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## Learning Together: Using ADR to Improve Communication and Collaboration in Education

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# LEARNING TOGETHER: USING ADR TO IMPROVE COMMUNICATION AND COLLABORATION IN EDUCATION

## I. THE CROSSROADS: AN INTRODUCTION TO PROBLEMS FACING SCHOOLS—EXEMPLIFIED BY ONE DISTRICT’S DRASTIC COURSE OF ACTION

On February 23, 2010, a school board shocked the nation by electing to fire the entire faculty and staff of one of its schools—the only public high school in Central Falls, Rhode Island.<sup>1</sup> This course of action was chosen by frustrated Superintendent Frances Gallo when she was asked to implement one of four reform plans by the Rhode Island Commissioner of Education.<sup>2</sup> As drastic as Gallo’s choice was, it was not the most extreme option the state instructed her to choose from—one of the options would have resulted in shutting down Central Falls High School altogether.<sup>3</sup>

Gallo’s decision, adopted by the school board in a five-to-two vote, led to finger pointing and accusations on all sides. In addition to highlighting the school’s abysmal academic history,<sup>4</sup> Gallo blamed union leadership for the outcome, claiming that the teachers union “went too far because [Gallo] would not commit to monetary incentives.”<sup>5</sup> On the other hand, the union refused to accept an alternative reform plan that called for extra work with little increase in financial compensation,<sup>6</sup> accusing the superintendent and school board of not bargaining in good faith while asserting that it had been “at the table,” but the administration had not been “willing to bargain.”<sup>7</sup>

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1. Katie Zezima, *A Vote to Fire All Teachers at a Failing High School*, N.Y. TIMES, Feb. 24, 2010.

2. *Id.*

3. *Id.*

4. *See id.* (indicating that Central Falls High School had a four-year graduation rate of 48% and was considered one of Rhode Island’s six lowest-achieving schools).

5. *Id.*

6. Jennifer D. Jordan & Linda Borg, *Central Falls to Fire Every High School Teacher*, THE PROVIDENCE J., Feb. 13, 2010.

7. Zezima, *supra* note 1.

While tragic and unfortunate, this result did not come about ex nihilo. The controversy surrounding Central Falls High School highlights problems that most school districts deal with regularly: concerns about declining graduation rates, quality of teaching, teacher salaries, confrontational bargaining with teacher associations,<sup>8</sup> government intervention and testing, budget limitations, and public opinion.

Not many schools have descended to the levels of poor graduation rates, conflict, and failure in communication to which Central Falls High School tumbled.<sup>9</sup> However, even school districts that currently perform above national and state averages must address these issues in order to prevent similar conflict and falling-out.<sup>10</sup> Any unhealthy conflict inhibits school districts in their efforts to provide quality public education. Without looking for adequate responses to all the pressures exerted on public schools—including communication between teachers and the administration and not losing sight of the purpose of public education—more schools may find themselves moving towards a Central Falls-like demise. If that happens, those who should be allies in education may become hostile combatants in both the public sphere and in any future litigation. The possibility of this fall-out between teachers and administration lends itself to the following question: how can school districts handle the conflicts they face in ways that

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8. Teacher associations, or teacher unions, and their collective bargaining with school districts have a reputation of leading to hostile feelings between teachers, school boards, and administrations. See Todd A. DeMitchell & Casey D. Cobb, *Teachers: Their Union and Their Profession. A Tangled Relationship*, 212 EDUC. LAW REP. 1 (2006). See also Samuel B. Bacharach et al., *School Management and Teacher Unions: The Capacity for Cooperation in an Age of Reform*, 91 TEHR. C. RECS. 97, 98 (1989) (asserting that collective bargaining has “generated an adversarial relationship between school boards, administrators, and teachers”).

9. Nonetheless, there have been signs of other public organizations taking extreme measures to fix problems that are comparable to those used at Central Falls High School. One recent example involves the fallout between Wisconsin public unions and the state government over budget concerns and the effects of collective bargaining agreements. See Brady Dennis & Peter Wallsten, *Wisconsin Governor Urging Others to Take Stands Against Unions*, WASH. POST, Feb. 23, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/23/AR2011022307100.html>.

10. Pressure due to federal legislation continues to rise as schools struggle to satisfy federal requirements for public schools. Christine Armario, *82 Percent of US Schools May Be Labeled ‘Failing’*, ASSOCIATED PRESS, Mar. 9, 2011 (reporting that “[t]he Department of Education estimates the percentage of schools not meeting yearly targets for their students’ proficiency in math and reading could jump from 37 to 82 percent as states raise standards in attempts to satisfy [the No Child Left Behind Act’s] mandates”).

cultivate communication, reduce costs, and stay focused on the mission of the school district in order to improve the quality of education they provide?

This paper will address how alternative dispute resolution (ADR) procedures effectively implemented in business and government work sectors could very likely have a positive impact on school districts generally. First, it will address the current state of a relatively successful district, the Alpine School District located in Utah, and its implementation of ADR procedures, highlighting strong and weak points of the status quo in order to provide an example of how ADR is currently implemented in public schools. Secondly, the paper will address ADR procedures aimed at fostering a culture of positive communication and training that would improve teachers' ability to professionally deal with conflicts on his or her own, including the use of an ombudsperson, transformative mediation, and teacher training in conflict resolution.

