

## “DOING GOOD” IN SCHOOLS: A LEGAL & POLICY PERSPECTIVE ON COMMUNITY SERVICE IN EDUCATION

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Despite scholarly criticism<sup>1</sup> and the passage of additional federal requirements in the No Child Left Behind Act, the American public largely embraces the rhetoric of state and local control over schools.<sup>2</sup> The traditional defense of decentralization can be found in the writings of Alexis de Tocqueville, who, in describing America, wrote, “the strength of free nations resides in the local community. . . Without local institutions, a nation may establish a free government, but it cannot have the spirit of liberty.”<sup>3</sup> De Tocqueville’s acclaim for local control was a consequence of the civic interaction he witnessed in America during the mid-nineteenth century. In particular, he marveled at the complexity of public life in the towns and villages he visited throughout the country. To de Tocqueville, local institutions served to stir people to life, or to a form of “ceaseless agitation” of public affairs in which they voluntarily participated in community groups and engaged local decision makers. De Tocqueville observed that local civic

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1. See, e.g., C. Faber, *Is Local Control of Schools Still a Viable Option?* 14 HARV. J.L. & PUB. POL’Y 447 (1991), reprinted in EDUC. POL’Y AND THE LAW 882–887 (Mark G. Yudof et al. eds., 4th ed. 2002); JONATHAN KOZOL, THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA (2005).

2. See Lowell C. Rose & Alec M. Gallup, *The 38th Annual Phi Delta Kappa/Gallup Poll of the Public’s Attitudes Toward the Public Schools*, PHI DELTA KAPPAN 41, 45 (Sept. 2006), available at [http://www.pdkmembers.org/e-GALLUP/kpoll\\_pdfs/pdkpoll38\\_2006.pdf](http://www.pdkmembers.org/e-GALLUP/kpoll_pdfs/pdkpoll38_2006.pdf) (when asked in a poll, “Who should have the greatest influence in deciding what is taught in the public schools here—the federal government, the state government, or the local school boards?” 58% of the public responded the local school board, 26% the state government, and only 14% the federal government). See also President George W. Bush, Address Before the Joint Session of Congress (Feb. 27, 2001), (transcript available at <http://www.whitehouse.gov/news/releases/2001/02/20010228.html>) (saying “I believe in local control of schools. We should not and we will not run our public schools from Washington, D.C.”); Resolution of the American Federation of Teachers Regarding the No Child Left Behind Act (2006), <http://www.aft.org/about/resolutions/2006/nclb.htm> (“there continues to be growing frustration over the federal government’s policies infringing upon state and local control of education.”).

3. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 55-56 (J.P. Mayer & Max Lerner, eds., Harper & Row Publishers, Inc. 1966) (1835).

institutions allowed ordinary Americans to learn about and participate in their communities, ultimately creating an engaged civic participant and a more cohesive community.<sup>4</sup> As such, schools have traditionally been viewed in America as the primary setting to cultivate youth into informed and engaged future citizens of the local community. The Supreme Court has explicitly written on this very point, saying that public schools are crucial “in the preparation of individuals for participation as citizens, in the preservation of the values on which our society rests” and for “inculcating fundamental values necessary to the maintenance of a democratic political system.”<sup>5</sup>

From 1975 to 2001, America’s youth failed to embrace the Tocquevillian model of civic engagement. With declining rates of voting and civic participation among young Americans, one could have argued that the “ceaseless agitation” of civic affairs that de Tocqueville marveled at had, in large part, ceased to exist.

As a response, many educators in the 1990’s embraced service learning as a tool to engage students in civic and community affairs. Service learning can be broadly defined as those school-based activities that involve students in community affairs and that directly complement the classroom curriculum.<sup>6</sup> In addition to fostering a greater sense of civic involvement, proponents of service learning argue that these projects can benefit children by improving core academic skills, as well as improving motivation.<sup>7</sup> Service learning and, more generally, community service initiatives have become commonplace in the American educational system, with a recent survey finding 38%, or 10.6 million students, reporting current or past participation in community service as part of a school activity.<sup>8</sup> In fact, whether because of the efforts of service learning proponents, or the terrorist attacks of September 11, 2001 and the resulting turmoil in the world, or some combination of the two, youth interest in both civic and political engagement has been appreciably increasing in

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4. To de Tocqueville, this had the effect of giving people a tangible stake in their community and a real connection with their neighbors. Additionally, this type of participation in civic affairs had the effect of educating Americans about their community and about the political process more generally. After learning about the virtues of civic life, de Tocqueville believed these citizens would eventually become more productive and active participants in society. *See generally id.* at 54-88.

5. *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979) (upholding a citizenship requirement for public school teachers).

6. Todd Clark et al., *Service Learning as Civic Participation*, 36 *THEORY INTO PRAC.* 164, 165 (1997).

7. *See, e.g.*, Michael X. Delli Carpini & Scott Keeter, *What Should Be Learned Through Service Learning?*, 33 *POL. SCI. AND POL.* 635, 635 (arguing that service learning can improve civic engagement); KY. EDUC. ASS’N, *COMMUNITY SERVICE/SERVICE LEARNING: AN IMPLEMENTER’S GUIDE AND RESOURCE MANUAL* 12 (1996) (discussing both the academic and motivational benefits of service learning).

8. CORP. FOR NAT’L & CMTY. SERV., *EDUCATING FOR ACTIVE CITIZENSHIP: SERVICE-LEARNING, SCHOOL-BASED SERVICE AND YOUTH CIVIC ENGAGEMENT* 1 (Mar. 2006) [hereinafter *EDUCATING FOR ACTIVE CITIZENSHIP*].

America.<sup>9</sup>

Service learning programs, especially those that mandate service as a prerequisite for high school graduation, also implicate a number of legal concerns. In a trilogy of cases, federal circuit courts have considered the constitutionality of service requirements under the First, Thirteenth and Fourteenth Amendments. Whether the service programs are mandatory or optional, the legal principles enunciated in these cases are important for policymakers to consider when developing community service initiatives.

