<sup>77</sup> An evaluation of these mediations found that unexcused absences by chronically truant children dropped between forty-six and ninety-one percent in six of the seven counties.<sup>78</sup>

More importantly, because parents are involved in the decision-making process, the agreements made tend to create lasting results.<sup>79</sup> In 2002, the Commission followed up with cases that had gone to mediation and found that the significant reduction in student absences continued the following year.<sup>80</sup> For example in Delaware County, Ohio the average number of school days missed from each truant children declined from 13.2 to 3.4 after a mediation, and the number of absences fell even more the following year to 2.9.<sup>81</sup> The news that mediations could cause such drastic improvements in attendance

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<sup>73</sup> Unfortunately, the Commission has been disbanded since 2009 after significant statewide budgetary cuts took away its funding. However, the Supreme Court of Ohio has recently decided that its Dispute Resolution Section will manage truancy mediations moving forward. See [http://www.supremecourt.ohio.gov/PIO/news/2012/disputeResComm\\_010512.asp](http://www.supremecourt.ohio.gov/PIO/news/2012/disputeResComm_010512.asp)

<sup>74</sup> Michael A. Lindstadt, *Employing Mediation to Approach Truants*, 43 Fam. Ct. Rev. 303, 310 (2005). Unfortunately, the Commission has been disbanded since 2009 after significant statewide budgetary cuts took away its funding. However, the Supreme Court of Ohio has recently decided that its Dispute Resolution Section will manage truancy mediations moving forward. See [http://www.supremecourt.ohio.gov/PIO/news/2012/disputeResComm\\_010512.asp](http://www.supremecourt.ohio.gov/PIO/news/2012/disputeResComm_010512.asp)

<sup>75</sup> *Id.*, at 311.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*, at 312.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

rates could not be ignored by other Ohio school districts, and by 2009 more than 500 schools had adopted this strategy.<sup>82</sup>

The evidence is clear that mediations are successful in combating truancy and if Ohio can set up a program that encompassed much of the entire state, there is no reason why Baltimore City cannot do the same. City officials and schools should use Ohio's mediation program as a model in the coming years to fully develop its own comprehensive system. The Commission learned early on that it is extremely important to start truancy mediations early in a child's education, when school absences are just beginning and a student has not already fallen significantly behind in school.<sup>83</sup> Studies indicate that frequent absences in even kindergarten and first grade are strong predictors of future truant behavior.<sup>84</sup> Mediation provides teachers and school administrators the opportunity to explain to parents the importance of going to school even when their children are young, and usually this message resonates with parents. In Ohio, the average number of absences for first graders involved in truancy mediations fell from 13 before the mediation to 2 afterwards.<sup>85</sup> Because of the importance of starting mediations early, Baltimore's truancy mediation program should first begin at the elementary school level and then expand to middle and high schools.

Each school should also send out a letter to parents in the beginning of every year stating that attendance will be taken extremely seriously and that unexcused absences will

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<sup>82</sup> Telephone Interview with Maria Mone, former Director of the Ohio Commission on Dispute Resolution & Conflict Management, March 26, 2012.

<sup>83</sup> Michael A. Lindstadt, *Employing Mediation to Approach Truants*, 43 Fam. Ct. Rev. 303, 305 (2005)

<sup>84</sup> Faith Connolly and Linda S. Olson, *Early Elementary Performance and Attendance in Baltimore City Schools' Pre-Kindergarten and Kindergarten*, Baltimore Education Research Consortium, March 2012, at 1.

<sup>85</sup> Sara Mogulescu, *Approaches to Truancy Prevention*, Vera Institute, October 2002, at 5.

not be tolerated.<sup>86</sup> If preliminary measures to reach out to the parents and reduce absences are unsuccessful, then a letter should be sent from the school to the student's parents inviting them to mediation before any legal action is taken.<sup>87</sup> This letter should be written and signed by the school with a cordial tone but sent on court stationary to remind parents that continued school absences for their child could result in legal action.<sup>88</sup> Some might argue that using the court's authority to push people into mediation goes against one of its core principles---that mediation should always be a voluntary process. However, the stakes are so high for the future of a young child at this point that veiled threats from the court is appropriate if it helps mobilize parents. Certain communities in Ohio had no-show rates at mediations of over 40% in the beginning of the program, and mediations can never work if the participants fail to show up.<sup>89</sup> Moreover, there should be less concern over voluntariness in these mediations because both sides are working towards a common goal and the environment should be less combative than a traditional mediation. Baltimore City's program should begin in select elementary schools and when other school principals learn about the resulting reduction in truancy, the program will begin expanding naturally as it did in Ohio.

The most promising aspect of beginning a citywide truancy mediation program is that it is cost-effective. This strategy is not one of those ideas that sounds great in theory but is too costly to actually implement in a city with serious budgetary concerns. Ed Krauss, the former Director of the Truancy Prevention Through Mediation Program in Ohio, says that costs from mediations only derive from two principal sources: paying

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<sup>86</sup> *Id.*, at 4.