## II. AN EXAMPLE OF ABOVE-AVERAGE EDUCATION: ALPINE SCHOOL DISTRICT'S CURRENT STATUS, CONCERNS, AND ADR PROCEDURES

Fortunately, not many school districts currently have a Central Falls High School on their hands—and it would be best for everyone invested in education across the country for that to remain true indefinitely. Some school districts, such as the Alpine School District located in Utah, appear relatively safe from the chaotic turmoil facing schools in Rhode Island. As an example of above-average education, Alpine School District has been quite successful on many fronts. It consistently boasts standardized test scores that rank above both national and Utah averages.<sup>11</sup> In addition, the school district has adopted ADR procedure for handling complaints and discipline that has been crafted through bargaining with the teachers association.<sup>12</sup>

However, there is still room for improvement. The district

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11. See Alpine School District Annual Stakeholders' Report (Feb. 2011), available at <http://www.alpine.k12.ut.us/privateComponents/districtOffice/SH-Report-comb.pdf> [hereinafter *Report*].

12. ASD Policy Manual, Policy No. 1312 (2003), available at [http://policy.alpinedistrict.org/policy/1312\\_Parent\\_Complaints\\_Policy](http://policy.alpinedistrict.org/policy/1312_Parent_Complaints_Policy) [hereinafter *Policy No. 1312*].

itself has recognized several areas in which to improve, including teacher quality, school and district culture, community relations, and leadership.<sup>13</sup>

In addition, financial troubles remain omnipresent, and the current problems facing the nation's economy have increased these concerns. Alpine School District, like every school district in the nation, must find ways to draw out and develop the human capital it has in administrators, teachers, staff, and students with less financial capital than desired.<sup>14</sup>

Alpine School District has created various ADR procedures, many of which appear to be the product of negotiation with the teacher association and/or board approval.<sup>15</sup> Three of these procedures used by Alpine School District will be analyzed as

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13. According to its 2011 report, the school district is specifically concerned with the following: teacher quality (valuing quality teachers by recognizing excellence and facilitating continuous improvement in the art and science of teaching); school and district culture (sharing values, beliefs, and processes that sustain a positive, safe, and nurturing environment to promote pride in the school and district); community relations (engaging parents and the broader community to support student achievement); leadership (developing and sustaining leaders who have vision and passion for student and employee success); comprehensive curriculum (educating students through a wide range of content and learning opportunities leading to the development of the whole child); and resources (identifying and providing requisite tools, skills, and personnel that lead students toward successful participation in the 21st Century). *See Report, supra* note 11.

14. For example, during the 2009-2010 school year, Alpine School District committed \$214,435,315 to student instruction (teacher/aide salaries and benefits, supplies, and textbooks) and \$21,386,852 to district and school leadership (principals, assistant principals, secretaries, board, superintendent, business administrator, liability insurance, and legal fees) out of its total budget of \$334,736,379. *Id.* In other words, the district devoted approximately 73% of its budget to student instruction, most of which went directly to teachers. *Id.* This represents a large monetary investment to human capital—an investment meant to attract and develop quality teachers and cultivate well-educated students. After receiving community feedback in determining its budget, the district also allocated \$700,000 to its “Teacher Quality – Incentive Pay Program,” \$900,000 to its “Adult Student Ratio Initiative” (aimed at reducing the number of students per adult in the classroom), and \$2,500,000 for three days of teacher training and professional development. *Id.* It is currently looking to address resource challenges by reducing expenditures strategically, utilizing reserves and fund balances in appropriate ways, and gathering feedback from those with an interest in the school (its stakeholders). *Id.* These figures imply the dedication the district has to its human capital, but they also demonstrate the financial limitations it faces. Undoubtedly school districts would highly value more cost efficient ways to develop and cultivate administrators, teachers, staff, and students and to reduce the costs incurred by recruiting and training teachers and enticing them to stay.

15. *Policy No. 1312, supra* note 12 (indicating the policy for parental complaints was adopted by board approval). *See also* ASD Policy Manual, Policy No. 4058 (2001), available at [http://policy.alpinedistrict.org/policy/4058\\_Grievance\\_Procedure\\_Policy](http://policy.alpinedistrict.org/policy/4058_Grievance_Procedure_Policy) (indicating the policy for teacher grievances was adopted pursuant to negotiation) [hereafter *Policy No. 4058*].

an example of how ADR is currently being implemented in schools. The following areas wherein Alpine School District is currently using ADR procedures will be discussed in more detail below: (1) parent complaints, (2) grievances of certified personnel, and (3) disciplinary action regarding certified personnel.

#### A. *Parent Complaints*

Even though parental complaints are one of the areas where it appears that ADR procedure has been proposed and used, the Alpine School District provides very little guidance in this area. When addressing parental concerns, the district's first line of defense is to have the issue resolved informally "at the level closest to the problem."<sup>16</sup> According to district policy, the procedures to be used in addressing parental complaints "shall be fair to all parties and shall provide that solutions will be rendered in a courteous, objective and timely manner."<sup>17</sup> The only other guidance provided by the school district's policy is that decisions in the process may be appealed to the Board of Education but the board gets the final say in the matter, and any parent or guardian that "upbraids, insults, or abuses a district employee on school property or in the presence of pupils shall be handled with appropriate legal action."<sup>18</sup> No other guidance or clarification is offered by the district in its policy.

First, this policy, even though simple and somewhat vague, provides value to the Alpine School District and students' parents. The policy notifies parents that they may bring up concerns they have with the district. It promises to keep the process informal—reducing the emotional and time-consuming burden that formal investigations put on all parties involved. In addition, the policy provides an opportunity for problems to be resolved within the school district, avoiding the costs and expenditures associated with resolving disputes in court. Also, it calls for fair, timely, and objective solutions, clothed with a mantle of courtesy. However, despite these benefits, there are still areas of concern unaddressed (or even created) by the current policy.