Service learning programs teach students how to engage civic and political structures in their community. This correlation has been well-documented.<sup>10</sup> However, service learning programs should not be viewed solely through the lens of education. These programs provide direct benefits to the community and offer the opportunity to build relationships and greater inter-connectedness among those in society. As such, local governments and school districts must forge relationships and create synergies to maximize the potential effectiveness of service learning. If structured properly and to the unique needs of each community, local governments can harness the power of service learning to complement traditional educational areas, build a more active citizenry, and forge a greater sense of community. Comprehensive service learning programs can instill core values of social justice into young students and help diminish community barriers based on income and race before they arise in adulthood.

Section I of this article briefly examines the development of the service learning curriculum in the United States. Section II discusses the leading federal cases on the constitutionality of service learning requirements and offers legal considerations for policymakers and school administrators seeking to implement service learning in their school's curriculum. Section III then explores the benefits of service learning, both from an educational and community perspective. Finally, Section IV will provide a potential framework for greater community involvement in service learning.

#### THE DEVELOPMENT OF COMMUNITY SERVICE LEARNING

Service learning programs rose to prominence in the 1990's primarily

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9. See Thomas Sander & Robert Putnam, *Sept. 11 as Civics Lesson*, WASH. POST, Sept. 10, 2005, at A23 (stating that "new evidence from multiple sources confirms that those Americans who were caught by the flash of Sept. 11 in their impressionable adolescent years are now significantly more involved in public affairs and community life than their older brothers and sisters."). See also CTR. FOR INFO. & RES. ON CIVIC LEARNING & ENGAGEMENT, FACT SHEET: THE YOUTH 2004 ELECTION (July 2004) (presenting exit poll data that estimates that the turnout of 18-24 year-olds in the 2004 election was approximately 47%, up from 36% in 2000).

10. See, e.g., Diana Owen, *Service Learning and Political Socialization*, 33 POL. SCI. AND POL. 638, 639 (2000); Robert Koulisch, *Citizenship Service Learning: Becoming Citizens by Assisting Immigrants*, 31 POL. SCI. AND POLS., 562, 562-67 (1998); Carpini & Keeter, *supra* note 7.

because of a concern about the declining interest in civic and community affairs among youth. After discussing these negative trends and the dissatisfaction of the American electorate, in 1997, a group of education policymakers concluded, “with these trends, schools must redouble their effort to counteract citizen apathy, improve citizen knowledge, and increase citizen participation.”<sup>11</sup> Community service and service learning programs were viewed as mechanisms to counteract the disinterest of American youth in civic and political affairs.

Surveys since the events of September 11, 2001, show an impressive rise in civic engagement: high school students are increasingly interested in government and current events, college freshmen are increasingly discussing politics, and young adults are voting in higher numbers.<sup>12</sup> The number of young people who volunteer has increased along with a corresponding increase in the frequency of service activities.<sup>13</sup> While the volunteer rate for Americans between the ages of 16 and 19 was 13.4% in 1989, it reached 26.9% in 2002, and increased every year subsequent through 2005, peaking at 30.4%.<sup>14</sup> However, proponents of service learning argue that these positive trends do not eviscerate the continued need for service learning. For instance, despite new technologies that allow Americans to connect with one another instantaneously, there has been a continued concern about the isolation of Americans, particularly youth.<sup>15</sup> Additionally, if the terrorist attacks in New York City and Washington, D.C. did play a significant role in increased civic and political interest, then it remains uncertain whether future generations of youth who did not personally experience the attacks will embrace the same level of interest in civic affairs. The 2006 data on youth volunteerism is of some concern, showing a decline in the volunteer rate to 26.4%—the first such decline in five years.<sup>16</sup>

Nonetheless, volunteerism is commonplace among youth in today’s America. A recent study found that 15.5 million teens participated in volunteer service in 2004, totaling some 1.3 billion hours of community service.<sup>17</sup> There has been a marked change from traditional civics’ education

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11. Clark, *supra* note 6, at 164.

12. See Sander & Putnam, *supra* note 9, at A23; Jason Szep, *Youth Turnout in Election Biggest in 20 Years*, REUTERS, Nov. 8, 2006, <http://elections.us.reuters.com/top/news/usnN08342322.html> (noting that 24% of Americans under the age of 30, or at least 10 million young voters, cast ballots in the 2006 mid-term elections—up four percentage points from the last mid-term elections in 2002).

13. See Sander & Putnam, *supra* note 9, at A23 (finding a 14% increase in the number of high school volunteers from 1986. Further, the average frequency of volunteerism has increased 50%).

14. CORP. FOR NAT’L & CMTY. SERV., VOLUNTEERING IN AMERICA: 2007 STATE TRENDS AND RANKINGS IN CIVIC LIFE, 4 (April 2007) [hereinafter VOLUNTEERING IN AMERICA].

15. See, e.g., ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000) (discussing how Americans have become increasingly isolated from their families and communities).

16. See VOLUNTEERING IN AMERICA, *supra* note 14, at 4.

17. CORP. FOR NAT’L AND CMTY. SERV., BUILDING ACTIVE CITIZENS: THE ROLE OF

to a new approach that incorporates real world experiences in community activities to learn about community and governmental structures.<sup>18</sup> Policymakers concerned with civic engagement began to realize that classroom lessons, without practical experiences, left students unprepared to participate in their communities as adults. Indeed, the benefits and opportunities of participating in one's community may be the type of lesson that is best learned by actual participation. Long before educationally-based community service initiatives, the philosopher Aristotle observed, "For things that we have to learn to do, we learn by doing them."<sup>19</sup> To this end, proponents of service learning argue that service programs have the ability to "hook" children and young adults into a lifetime of service. One scholar writes, "[T]he evidence clearly seems to support the wisdom of encouraging young people to become engaged in service or community work if a mature adult population of volunteers is desired."<sup>20</sup> Thus, proponents of service learning argue that it becomes crucial for schools to engage young people in meaningful and enjoyable service activities in order to produce civically knowledgeable and involved future adults.