<sup>87</sup> *Id.*, at 5.

<sup>88</sup> *Id.*

<sup>89</sup> Telephone Interview with Ed Krauss, Former Director of Ohio's Truancy Prevention Through Mediation Program, April 23, 2012.

mediators and paying for substitute teachers if parents can only meet for a mediation during class hours.<sup>90</sup> In Ohio, many of the mediators were court employees who were already being paid and simply took several days out of a month to mediate cases in schools with no added cost to a particular city.<sup>91</sup> Otherwise, a school district would need to partner up with community mediators around Maryland or hire private mediators, but Mr. Krauss estimates that \$40,000 will pay for at least 1,000 truancy mediations across the city.<sup>92</sup>

It is rare to find a potential solution to a problem this important for such a relatively small amount of money. Baltimore City could raise much of these funds through grants and also save money by not prosecuting as many parents each year for truancy cases. The Office of Attendance and Truancy does not disclose how much it costs to enforce the compulsory attendance law, but the average truancy case in Washington State is \$475---ranging from \$200 to nearly \$1,500.<sup>93</sup> Assuming this amount is relatively transferable, the City could save \$95,000 by simply cutting the number of prosecutions in half from roughly 400 last year to 200 moving forward.<sup>94</sup> Prosecutions would only be reserved for parents of elementary school children who actively prevent or obstruct a child's ability to go to school after a truancy mediation has already taken place. This reduction in the number of prosecutions would be a compromise between people

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Email Communication with Ed Krauss, April 25, 2012. Mr. Krauss estimates that it would cost \$160 to pay a mediator for a full day (6 mediations) and \$100 for a substitute teacher. That comes to a total of \$2,600 per 60 mediations and more than 920 mediations for \$40,000. However, he says that many mediations will be performed for free by volunteers and a lot of mediations will not require a substitute teacher to fill in.

<sup>93</sup> Marna Miller, Tali Klima, & Corey Nunlist, *Washington's truancy laws in the juvenile courts: Wide variation in implementation and costs*. Olympia: Washington State Institute for Public Policy, Document No. 09-10-2201, October 2009.

<sup>94</sup> This calculation was made by multiplying 200 by \$475, which equals \$95,000.

who believe the compulsory attendance law must be enforced against the worst offenders, and those who wish to spend resources on more rehabilitative efforts. If parents are ultimately charged with violating the compulsory attendance law, their cases should be fast-tracked in the courts and heard within two weeks.<sup>95</sup> A quick turnaround would at least provide the punitive approach of having a valuable impact on a child's future education within a reasonable amount of time.

Mr. Krauss says the problem in getting truancy mediation programs off the ground is never a lack of money, but a lack of understanding by stakeholders that mediations can actually work.<sup>96</sup> If Dr. Alonso or other education leaders in Baltimore City examined the data and fully endorsed this method of reducing truancy, then a mediation program could begin before the start of the next school year. The program could start small in only five or ten schools and be characterized as a trial run, but the positive results would almost surely create a high demand across the City. Even if the program does not ultimately end up being successful, little money would have been lost--and at least City officials and school principals could say they gave a good faith effort in exploring a potential truancy strategy that has helped families all over the country.

## **Conclusion**

Few things are as important to the future of a child as receiving a proper education and earning a high school diploma. Neither of which is possible if students fail to attend school. Chronic truancy is often the first sign that a young person is heading down the wrong path, in danger of eventually dropping out of school, and entering a life

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<sup>95</sup> Telephone Interview with Ed Krauss, Former Director of Ohio's Truancy Prevention Through Mediation Program, April 23, 2012. The fast-tracking system was used in Ohio and Mr. Krauss found it much more effective than waiting three months before a parent's case goes to trial.

<sup>96</sup> *Id.*

of crime and drugs. In Baltimore City, where more than 5,000 students miss at least a month of school every year without a valid excuse, finding effective ways to reduce absences should always be the first priority for education reform.<sup>97</sup> Prosecuting and convicting parents of truant children, however, is not the right way to combat this problem. If the recent increase in court cases and convictions represents a new strategy by schools and City officials, then the plan should be stopped and reversed.

Instead money should be used to help develop and organize a citywide truancy mediation program to increase school attendance rates. Mediations are uniquely designed to bring parents and school officials together in a non-confrontational setting to determine the root causes of a child's truant behavior and collectively agree on the best ways to fix the problem. A truancy mediation program would not cost a lot of money, but it would require commitment from education leaders around the city that is, frankly, way overdue at this point. Truancy mediations have already been successful in places all over the country, including the few local schools that have taken part in the BMSART program. It is time to give this approach at least a chance to brighten the future of thousands of children in Baltimore City.

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<sup>97</sup> Maryland State Department of Education, *Habitual Truants Maryland Public Schools 2010-2011*, available at: <http://www.marylandpublicschools.org/NR/rdonlyres/11C79F29-716F-4308-8EAF-EE5C4D8788DA/30816/habtru11.pdf>, last visited 4/26/2012.