For example, the policy makes "the level closest to the

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16. *Policy No. 1312, supra* note 12.

17. *Id.*

18. *Id.*

problem” deal with aggrieved parents directly. This requirement places teachers—already worried about grading, lesson planning, and other duties—in the unenviable position of also being responsible for diffusing and placating aggrieved parents. In essence, this policy forces people trained to teach mathematics, history, music, or some other subject to learn how to act as a member of a societal bomb squad, with little to no training in the area. Even though some teachers receive training in classroom management, nothing in their training at the university level prepares them to handle other forms of conflict—parent-teacher conflict, teacher-administrator conflict, teacher-teacher conflict, etc.<sup>19</sup> In other words, asking teachers to be the district’s frontline to resolve conflicts that have arisen takes teachers out of their professional comfort zones and calls on them to do a job they may not be trained to do.

Also, based on the wording of the policy, positive outcomes are expected from the system but there is very little guidance on the procedures that will lead to a positive outcome. Every parent would hope—and likely expect—that a complaint that he or she raises with the school district will be dealt with in a fair, timely, objective, and courteous manner. Parents are left without knowing what procedures will ensure that solutions proposed by teachers, administrators, or members of the Board of Education will be what the policy requires.

Finally, the language of the policy appears to establish that the complainant parents and the school district become adversarial parties once the parents have raised their complaint. As referenced above, the policy contains a note that if an aggrieved parent is hostile with a district employee, legal action will be taken. This imposes an additional requirement on parents who become upset with the district—they must communicate their complaints civilly—without explicitly requiring the same from district employees. This note seems unnecessary and implies that the district and the parent stand in opposition to each other, not as friends on the same side—with the district ready and willing to take legal action against

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19. For example, students earning a bachelor’s degree in elementary education at Brigham Young University are not required to take classes in conflict resolution. See BYU BS in Elementary Education Map Sheet (2011), *available at* <http://saas.byu.edu/advisement/pdf/11/356020.pdf?lms=9> (providing degree course requirements for the 2011–2012 academic year).

the parents. All of these problems with the district's policy involving parent grievances show weaknesses in current policy that can and should be addressed by school districts wishing to maximize their use of ADR to address parental complaints.

*B. Grievances of Certified Personnel*<sup>20</sup>

The Alpine School District's ADR procedure regarding teacher grievances is much more developed than the procedure used for parent complaints. This is likely attributable to the fact that the district recognizes that "[g]ood morale is maintained by sincere efforts of all persons concerned to work toward constructive solutions to problems in an atmosphere of courtesy and cooperation."<sup>21</sup> It is also likely attributable to the fact that teacher associations represent teachers, not parents or the community at large, and these associations have helped flesh out procedure involving teachers by negotiating with the district.<sup>22</sup>

According to district policy, the purpose of providing ADR procedure for teachers' grievances is "to secure, at the lowest appropriate administrative level, equitable solutions to the problems which may arise."<sup>23</sup> It promises confidential and informal proceedings, and it allows for formal proceedings to take place if the informal process does not satisfy the aggrieved teacher.<sup>24</sup> These proceedings start with the principal and flow through to the superintendent and to the Board of Education if necessary.<sup>25</sup>

The informal proceedings allow teachers to discuss grievances they have with the principal, other administrator, or a teacher association representative.<sup>26</sup> If a teacher does not feel capable of raising the concern in person, he or she may bring along a teacher association representative or have the

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20. Even though the policy references certified personnel, this article will limit discussion of these individuals to teachers. Therefore, while the policy applies to certified personnel generally, the analysis and discussion will focus on teachers specifically.

21. *Policy No. 4058, supra* note 15.

22. *See id.* (indicating the policy for teacher grievances was adopted pursuant to negotiation with the teacher association).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*



representative act on the teacher's behalf.<sup>27</sup>

Formal proceedings begin once an aggrieved teacher submits a formal complaint, in writing, to the principal, an immediate supervisor, or appropriate district level administrator (if the issue does not involve the principal or supervisor).<sup>28</sup> Teachers have 120 days to submit the grievance for review after it occurs or after they become aware of the circumstances leading to the grievance.<sup>29</sup> In addition to submitting the formal complaint, aggrieved teachers may also request a conference to discuss the grievance.<sup>30</sup> The principal, or other responsible administrator, must submit a written decision regarding the complaint within five days after the complaint was submitted or within five days of a conference.<sup>31</sup> If the aggrieved party is still not satisfied, he or she may appeal the decision.<sup>32</sup>

The procedure provided does several things that can provide value to the school district: it has a tiered system for handling complaints, formally and informally; it allows aggrieved teachers to seek outside help and advice from a teacher association representative; and it establishes a timeline for decision making. The tiered system accommodates differing levels of complaints. Small, easily dealt-with complaints can be handled informally while larger, more contentious complaints will be treated at a more formal level. Allowing teachers to bring in outside help gives the teachers more confidence and allows them to express their concerns through someone with more experience in negotiation and dispute resolution. Establishing a timeline lets teachers and administrators know how quickly decisions will be made and when to expect results. Each of these practices helps the district handle grievances more efficiently.