Service learning programs, which complement classroom teachings through active community engagement, are intended to integrate elements of volunteerism, civics, and traditional academic subjects such as reading, writing, math, and science. As opposed to purely volunteer activities, service learning programs are based on the realization that service alone does not constitute a comprehensive citizenship education; instead, it must be complemented with classroom learning and reflection.<sup>21</sup> Of the 10.6 million young people who participated in community service as part of a school activity, seventy-seven percent of these youth reported this activity as part of a service learning program that contained one of the three generally accepted elements of high-quality service learning: student planning of the service activity, participating in regular service for a semester or longer, and writing and reflecting on the service experience.<sup>22</sup> More broadly, comprehensive service learning programs can be broken down into six stages of the project: 1) Problem/Policy Discussion & Analysis; 2) Researching & Discussing Potential Solutions; 3) Planning Service Activities; 4) Participating in Service; 5)

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SOCIAL INSTITUTIONS IN TEEN VOLUNTEERING, 1 (Nov. 2005) [hereinafter BUILDING ACTIVE CITIZENS].

18. See Clark *supra* note 6, at 164.

19. ARISTOTLE, NICOMACHEAN ETHICS, Book II, Ch. 1 (H. Rackham, trans. William Heinemann 1926).

20. See Thomas Janoski, et. al., *Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering*, 13 SOC. F. 495, 516 (1998).

21. See Rachel Parker-Gwin & J. Beth Mabry, *Service Learning as Pedagogy and Civic Education: Comparing Outcomes for Three Models*, 26 TEACHING SOC. 276, 278 (1998) ("for service learning to enhance academic outcomes, such as critical-thinking skills, it must be paired with critical analysis of issues; otherwise, it is simply charity."); Clark, *supra* note 6, at 165.

22. EDUCATING FOR ACTIVE CITIZENSHIP, *supra* note 8, at 1.

Reflecting on Service; and 6) Celebrating Service.

Not surprisingly, socio-economic status appears to impact the service opportunities schools offer. A negative correlation has been observed between the percentage of students eligible for free or reduced-price lunch and the percentage of students participating in community service activities.<sup>23</sup> A 2007 study by the Corporation for National & Community Service highlights some of the challenges and opportunities in implementing service learning among socio-economically disadvantaged student populations. While the study confirmed past findings that youth from disadvantaged circumstances were less likely to report current or past participation in school based service,<sup>24</sup> when students from disadvantaged circumstances do volunteer, they demonstrate the same commitment and enthusiasm as students from non-disadvantaged circumstances.<sup>25</sup> Similarly, there was no appreciable difference along socio-economic lines in how youth come to volunteer with a given organization; regardless of background, youth are most likely to volunteer because they are asked, and teachers are the most likely person to make the request.<sup>26</sup> Youth from socio-economically disadvantaged backgrounds are more likely to volunteer with a religious congregation and more likely to be motivated to volunteer to gain work experience.<sup>27</sup> Building off this data, additional research and policy efforts need to be undertaken to overcome this volunteer-gap among children based on socio-economic status.

The American public's perception of service learning is overwhelmingly positive. A survey from Roper Starch Worldwide found that while many Americans were not familiar with the term "service learning," when it was explained to them, 90% of Americans endorsed integrating service learning into their local schools.<sup>28</sup> Similarly, 90% of Americans agreed that service learning will help students build the skills they need to be successful in life, 89% agreed that service learning will encourage active citizenship and community involvement, and 85% agreed that service learning will improve students' academic skills.<sup>29</sup>

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23. See Rebecca Skinner & Chris Chapman, *Service-Learning and Community Service in K-12 Public Schools*, 1 EDUC. STAT. Q., (2000) available at [http://nces.ed.gov/programs/quarterly/vol\\_1/1\\_4/3-esq14-h.asp](http://nces.ed.gov/programs/quarterly/vol_1/1_4/3-esq14-h.asp).

24. See CORP. FOR NAT'L & CMTY. SERV., LEVELING THE PATH TO PARTICIPATION: VOLUNTEERING AND CIVIC ENGAGEMENT AMONG YOUTH FROM DISADVANTAGED CIRCUMSTANCES 3 (Mar. 2007) (31% of students from disadvantaged circumstances reported past or current participation in school-based service, compared to 40% of students from non-disadvantaged circumstances).

25. *Id.* at 2.

26. *Id.* at 2, 9 (43% of disadvantaged youth reported volunteering because they were asked. Almost the same number, 44%, of youth from non-disadvantaged backgrounds reported the same cause).

27. *Id.* at 2.

28. ROPER STARCH WORLDWIDE, PUBLIC ATTITUDES TOWARD EDUCATION AND SERVICE LEARNING 18-19 (Nov. 2000) (parents with school-aged children were even more enthusiastic about the use of service learning).

29. *Id.* at 24.

Both state and national policymakers have promoted service learning as an integral component of education. In signing the National and Community Service Act of 1990, former President George H.W. Bush helped establish the Point of Lights Foundation—an organization that promotes volunteerism, with a particular emphasis on service learning.<sup>30</sup> Former President Bill Clinton signed the National and Community Service Trust Act of 1993, which created both AmeriCorps and the Corporation for National and Community Service.<sup>31</sup> Speaking of the need to serve, President Clinton said, “we recognize a simple but powerful truth—we need each other and we must care for each other.”<sup>32</sup> Finally, the No Child Left Behind Act, signed by President George W. Bush, provides funding for character education programs that teach civic virtue, citizenship, fairness, and justice.<sup>33</sup> On the state level, a 2002 survey found that state legislatures in six states have policies regarding the authorization of appropriations for service learning, and ten states encourage the use of service learning as a mechanism for increasing student achievement.<sup>34</sup> Maryland has gone the furthest, mandating that students complete either seventy-five hours of volunteer work or an alternative service learning program in order to graduate from high school.<sup>35</sup> Kathleen Kennedy Townsend, former President of the Maryland Student Service Alliance, commented on the measure, “[Y]ou have to do a lab for science, think of this as a lab for citizenship.”<sup>36</sup> Taking another approach, New York City has recently proposed a novel tax credit for low-income families that rewards certain activities—including finishing high school, receiving preventative health care and participating in service learning programs.<sup>37</sup>

Certainly, not everyone has fully embraced service learning programs.<sup>38</sup> Of note, twenty-three states have no mention of service learning in any state policy, and the implementation and funding of a vast majority of these

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30. National and Community Service Act, Pub. L. 101-610, 104 Stat. 3127 (1990).

31. National Community Service Trust Act of 1993, Pub. L. 103-82, 107 Stat. 785 (1993).

32. See KY. EDUC. ASS'N, *supra* note 7, at 11.

33. No Child Left Behind Act, Pub. L. 107-110, 115 Stat. 1425 (2001).

34. RMC RESEARCH CORP., POLICY K-12 SERVICE LEARNING (July 2002) (Massachusetts, Minnesota, Mississippi, New Jersey, New Mexico and Vermont are the six states with appropriations for service learning. California, Connecticut, Florida, Indiana, Michigan, Mississippi, North Carolina, South Carolina, Tennessee and Texas are the ten states that encourage the use of service learning to increase student achievement and engagement).

35. See Lisa Leff, *Md. Mandates Public Service By Students*, WASH. POST, Jul. 29, 1992, at A1.

36. Mark Parenti, *Lobbying School*, 25 REASON 56, 56 (Apr. 1994).

37. See Diane Cardwell, *Tax Credits and Rewards Sought for Poor*, NY TIMES, Sept. 12, 2006, at B5.

38. See, e.g., Helen M. Marks & Susan Robb Jones, *Community Service in the Transition*, 75 J. OF HIGHER EDUC. 307 (2004) (presenting a study that shows students with mandatory community service requirements drop service in their transition to college more often than students with voluntary service opportunities); Michael Ferraraccio, *Mandatory Community Service Requirements in Public High School: Are They Constitutional?*, 27 J.L. & EDUC. 139, 145 (1998).

programs remains primarily at the local level.<sup>39</sup> As a result, policy discussions on how best to implement service learning in a community must focus on the ability of local governments and school boards to properly tailor service learning for a particular community.

The attractiveness of service learning as a tool to build stronger communities finds additional support from current political and cultural trends in education policy and society at large. Indeed, these programs are not just “feel-good” initiatives for policymakers—they react to real concerns of parents and taxpayers about engaging young people in civic affairs and breaking down barriers between groups in a community.<sup>40</sup> First, with the newfound focus on school testing, many education policy experts have expressed concern over schools allocating less time for subjects such as social studies, music and creative classroom activities.<sup>41</sup> Service learning offers the opportunity for teachers to embrace non-core subjects and engage in creative problem solving activities that are not possible in standard test preparation lessons. Second, the increased realization in the United States that childhood education needs to embrace diversity through exposing children to all different types of people within a community naturally lends itself to service learning.<sup>42</sup> Third, certain parents and school districts have clamored for greater values or character education in schools.<sup>43</sup> By promoting civic involvement, volunteerism, and altruism, service learning programs are a powerful form of character education. Unlike other attempts at “values” education, the general tenets of service learning (giving back to your community, helping those in need, etc.) find near universal acceptance among American parents. Finally, in such a politicized environment of “Blue” and “Red” America, service programs and civic education offer a rare opportunity for politicians to agree on a policy initiative popular with the public. From President Kennedy’s call to service over forty-five years ago to President Bush’s and President Clinton’s more recent programs, support for service programs has largely been a popular public policy.

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39. See RMC RESEARCH CORP., *supra* note 34, at 18-19, 23-24.

40. See ROPER STARCH WORLDWIDE, *supra* note 28, at 23-24 (90% of Americans in a poll reported being likely or very likely to support service learning in their local school and 89% agreed with the statement that service learning will encourage active citizenship and community involvement).

41. See CTR. ON EDUC. POL’Y, FROM THE CAPITOL TO THE CLASSROOM: FOUR YEARS OF NO CHILD LEFT BEHIND 10 (2006).

42. See ROPER STARCH WORLDWIDE, *supra* note 28, at 15 (55% of Americans agreed that it was a definite responsibility of public schools to teach students how to work with people who are different from themselves).

43. See, e.g., Stephen Bates, *A Textbook of Virtues*, NY TIMES, Jan. 8, 1995, at 4A; ROPER STARCH WORLDWIDE, *supra* note 28, at 15 (survey found that 58% of American said that public schools are doing a “fair” or “poor” job in helping students develop their values).

**LEGAL CONSIDERATIONS FOR POLICYMAKERS IMPLEMENTING SERVICE  
LEARNING AND COMMUNITY SERVICE INITIATIVES**

While many schools have chosen to keep community service learning activities optional or simply highly encouraged, some school districts have opted to mandate community service activities as a prerequisite for high school graduation.<sup>44</sup> The constitutionality of such mandatory community service requirements has been evaluated in a series of cases under the Free Speech Clause of the First Amendment, the Involuntary Servitude Clause of the Thirteenth Amendment, and the Due Process Clause of the Fourteenth Amendment. With very few limitations, the courts have held that mandatory community services requirements withstand constitutional challenges by disgruntled students and parents. Although these cases involve mandatory community service programs, many of the constitutional principles are also applicable for educators looking to implement optional service learning programs or utilize service learning as a complement to traditional classroom instruction. With the aim of highlighting the relevant legal considerations for policymakers interested in implementing service learning, the following analysis provides a summary of the most significant case law on the subject.

**A. First Amendment Challenges**

In *Steirer v. Bethlehem Area School District*, the Third Circuit considered the constitutionality of a community service requirement for high school students in light of the First Amendment's free speech protections.<sup>45</sup> The school's program required that every student complete a total of sixty hours of community service during their four years in high school. The school maintained a list of more than seventy approved community service organizations for the students to choose from and students and parents were encouraged to submit the names of other potential organizations.<sup>46</sup> The requirements for inclusion on the school's list were threefold: the organization must (1) demonstrate an intent to promote the welfare of the community, (2) must not discriminate against any race, religion or sex, and (3) must provide assurances that the organization is free from doctrinal motivation.<sup>47</sup> The school also provided an alternative option that allowed students to develop their own community service experience.<sup>48</sup>

Within its body of First Amendment law, the Supreme Court has found

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44. This article does not delve into the merits of whether mandatory service requirements are desirable, and instead focuses on the benefits of service learning generally, both educationally and in the community. For criticisms of the policy and constitutional basis of mandatory community service requirements, see Tom Underwood, *Mandatory Community Service: Constitutional Considerations*, 27 J.L. & EDUC. 499 (1998); Ferraccio, *supra* note 38.