As with the procedure for parent complaints, however, there are various holes in these procedures that may produce unintended consequences or fail to provide as much value as the district could by using other means. For example, the tiered system does nothing preventative; it only deals with

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27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

established conflicts. In order for teachers to raise a complaint or concern, they must address the principal or some other superior to feel like their grievance will be heard by the administration. This likely has a chilling effect on complaints teachers raise. If they do not feel that their concern is large enough or important enough to discuss with a superior, they will keep it to themselves or discuss it with non-administrative individuals (co-workers, teacher association representatives, or other third parties). Even though this reduces the administrative burden of handling complaints, it also prevents the administration from accumulating information about potential problems. When more information is available, district administrators can make better, more informed decisions. Moreover, allowing teachers to feel like they can be heard, even over simple matters, will help them feel like the administration understands the ups and downs they experience in their day-to-day work. By only handling established conflicts, the tiered system may miss out on some of these benefits.

In addition, allowing the teacher to bring a teacher association representative is a two-edged sword; although it gives the teacher more flexibility in bringing the complaint, it also likely makes the complaint resolution more adversarial. In theory, teacher associations and school administrators could work together synergistically to produce high quality results in education.<sup>33</sup> However, far too often, as evidenced in Central Falls High School's circumstances, bargaining between these associations and district administrations becomes confrontational—teacher associations and school districts often resemble adversaries fighting over narrow issues, rather than collaborators working towards more expansive educative success. In fact, much of the good that could be accomplished through collective bargaining agreements remains undone because hostile negotiations between adverse parties base winning or losing on a few minor points, rather than on the realization of institutional missions or goals.<sup>34</sup>

Unfortunately, this very tension appears to exist between Utah school districts and teacher associations even if districts

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33. Cynthia L. Estlund, *Working Together: The Workplace in Civil Society* (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Grp., Paper No. 3, 1999) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=198823](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=198823).

34. See DeMitchell & Cobb, *supra* note 8, at 1.

like Alpine have managed to avoid it.<sup>35</sup> Teachers look to teacher associations as their protectors against the administration and teacher associations are “vilified,” considered by some to be the “protectors of bad teachers.”<sup>36</sup> Therefore, teachers that turn to teacher association representatives seek advice from the school district’s adversary rather than to a friend of both parties. Even though doing so provides some benefit to the teacher, it also increases the likelihood that the relationship between the teacher and the administration will be damaged as each side fights for its rights. The more teachers turning to the association pits teachers against school administration, the more likely Central Falls-like fallout becomes for school districts. With these points in mind, this section of ADR policy for Alpine School District’s certified personnel creates or ignores problems that should be addressed by all school districts.

### C. *Disciplinary Action Regarding Certified Personnel*

The Alpine School District also has an ADR procedure for situations involving teacher discipline.<sup>37</sup> This procedure handles complaints by administrators, parents, adults, or students<sup>38</sup> and is formal from the outset.<sup>39</sup> When such a complaint is raised, the administrator must investigate the issue.<sup>40</sup> Upon receipt of the complaint, the principal becomes responsible to “encourage a meeting between the teacher and the person making the complaint.”<sup>41</sup> If the aggrieved party refuses, the principal then acts as a middleman, conveying messages between the two parties.<sup>42</sup>

After learning about the accusation, the teacher has an

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35. Sharon Gallagher-Fishbaugh, *Effective Teacher Evaluation Programs Can Improve Schools*, SALT LAKE TRIB., Jan. 29, 2011, available at <http://www.sltrib.com/esp/cms/sites/sltrib/pages/printerfriendly.csp?id=51089239>.

36. *Id.*

37. ASD Policy Manual, Policy No. 4057.1 (2010), available at [http://policy.alpinedistrict.org/policy/4057.1\\_Disciplinary\\_Action\\_Outside\\_of\\_Set\\_Evaluation\\_Policy](http://policy.alpinedistrict.org/policy/4057.1_Disciplinary_Action_Outside_of_Set_Evaluation_Policy).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

opportunity to rebut the allegations.<sup>43</sup> As the administrator investigates the issue, he or she will counsel with the teacher if a problem does exist.<sup>44</sup> If the problem appears to be remediable, the administrator will adopt a remedial plan for the teacher.<sup>45</sup>

Using ADR procedures in this way shows a degree of commitment to teachers, even when the teachers do not live up to the terms of their employment or have more serious problems with the administration, teachers, and others. Allowing for the implementation of a remedial plan demonstrates a commitment to the human capital, which the school district has in its teachers. Also, providing a middleman for situations involving hostile and/or uncooperative parties will likely facilitate resolution.

However, policies such as this one also fall short of what ADR procedure could potentially accomplish for school districts. For example, the system focuses heavily on having the disputing parties work issues out together, but it fails to provide those parties with necessary tools to communicate and understand one another. Without these tools, each party will most likely not fully understand where the other is coming from, making it difficult to arrive at an ideal resolution. In addition, the current system utilizes the principal, an individual charged with a multitude of administrative duties, as a mediator. This duty does not necessarily comport with the training principals typically undergo.<sup>46</sup>

In fact, the design of the Alpine School District's current

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43. *Id.*

44. *Id.*

45. District policy recommends the following contents for a plan of remediation: (1) statement regarding whether the administrator is issuing an informal written reprimand (administrator file), issuing a formal written reprimand (personnel file), placing the teacher on probation, or other action being taken; (2) review of the policy or concern which is the basis for disciplinary action; (3) statement covering the circumstances, facts, and conclusions of the problem; (4) statement outlining what is expected of the employee (i.e. requirements for meeting the standard); (5) statement regarding the administrator's involvement in remediation; and (6) an indication that the failure to comply may warrant further disciplinary action. *Id.* After these steps have been taken, or if the problem presented is not remediable, the policy implies that termination is an appropriate subsequent action. *Id.*

46. See MARK E. ANDERSON, PRINCIPALS: HOW TO TRAIN, RECRUIT, SELECT, INDUCT, AND EVALUATE LEADERS FOR AMERICA'S SCHOOLS 5-7 (1991), available at <http://www.eric.ed.gov/PDFS/ED337843.pdf> (asserting that principals receive substantive academic training through formal education, but they are not prepared to deal with conflict).