45. 987 F.2d 989 (3d Cir. 1993).

46. *Id.* at 991.

47. *Id.*

48. *Id.*

that in addition to written and verbal speech, the Constitution also protects expressive conduct under the First Amendment. For example, the Supreme Court has found that donning a black arm band in protest of war, labor picketing, and handing out of leaflets all constitute expressive conduct that is protected by the First Amendment.<sup>49</sup> Likewise, the plaintiffs in *Steirer*, two high school students, alleged that performing mandatory community service constituted expressive conduct because it forced the students to “declare a belief in the value of altruism.”<sup>50</sup> The students argued that altruism was not a universally accepted ideology, and that it would follow that a member of the community observing such behavior would assume the students believed “the idea that helping others and serving the community are desirable.”<sup>51</sup> Since the students believed that mandatory community service was expressive conduct, they alleged the school was compelling speech from them through this mandated activity in violation of the First Amendment.

However, the Third Circuit upheld the school’s program, finding there was no evidence that the school required students to explicitly express their belief in the value of community service.<sup>52</sup> As such, no expressive conduct was found in the context of this community service requirement.<sup>53</sup> The court uncovered no evidence that people in the community would likely perceive student service activities as some form of a “particularized message of their belief in the value of community service and altruism.”<sup>54</sup> Just as likely, the Third Circuit opined, was that “students performing community service under the auspices of a highly publicized required school program will be viewed merely as students completing their high school graduation requirements.”<sup>55</sup> Instead, the court sided with the school district in finding that the purpose of the community service requirement was educational—seeking to teach students about community service by requiring them to perform it.<sup>56</sup> The Third

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49. See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Schneider v. Town of Irvington*, 308 U.S. 147 (1939).

50. *Steirer*, 987 F.2d at 993.

51. *Id.* (quoting Brief of Petitioner at 28). This standard, examining how the community would perceive an alleged expressive action, comes from *Spence v. Washington*, and is often referred to as the *Spence* test. The test asks whether the activity presents a message to viewers—in this case, whether the students supported the notion of altruism and community service as a positive belief. 418 U.S. 405, 409 (1974).

52. *Steirer*, 987 F.2d at 996. In fact, the record of the case plainly stated that there was no indication that a student who criticized the community service program would not receive a passing grade.

53. *Id.* at 995-996. The court noted that while almost anything could be considered speech in some hypothetical context, courts were not to embrace the notion that the First Amendment offered protection in each and every one of these instances. The court quoted *City of Dallas v. Stanglin*, “it is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one’s friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment.” 490 U.S. 19, 25 (1989).

54. *Steirer*, 987 F.2d at 997.

55. *Id.*

56. *Id.*

Circuit pointed to the long history of public schools teaching values to their students, including discouraging drug use, encouraging exercise and, more generally, pointing "students toward values generally shared by the community."<sup>57</sup> Because exposure to community values in an educational environment does not require students to embrace these values, the Third Circuit upheld the community service requirement under the scrutiny of the First Amendment.

The court did establish an important limitation for educators seeking to implement mandatory community service requirements. The court opined that the constitutionality of community service requirements would be suspect if the programs ceased to be about education, and instead required the students to express agreement with the educators' values.<sup>58</sup> This should raise red flags for mandatory community service programs that go beyond exposure to community affairs or education about political issues, and instead require students to agree with an educator's stance on a particular community issue. Likewise, students' grades and evaluations in such programs must not be based upon their professed views about the underlying value of community involvement. This does not translate to a service learning environment where community service programs cannot reflect a particular ideology of community involvement—the very point of service learning is to inform students about the power of community action and inspire a sense of civic responsibility. Indeed, students have always been exposed to history and civics education that promote certain views and beliefs.

However, the constitutional line may be crossed if those noble goals of educating, informing, and inspiring students about the general value of community service are abandoned by the school in exchange for compulsory agreement by students on particular beliefs or issues. The court in *Steirer* wrote, "Arguably, a student who was required to provide community service to an organization whose message conflicted with the student's contrary view" could potentially assert a constitutional violation under the First Amendment.<sup>59</sup> In this case, the court noted that the school's community service program did not limit students to providing service to a particular type of organization. As such, educators can avoid legal challenges to such community service initiatives by either ensuring that students have a reasonable and diverse set of community service programs to choose between or by simply implementing a

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57. *Id.*

58. *Id.* at 994. The court quoted *Tinker*:

"state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligation to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." 393 U.S. 503, 511 (1969).

59. *Steirer*, 987 F.2d at 996.

service activity that is sufficiently non-objectionable to a reasonable member of the community.

### **B. Thirteenth Amendment Challenge**

In addition to their First Amendment challenge, the plaintiffs in *Steirer* also alleged that the district's community service requirement violated the prohibition against involuntary servitude found in the Thirteenth Amendment.<sup>60</sup> This same claim was raised in a Second Circuit case, *Immediato v. Rye Neck School District*.<sup>61</sup> With fairly similar legal reasoning, both the Second Circuit and the Third Circuit ultimately upheld the community service requirements under the Thirteenth Amendment.