ADR procedure resembles ADR used by businesses managing non-professional employees, such as waiters at a restaurant, rather than trained professionals that have an interest in educational outcomes.<sup>47</sup> Even though such models excel at resolving problems quickly, they often only address issues at hand, rather than create a forum of discussion that can further enhance the connection between teachers and administrators. Teachers have received specialized training relevant to educating students. They often learn new theories and methodologies developed by professors that can impact the quality of education they provide. However, if these teachers become afraid to discuss concerns they have about curriculum, administration, or other aspects of their jobs, the flow of this knowledge from the teachers to the administration becomes limited. Thus, the district misses out on potentially valuable information which could help the schools progress.

In summary, the ADR procedure utilized by the Alpine School District has likely had a positive impact on education. However, by implementing additional ADR procedures developed in the various private and government employment sectors, the district would undoubtedly benefit even more. While many of the problems faced by school districts are unique to public education, districts share many others problems common to employers generally. For instance, no business has the luxury of unlimited resources, so, just like school districts, all businesses face budgetary constraints and monetary limitations. In addition, even problems that appear unique to school districts (such as handling parental complaints, disobedient students, etc.) have general counterparts that are dealt with in the business sector (unhappy customers, etc.). Due to these similarities, ADR procedures that have proven effective in business and governmental arenas will most likely prove effective in education.

### III. ADR PROCEDURES FOR IMPROVING COMMUNICATION

Districts should be mindful of how well teachers and administrators communicate with each other, students,

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47. THOMAS D. CAVENAGH, BUSINESS DISPUTE RESOLUTION: BEST PRACTICES, SYSTEM DESIGN & CASE MANAGEMENT 59-78 (2000). See also DeMitchell & Cobb, *supra* note 8, at 4-5.

parents, legislatures, teacher association representatives, and members of the community. Failure to communicate, or even inadequate communication, further complicates all other concerns school districts face. Even though teachers and administrators are trained professionals in educating students and carrying out administrative duties, many are not well-experienced when it comes to matters of communication or conflict resolution.

By improving communication between parents and teachers, as well as between teachers and the administration, school districts will improve community relations and create more understanding and unity between teachers and the administration in carrying out the district's educational mission and goals. Effective communication is vital to healthy employer-employee relationships,<sup>48</sup> and the relationships between administrators and teachers, or employers and their employees, are no exception. Effective communication alerts people to problems that are developing and seemingly mild concerns that may evolve and spread.<sup>49</sup> It helps administrators know where teachers are coming from and lets teachers know that their voices are being heard. Good communication fosters positive morale and integrates communities, even when different members of those communities do not see eye to eye.<sup>50</sup> Even when relationships have been damaged and problems have arisen, it ensures that shared goals and desires do not become lost in the fight over less important issues by finding common ground for decisions that benefit all parties involved.<sup>51</sup>

And, to speak directly to Alpine School District's mission statement and goals, good communication is key to ensuring

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48. Mosad Zineldin, *Co-opetition: The Organisation of the Future*, 22 *MARKETING INTELLIGENCE & PLAN.* 780 (2004).

49. See ALEC MACKENZIE, *THE TIME TRAP: THE CLASSIC BOOK ON TIME MANAGEMENT* 184-189 (1990) (discussing managerial problems that arise due to poor communication).

50. John Barkai, *Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil*, 75 *NEB. L. REV.* 704, 710-11 (1996) (asserting that "good communication skills during negotiations can assist the parties to learn about the needs of the other party and to avoid disruptive, emotional communication that can be a roadblock to a successful negotiation").

51. See, e.g., Aimee Gourlay & Jenelle Soderquist, *Mediation in Employment Cases is Too Little Too Late: An Organizational Conflict Management Perspective on Resolving Disputes*, 21 *HAMLIN L. REV.* 261, 273 (1998) (discussing how effective communication creates opportunities to find win-win situations and creative options to resolve disputes in ways that benefit employees and employers).

the future of our democracy.<sup>52</sup> It has a positive impact on areas the district has specifically decided to improve: teacher quality, developing a culture where values and beliefs may be shared to benefit schools, community relations, leadership, and preserving resources by preventing costly misunderstandings. All of these areas will improve and the mission of the district will be advanced when teachers and administrators know how to communicate with each other, parents, and students effectively.

However, many teachers and administrators could use help communicating. When disputes arise, these individuals often struggle to express ideas productively, discover and process needed information, and temper their thoughts to prevent misunderstanding. While good communication unites the parties involved, poor communication creates adversaries where there should be allies.<sup>53</sup> Poor communication leads to people feeling marginalized, unsatisfied with their work relationships, and disconnected from the community. Failure to communicate often leads to severing relationships which could eventually rise to a level experienced by Central Falls High School.<sup>54</sup>

Many employers have found ADR procedures helpful in improving communication.<sup>55</sup> One particularly beneficial ADR method is the use of an ombudsperson.

### A. *Organizational Ombudspersons: A Friend to Teachers and Administrators*

School districts can provide teachers and administrators access to an ombudsperson—an individual independent from both school administration and teacher associations—that will facilitate and improve communication and understanding. The

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<sup>52</sup> See Report, *supra* note 11.