Ratified after the Civil War, the Thirteenth Amendment prohibits both slavery and involuntary servitude. The plaintiffs in both *Steirer* and *Immediato* claimed that the mandatory community service policies were a form of involuntary servitude. Specifically, in *Steirer* the plaintiffs alleged that "participation in the program is involuntary because the threat of not receiving a diploma" is such a severe repercussion as to constitute coercion.<sup>62</sup> Plaintiffs in *Immediato* requested the court to look at the plain meaning of the term "involuntary servitude"—arguing that the program required work for the benefit of another (the community), which was plainly involuntary.<sup>63</sup> Plaintiffs argued that even though students were not physically compelled to participate and did in fact have alternatives to completing the requirement, these options were not necessarily viable ones in today's society. Plaintiffs reasoned that one cannot assume students will be able to succeed without a high school degree, possess the resources to transfer to private school or be in the same educational position by earning a general equivalency diploma.<sup>64</sup>

In rejecting these arguments, both the Second Circuit and the Third Circuit pointed to established constitutionally permissible policies of compelling certain types of behavior—such as requiring lawyers to complete pro bono work as a condition of their bar license or requiring doctors who have accepted certain types of scholarships to perform services for the needy.<sup>65</sup> Similar to a community service requirement as a prerequisite to high school graduation, the court reasoned that individuals in these situations are presented

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60. *Id.* at 991.

61. 73 F.3d 454, 457 (2d Cir. 1996) (to earn their diplomas, all students at the high school were required to complete forty hours of community service during their four years in high school. While some of the service could be done in or around the school, at least twenty hours of service had to be provided to an organization outside the school. The students were also required to participate in a corresponding classroom discussion about their service experience. The school published a list of suggested organizations and groups that had specifically asked for student help; however, students remained free to suggest their own charitable organizations).

62. *Steirer*, 978 F.2d at 998.

63. *Immediato*, 73 F.3d at 459-460.

64. See Underwood, *supra* note 44, at 502.

65. See *United States v. 39.64 Acres of Land*, 795 F.2d 796 (9th Cir.); *United States v. Redovan*, 656 F. Supp. 121, 128-129 (E.D. Pa. 1986).

with a real choice, albeit one that may have significant consequences for their professional future. The Third Circuit wrote, "the critical factor in every case finding involuntary servitude is that the victim's only choice is between performing the labor on the one hand and physical and/or legal sanctions on the other."<sup>66</sup> Both courts pointed to the Supreme Court's language in *United States v. Kozminski* regarding the original intent of the Thirteenth Amendment, which recognized that "the phrase 'involuntary servitude' was intended to extend 'to cover those forms of compulsory labor akin to African slavery.'"<sup>67</sup> The Second Circuit and Third Circuit both found there was no leap of logic tall enough to somehow analogize a mandatory community service requirement in high schools within the intent of the Amendment, slavery.<sup>68</sup> Professor Rodney Smolla writes, "the mere claim that some percentage of one's labor or wealth has been commandeered by a state for the benefit of others will not, standing alone, be understood as constituting involuntary servitude."<sup>69</sup> Because the work required—forty to sixty hours over four years—is not severe, and because the conditions under which the work is performed are hardly onerous, both courts found that this educational requirement did not constitute involuntary servitude.<sup>70</sup>

However, the Second Circuit and Third Circuit noted some limitations to mandatory community service programs in the context of the Thirteenth Amendment. First, the Second Circuit said that it could be conceivable that certain types of mandatory "service" would not survive constitutional scrutiny. As a seemingly extreme example, the court wrote that an "obviously exploitative purpose of the program" such as having students spend their Saturdays at their teachers' homes washing their cars and painting their homes in the name of "service" might indeed warrant a finding of involuntary servitude.<sup>71</sup> Second, and more significant for educators looking to implement service programs, the court opined that if a service program were to require an extremely large number of hours, it could theoretically constitute involuntary servitude under the Thirteenth Amendment.<sup>72</sup> The court noted that "like so

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66. *Steirer*, 987 F.2d at 999.

67. 487 U.S. 931, 942 (1988) (quoting *Butler v. Perry*, 240 U.S. 328, 332 (1916)), *superseded by statute*, 18 U.S.C.S. §1589, *as recognized in* *United States v. Marcus*, 487 F. Supp. 2d 289 (E.D.N.Y. 2007) (the court in *Marcus* stated that §1589 was to "provide federal prosecutors with the tools to combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*").

68. *Immediato*, 73 F.3d at 460 (the Second Circuit rejected plaintiff's argument that the term "involuntary servitude" should be taken literally, and instead took a "contextual approach" in which they compared the nature of the work and the degree of compulsion to the intent of the Amendment. Under this standard, the court found no constitutional violation); *Steirer*, 987 F.2d at 1000 (Third Circuit's ruling against public service requirement as "involuntary servitude").

69. Rodney A. Smolla, *The Constitutionality of Mandatory Public School Community Service Programs*, 62 LAW & CONTEMP. PROB. 113, 120 (1999).

70. *Immediato*, 73 F.3d at 460; *Steirer*, 987 F.2d at 1000.

71. *Immediato*, 73 F.3d at 460.

72. *Id.* at 459.

many thorny legal distinctions, it is all a matter of degree.”<sup>73</sup> Although the Second Circuit did not establish a specific number of hours that would be considered unreasonable, it did not find the forty hour service requirement by the Rye Neck School District severe—nor did the Third Circuit find the sixty hour requirement by the Bethlehem School District objectionable. Thus, there may be some conceivable outer-limit of required service hours that might implicate Thirteenth Amendment protections; but that number seemingly is well over 100 service hours spread over four years. Ambitious school districts looking to implement large service requirements should be aware of this potential limitation, both constitutionally and in an educational context as it is likely that too many required service hours could inhibit future community involvement and interfere with other educational priorities. Finally, in dicta, the Third Circuit dismissed an argument on behalf of the school district “that the Thirteenth Amendment is inapplicable merely because the mandatory service requirement provides a public benefit.”<sup>74</sup> As such, schools would be wise to avoid relying solely on public benefits as a means of justifying programs under the Thirteenth Amendment and instead focus on the stark differences between community service and the original intent of the Amendment, slavery and involuntary servitude. This does not mean that the public benefits provided by service learning are not compelling justification for such programs nor that communities should shy away from maximizing the community benefits of service learning. But, schools must also focus on the myriad of educational benefits these programs provide to the students.