<sup>53</sup> David B. Lipsky & Ariel C. Avgar, *Toward a Strategic Theory of Workplace Conflict Management*, 24 OHIO ST. J. ON DISP. RESOL. 143, 178-79 (2008) (asserting that conflict arising out of poor coordination and communication strains workplace relationships and has a negative effect on work outcomes).

<sup>54</sup> See, e.g., Jeffrey W. Stempel, *Identifying Real Dichotomies Underlying the False Dichotomy: Twenty-First Century Mediation in an Eclectic Regime*, 2000 J. DISP. RESOL. 371, 382 (indicating that poor communication is a key factor in parties' failure to resolve disputes outside of the courts, thereby forcing adjudication of the matter rather than mutual settlement).

<sup>55</sup> See CAVENAGH, *supra* note 47, at 1-16 (introducing ADR systems and principles designed and used by various employers that have improved communication within the employers' various businesses).

role of the ombudsperson has been around for centuries.<sup>56</sup> Even though ombudspersons have been connected with government administration historically,<sup>57</sup> in the modern workplace, including universities, ombudspersons have been used to cultivate synergistic, diverse work environments and preempt and control workplace conflicts.<sup>58</sup> By using the skills of a trained ombudsperson, school districts will be able to reduce costs, give teachers an opportunity to be heard, and keep the relationships between administrators, faculty, and staff healthy and productive. A skilled ombudsperson will improve communication and understanding between teachers and administrators, helping them draw out underlying needs and interests of each side and allowing them to work together to provide higher quality education.<sup>59</sup>

A prime example of how useful an ombudsperson can be for a company is Sandia National Laboratory (Sandia), an American-based laboratory that supports U.S. national economic and military security.<sup>60</sup> According to Sandia, an ombudsperson “provides a safe, confidential option” for communication that helps the company resolve “ethical dilemmas, personal conflicts and gray areas” that do not appear to have obvious solutions.<sup>61</sup> In other words, the mission of the ombudsperson is to “provide an avenue for all [employees, managers, and staff] to confidentially voice and/or resolve concerns, issues, and barriers.”<sup>62</sup>

The fact that Sandia uses ombudspersons in an organization employing highly trained and specialized engineers is significant.<sup>63</sup> The work these individuals engage in is extremely important—national defense and energy production.<sup>64</sup> Sandia understands that communication and openness among the professionals it employs is vital due to the

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56. CHARLES L. HOWARD, *THE ORGANIZATIONAL OMBUDSMAN: ORIGINS, ROLES, AND OPERATIONS – A LEGAL GUIDE* 1-2 (2010).

57. *Id.* at 14-15.

58. *Id.*

59. See Carrie Menkel-Meadow, *Introduction: What Will We Do When Adjudication Ends? A Brief Intellectual History of ADR*, 44 UCLA L. REV. 1613, 1616 (1997) (discussing the benefits of offering a variety of dispute resolution methods).

60. CAVENAGH, *supra* note 47, at 39.

61. *Id.* at 51.

62. *Id.*

63. *Id.* at 39.

64. *Id.*



complexity and importance of its business objectives.

In order to make its ombudsperson effective, Sandia allows “employees of any classification, including managers, staff, technicians, administrative support, union represented, student and special program employees, independent contracts and vendors” to discuss anything to do with Sandia or other employees with the ombudsperson.<sup>65</sup> In addition, anything discussed with the ombudsperson remains confidential, so employees can trust that nothing communicated will harm them.<sup>66</sup> “No formal written records are kept,” and “[n]o action is taken without [the person consulting the ombudsperson’s] permission.”<sup>67</sup> The effect of coupling the ability to communicate any concern with the promise of confidentiality increases employees’ willingness to communicate.<sup>68</sup> In turn this allows the ombudsperson to “[p]rovide unfiltered feedback to management by reporting issues and trends without disclosing names.”<sup>69</sup> The ultimate result is that the administration is alerted to problems and concerns that employees would otherwise be reluctant to raise.

Also key to the ombudsperson’s impact on Sandia is the fact that everyone understands the ombudsperson’s role.<sup>70</sup> Accordingly, all employees know that the ombudsperson does the following: listens to individuals’ concerns, remains impartial to all individuals, keeps information confidential, improves communications by providing an alternate communication channel, and provides unfiltered feedback to management by reporting issues and trends without disclosing names.<sup>71</sup> Employees also know that the ombudsperson does not do the following: take sides, breach confidentiality, make company policy, make formal management decisions to resolve concerns, or resolve non-work related concerns, take action on a concern without permission.<sup>72</sup> Because the limits and abilities of the ombudsperson have been clearly demarcated,

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65. *Id.* at 51.

66. *Id.* at 52.

67. *Id.*

68. See *id.* at 49 (stating that providing access to ombudspersons “legitimizes the idea that it is acceptable to raise questions” and “people with questions and problems often come in early, when most disputes are more easily resolved”).

69. *Id.* at 52.

70. *Id.*

71. *Id.*

72. *Id.* at 52-53.

employees can use this resource with confidence, knowing what to expect and how to utilize it.

By using an ombudsperson in this capacity, it appears that Sandia has been able to draw more value out of its professional employees. The ombudsperson creates more openness in communication, which allows the highly trained professionals at the company to give more frank and honest input to the company.<sup>73</sup> The company is able to respond to this input, thereby enhancing the workplace and creating more unity between the company and its employees.