### C. *Fourteenth Amendment Challenge*

The challenge to the Rye Neck School District’s community service program considered by the Second Circuit faced one additional constitutional issue: the allegation that the program violated both the parents’ and students’ due process rights under the Fourteenth Amendment.<sup>75</sup> The Fourth Circuit Court of Appeals considered a similar challenge in *Herndon v. Chapel Hill-Carrboro City Board of Education*.<sup>76</sup>

In both *Immediato* and *Herndon*, the court began its due process analysis by examining the plaintiff’s allegation that the service requirement violated a non-approving parent’s right to control and direct the education of his or her children. As an initial matter, both courts acknowledged existing

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73. *Id.* (“There may be some mandatory programs so ruthless in the amount of work demanded, and in the conditions under which the work must be performed, and thus so devoid of therapeutic purpose, that a court justifiably could conclude that the [work constituted] . . . involuntary servitude.” (quoting *Jobson v. Henne*, 355 F.2d 129, 132 (2d Cir. 1966) (finding the constitutionality of forced labor depends on the nature and amount of the work demanded)).

74. *Steirer*, 987 F.2d at 998. The district court had placed considerable reliance on *Bobilin v. Bd. of Educ.*, 403 F. Supp. 1095, 1104 (D. Haw. 1975), a case that concluded that mandatory cafeteria duty was not covered by the Thirteenth Amendment because the public interest was being served. The Third Circuit explicitly noted it did not find this reasoning persuasive.

75. *Immediato*, 73 F.3d at 460.

76. 89 F.3d 174 (3d Cir. 1996).

legal precedent for finding that an unreasonable educational policy could violate parents' rights to direct the upbringing of their children.<sup>77</sup> However, Supreme Court jurisprudence also holds that parents have "no constitutional right to provide their children with. . . education unfettered by reasonable government regulation."<sup>78</sup> As such, the courts were left to balance the state's interest in the community service requirements with the interference the program caused in the plaintiffs' right to control the upbringing of their children. The Fourth Circuit summarized the applicable legal standard succinctly: "[e]xcept when the parents' interest includes a religious element. . . the Court has declared with equal consistency that *reasonable* regulation by the state is permissible even if it conflicts with that [parental] interest."<sup>79</sup>

Both the Second and Fourth Circuit Courts of Appeals rejected strict scrutiny review of these claims and instead evaluated the parents' claims under a rational basis review. Rational basis review involves a tougher standard: it requires the plaintiffs to prove there is no rational state interest in the service learning program. The courts found a number of rational state interests behind the programs, such as teaching students the habits of good citizenship, introducing students to their social responsibilities and exposing students to the needs of their communities.<sup>80</sup> Because of these valid justifications of the service program, the parents' claims of due process violations were rejected.<sup>81</sup> Professor Smolla comments:

[P]ublic schools constantly make choices about policy that are controversial and vehemently contested within the community. Virtually no aspect of a public school system's decision making is likely to please everyone within its constituency; there will always be students and parents who would like to opt out of heavy homework loads, physical education, courses in sex education, or any number of other curricular initiatives. The

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77. See, e.g., *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (invalidating a state statute that required all children to attend public school without the option of private school). Claims of unreasonable regulation have historically possessed the greatest chance of success when the regulation interferes with particular religious beliefs. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (finding for Amish plaintiffs that mandatory school attendance past the eighth grade violated their First Amendment protections to freedom of religion). But see Smolla, *supra* note 69, at 123 ("[c]ommunity service programs, however, do not implicate the wholesale deprivations of autonomy and choice in child-rearing and education that this venerable line of substantive due process cases were created to vindicate.").

78. *Runyon v. McCrary*, 427 U.S. 160, 178 (1976).

79. *Herndon*, 89 F.3d at 179. See also *Immediato*, 73 F.3d at 461 ("where, as here, parents seek for secular reasons to exempt their child from an educational requirement and the basis is a claimed right to direct the 'upbringing' of their child, rational basis review applies.").

80. See *Herndon*, 89 F.3d at 179; *Immediato*, 73 F.3d at 462.

81. Interestingly, plaintiffs in *Immediato* attempted to impose a strict scrutiny review of their claims because the program at issue forced students to act, as opposed to simply be exposed to ideas in a classroom. 73 F.3d at 462. The court rejected this argument by calling the distinction between exposure and action "chimerical, particularly in the educational context. In the course of education, schools often require more than a passive glance at a book." *Id.*

presumptive rule, however, is that the arguments against such programs must be vented and resolved in the political arena, and they are not subject to serious challenge merely on the general claim that the choices made impermissibly infringe on the broad liberty of parents to direct the upbringing of their children's education. To the extent that parents direct their children's education by directing them to public schools, they forfeit the right of selective micro-management.<sup>82</sup>

The final constitutional argument offered by opponents to these mandatory community service programs is also found under the Fourteenth Amendment: that the programs intrude on the student's personal liberty and privacy interests. Plaintiffs in both *Immediato* and *Herndon* argued that the Fourteenth Amendment's protection of substantive due process rights were violated because the choice of whether to serve others should be left to the conscience of the individual.<sup>83</sup> In pointing out that neither plaintiff identified a single instance where the individual choice of whether to serve others has been deemed a fundamental right under the Fourteenth Amendment, both the Second and Fourth Circuit Courts of Appeals rejected challenges to the community service requirements on substantive due process grounds.<sup>84</sup> Quoting Justice O'Connor, the court in *Herndon* wrote that expanding substantive due process rights beyond the Bill of Rights applies only to those rights that "involve the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy. . ."<sup>86</sup> The courts concluded, in both *Immediato* and *Herndon*, that although the choice to serve is significant, it does not rise to the type of decision that merits substantive due process protection under the Fourteenth Amendment.<sup>87</sup> In *Immediato*, the court also dismissed the plaintiff's contention that participation in the service program's classroom discussion component infringed on students' privacy interests by forcing students to disclose personal information.<sup>88</sup> The court reasoned that privacy considerations were not implicated when the program provided a wide variety of service options to the students.<sup>89</sup> In practice, it is common to ask students to write essays or engage

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82. See Smolla, *supra* note 69, at 125 (Although his presentation of the law is correct, Smolla's use of the word "forfeit" is misplaced—parents have an important role to play in dialoguing with teachers about curriculum and may in many instances have legitimate grounds for asking their student be excused from a certain exercise or class activity).