Sandia emphasizes conflict resolution and communication because it values its human capital investment and the overall success of its business; similarly, each community and school district should value—above all—the success of its school system, i.e., educating its youth. Providing public education to students is not mundane, mechanical work; it is done by trained professionals and requires innovation and creativity to facilitate learning in young students. With regards to the complexity and importance of the task they are presented, teachers very much resemble the engineers hired at Sandia. Therefore, using an ombudsperson to promote creativity, communication, and openness fits well with the professional duties of public school personnel, especially when dealing with personnel conflicts, ethical dilemmas, and educational gray areas.

The use of an ombudsperson would improve the communication of most if not all school districts. For example, the Alpine School district, mentioned earlier, could improve its communication through the use of an ombudsman. Alpine's current system allows aggrieved teachers to take their concerns to teacher association representatives and requires principals to act as intermediaries between parents and teachers. This system is surely intended to facilitate communication between parties; however, an ombudsperson would further facilitate the flow of unfettered communication beyond that possible under Alpine's current system. An ombudsperson allows teachers and administrators the opportunity to consult with a neutral, non-managerial person with whom they can speak frankly.

Generally, when a teacher enlists a representative from the teacher association to assist her in a dispute with the

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73. *Id.* at 45.

administration, the teacher has gained a friend but, perhaps unintentionally, cut herself off in some degree from the administration. She has turned to a party that is continually butting heads with the administration and is charged with pursuing the interests of its members, not the interests of the district.<sup>74</sup> However, if the teacher first discusses her complaint with an ombudsperson under Sandia's model, she can discuss her concerns with a trained, open-minded, and neutral party—one that can give her honest, unbiased feedback and keep confidences.

The ombudsperson can help the teacher better understand her complaint and the problem she is facing. He can coach her in ways to raise her concern with the administration productively and healthily, without adding any strain to the relationship. He in turn, and with the teacher's permission, can raise the issue with the administration without implicating her in any way.<sup>75</sup> He can advise the administration about potential problems and concerns that have come to his attention, allowing for the administration to take appropriate action. This allows the administration to find out information it might not discover otherwise. The teacher also will not be afraid to bother the principal with something that could be considered trivial or a waste of time. In summary, by communicating with the ombudsperson, teachers will be better equipped to handle the problem as the district's ally in education rather than a victim of the administration in need of rescue from the teacher association.<sup>76</sup>

The ombudsperson is not only a resource for teachers but can be just as beneficial for administrators who would like an unbiased opinion on how the district's human capital might be

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74. In fact, some scholars have gone so far as to assert that teacher association representation of teachers impedes the educational goals shared by administrators and teachers by imposing an industrial labor model of employment on an ideally professional setting. See DeMitchell & Cobb, *supra* note 8, at 4 (asserting that “[w]hen the industrial labor model is applied to education, teachers become labor and administrators become management,” rather than teachers and administrators acting as professional educators with common goals”).

75. It should be noted that in some situations anonymity might not be attainable (for example, if the teacher brings a concern to the ombudsperson is so fact specific that discussing the relevant facts would implicate the teacher). In these situations, the ombudsperson could still counsel with the teacher, but further discussion with the administration might not be appropriate.

76. *Id.* (describing the folly of treating teachers as labor union members, under the industrial labor model, who seek protection from management through legally binding instruments that spell out the terms and conditions of their work).

affected by a proposed decision. An ombudsperson could relieve administrators of their dispute resolution responsibilities, freeing them to focus their efforts on education. Additionally, the burden that would be taken away from principals if an ombudsperson were used to perform intermediary duties rather than the principal should also be considered. The onerous task of taking care of disputes from their outset could also be handled by this trained professional.

Adding an ombudsperson does not have to come at a burdensome cost to school districts. Districts already have and pay human resource employees, and one of the current positions could be modified to implement the role of ombudsperson. This means that districts could hire someone or possibly train an existing employee that would be able to act as an ombudsperson: listen to teacher concerns, counsel with the teachers, and even coach teachers in communication techniques. This employee could provide the same services and training for individuals in the school district's administration.

If having such an employee proves useful to school districts, they could determine that expanding access to ombudspersons would be beneficial. If resources permit, the need exists, or the benefit outweighs the cost, districts could consider having one ombudsperson per school. This would allow each individual ombudsperson to become intimately familiar with each school's unique culture and staff and would open up the possibility of extending ombudsperson services to students, parents, and the community as a whole. This would further expand the information that would be available to the administration in making policy determinations and other decisions.

In summary, using an ombudsperson and his expertise in communication to help connect teachers and administrators, promises abundant benefits to schools in the form of openness, counsel, and information.

### *B. Transformative Mediation*

Teachers' ability to deal with and prevent conflict overlaps with good communication and can be improved with good communication. Good communication lends itself to preventing damaging and costly disputes, especially when such communication is facilitated by an organizational ombudsperson. Nevertheless, it is helpful to consider conflict prevention as well in order to understand how ADR procedure

can further help employers keep their employees (teachers) and clients (students and parents) happy.

One such ADR procedure used by businesses to prevent conflict is transformative mediation, a vital component to the United States Postal Service's successful REDRESS (Resolve Employment Disputes Reach Equitable Solutions Swiftly) program.<sup>77</sup> Transformative mediation would benefit school districts by encouraging disputing parties to arrive at an agreement together, rather than having a case decided for them by a third party.<sup>78</sup>

In transformative mediation, which is closely related to facilitative mediation, a mediator assists aggrieved parties in settling their dispute, but not in the way it is handled in courts or arbitration. In programs like REDRESS, transformative mediators focus on "giving participants . . . the power to decide whether and how issues can be resolved." The mediator helps the individuals find a solution to the problem presented, not allocate fault.<sup>79</sup> As a result, individuals stop pointing fingers and accusing each other and start looking for ways to solve the problems presented.

Furthermore, transformative mediation can be used proactively to prevent conflicts before they arise. Through routine interviews or surveys conducted by third-parties and reported to the administration, school districts could be made aware of teacher satisfaction and productivity. This would allow school districts to become aware of potential conflicts before they arise.<sup>80</sup> Once districts have learned about potential problems, they could engage in open dialogue with teachers to resolve the problem with the assistance of a third-party mediator. In this way, districts would better "anticipat[e] and pre-empt[] opportunities for conflict, dashed hopes, unfulfilled assumptions, and damaged relationships."<sup>81</sup>

Applied in school districts, transformative mediation could help lower teacher turnover and, like an ombudsperson, help parties find solutions to problems in ways they cannot

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77. CAVENAGH, *supra* note 47, at 19.

78. *Id.* at 21 (stating that agreements "crafted by the people involved [are] almost always more satisfying and more lasting than one dictated by an outside third party").

79. *Id.* at 22 (internal quotations omitted).

80. Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement,"* 6 PEPP. DISP. RESOL. L.J. 1, 16 (2006).

81. *Id.* at 17.

realistically achieve themselves. When done with the goal of empowering the teachers to overcome their problems, as was done in the United States Postal Service, transformative mediation should train teachers to become problem solvers themselves. It gives them knowledge and communication skills that they can use when problems arise with administrators, fellow teachers, students, or parents.

In addition, transformative mediation would provide early resolution to problems as they arrive. The longer a dispute lasts and the more formal it is, the more damage it does to the relationship between the aggrieved parties. When the dispute is resolved by a third-party, the judgment creates a winner and a loser which further disconnects the two parties despite the fact that the dispute has been resolved. However, as aggrieved parties settle disputes together, they will be able to work together more efficiently, trust one another more, and feel more connected to the mission and goals of the school districts of which they are part.

By interviewing teachers regularly, or at least having them fill out employment satisfaction surveys, school districts could prevent conflicts that would otherwise arise. As teachers discuss their hopes and concerns with the district, they will feel more connected with the administration. Districts can evaluate ways that they can deal with disappointments and set-backs that the teachers have experienced before those feelings become attributed to their jobs or the administration itself. When the teachers themselves feel connected to the organization, they will be less inclined to turn to adjudication or other confrontational measures to resolve their problems.<sup>82</sup>

However, even though mediation promotes internal solution finding, it does not promote the same level of openness as does an ombudsperson. As discussed above, aggrieved individuals can speak freely and frankly with an ombudsperson, allowing the ombudsperson to find out the roots and causes of the problem itself—including aspects of the problem that might remain hidden during transformative mediation. When meeting face to face with a supposed adversary, even in the presence of a trained mediator, an aggrieved person will most

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82. See, e.g., Karl Aquino et al., *Getting Even or Moving On? Power, Procedural Justice, and Types of Offense as Predictors of Revenge, Forgiveness, Reconciliation, and Avoidance in Organizations*, 91 J. APPLIED PSYCHOL. 653 (2006) (discussing factors relating to adversarial conflict in the workplace).

likely feel restrained with regards to what she can or should say. Nonetheless, an ombudsperson will not be able to resolve all disputes. Therefore, transformative mediation as an alternative measure for teachers may prove necessary.

In addition to being an alternative to utilizing the ombudsperson, transformative mediation also improves upon ADR procedure currently implemented by school districts such as the Alpine School District. As discussed earlier, the disciplinary procedure used by the Alpine School District is formal at the outset—it involves investigation and relatively extensive adjudication by others. Despite being formal, however, it asserts that it wants parties to resolve concerns themselves, but then provides an easy escape by allowing them to adopt the principal as a mediator. By implementing the transformative mediation procedure developed by the United States Postal Service, school districts would be able to make the initial proceedings less formal and give parties an opportunity to heal the damage caused by the dispute. More generally, school districts could further promote resolution between the parties by discontinuing its practice of turning the principal into a middleman.

In summary, school districts can prevent conflicts early, even before they arise, and empower teachers to better resolve conflicts by addressing those conflicts via transformative mediation. Doing so will improve upon the ADR policies like Alpine School District's current procedure by making sure dispute resolution focuses on bringing opposing parties together and employee choice rather than on decisions passed down by administrators when this is possible.

### *C. Train Teachers in Conflict Resolution While Earning Degrees*

School district across the nation can also call for teachers to be trained in conflict resolution and mediation techniques as they earn their degrees. As noted above, teachers, though trained generally in classroom management, do not receive training related to conflict resolution. School districts could advocate such a change. Even though school districts are not directly responsible for the training that future teachers receive as part of their undergraduate education, they can very likely influence the training universities provide.

Universities want to produce teachers that school districts

want to hire in order to draw students to their programs. If school districts tell universities that they expect their teachers to provide the frontline for conflict resolution, those universities will be more likely to provide conflict resolution training to their students. If universities provide this training to future teachers, school districts will be able to benefit from better trained teachers at less cost to them. School districts should consider discussing this option with universities because this additional training would undoubtedly benefit universities, school districts, and teachers.

#### IV. CONCLUSION

There are many school districts across the nation doing much good as educators. However, even the best schools can improve. And implementing ADR technique—such as ombudspersons, transformative mediation, and conflict training in teacher undergraduate education—is an approach schools should consider. By facilitating communication through an ombudsperson, preventing disputes and empowering teachers through transformative mediation, and encouraging universities to better prepare future teachers for the conflicts, school districts will find greater success in providing education and ensuring the future of our democratic society.

*Clayton Cox*