83. See *Herndon*, 89 F.3d at 179; *Immediato*, 73 F.3d at 463 ("Daniel's choice as to how to spend his free time, and whether or not he will perform any volunteer services, is not the stuff to which strict scrutiny is devoted.").

84. *Id.*

86. *Herndon*, 89 F.3d at 180 (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992)).

87. See *id.*

88. *Immediato*, 73 F.3d at 463.

89. *Id.* (The court reasoned that the program did not force students to discuss deeply held religious or political beliefs where non-partisan and secular organizations were among the options available for students. Students weary of discussing religion or politics could simply choose a non-partisan and secular service option).

in class discussions about historical events and current affairs. These assignments do not typically draw objections from parents, much less implicate substantive due process rights. As long as the community service program at issue can show some justification under rational basis review and the program does not infringe on other protected rights, the precedents established in these cases leave school districts on solid footing with regards to challenges under the Due Process Clause.

#### ***D. Challenges Based Upon Excessive Religious Entanglement***

Although none of the courts addressed the argument that a community service program conducted through a religious organization could represent constitutionally suspect entanglement with religion, litigation brought on these grounds can be defeated by communities that take some common sense steps to avoid infringing on important First Amendment rights. As some school districts have opted to allow service activities with religious organizations to fulfill students' service obligations, the potential exists for litigation to be brought against a school under the First Amendment's protections of freedom of religion.<sup>90</sup>

The applicable legal standard, called the *Lemon* test, asks three primary questions: (1) does the government's action have a legitimate secular purpose, (2) does the government action have the primary effect of either advancing or inhibiting religion, and (3) does the government action result in an "excessive government entanglement" with religion.<sup>91</sup> Given the courts have already recognized the legitimate purpose behind service learning programs,<sup>92</sup> the second and third questions are most pertinent to our inquiry. Based on the Supreme Court's ruling in *Zelman v. Simmons-Harris*, a potential litigant asserting excessive entanglement with religion or advancement of religion would only have a meritorious case if there were not secular alternatives to the service activity run by the religious organization.<sup>93</sup> In *Zelman*, the Court focused on the element of choice—thus, students who are given a range of non-religious service alternatives are less likely able to assert such a claim. As a general rule, religious objections to service learning would only have constitutional merit if no secular service alternatives were available to students and the students were forced to volunteer at a religiously affiliated organization. Potentially, such a student could assert that they were being forced to provide labor to a religious organization in defiance of their First

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90. The type of service learning envisioned in this context might be a church-run soup kitchen or a synagogue sponsored health clinic--activities that may be administered by religious organizations but that primarily involve service activities, as opposed to activities having an emphasis on the teaching of religious doctrine.

91. *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971).

92. See *Herndon*, 89 F.3d at 179; *Immediato*, 73 F.3d at 462.

93. See *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (upholding a voucher program that allowed students to choose a new school, including religiously affiliated schools).

Amendment protections of freedom of religion. Obviously, schools that include religiously affiliated organizations as an option in their service programs would be wise to avoid such a scenario by providing a range of service opportunities to students.<sup>94</sup>

### ***E. Risk Management Strategies***

Certainly, legal considerations should not prevent communities from moving forward with a service learning program. As has been discussed in this article, the three leading cases on the subject all find for the school district. However, there remain important steps that communities can take in implementing service learning programs to minimize the risk of litigation. While the preceding discussion of the applicable case law on school based community service initiatives presents a few caution signs and concerns for implementing communities, this body of law is of very little use to local communities looking to avoid litigation unless it is transformed into enforceable policy guidelines for educators and community members that are geared to the needs and desires of that community. These guidelines must be easy to understand and provide a contact person to call when questions or emergencies arise.

Further, the Points of Light Foundation suggest developing a comprehensive Risk Management Plan.<sup>95</sup> The Foundation suggests that this plan: (1) identify potential risks, (2) quantify potential risks to the extent possible, (3) select and implement best practices (whether it be training, supervision or parental waivers), (4) manage claims and losses, and (5) monitor the program to make necessary adjustments.<sup>96</sup> A detailed and long-term risk management plan should be drafted by educators and policymakers in concert with attorneys to help evaluate potential risks to the community. While participants and specific programs may change from year to year, an effective risk management plan will provide institutional knowledge over the years so as to best guide future decision making and evaluation of risk.

## **THE BENEFITS OF SERVICE LEARNING**

Having discussed the legal considerations for policymakers implementing service learning initiatives, we now consider the educational and community benefits that a successful service learning initiative can and should generate. Because these programs require coordination between legal standards, educational realities, community needs and local governing structures, educators, policymakers and community members must work across

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94. School sponsored service activities that involve more of a religious component (e.g., preaching, bible study, missionary work) than an educational component would certainly create legal problems for a school district.

95. Points of Light Foundation, *Risk Management and Liability* (Oct. 2002) [http://www.servicelearning.org/resources/fact\\_sheets/k-12\\_facts/risk\\_mgmt/index.php?search\\_term=risk%20management](http://www.servicelearning.org/resources/fact_sheets/k-12_facts/risk_mgmt/index.php?search_term=risk%20management).

96. *Id.*

disciplines to implement such programs successfully.

#### A. *Educational Benefits of Service Learning*

Although service learning provides students with a number of educational benefits, we limit our examination to the following three broad categories: the ability to complement traditional academic subjects, the ability to increase motivation among students and the ability to teach students the importance of civic engagement.

Educators do not need to choose between teaching reading skills or engaging the class in service learning activities—instead, service learning can be structured to complement commonly tested areas such as reading and math. Reading, in particular, is a skill that can be incorporated into all levels of service learning.<sup>97</sup> Further, studies have documented methods to successfully integrate math<sup>98</sup> and economics<sup>99</sup> via service learning. For example, students planning to work in a food shelter might use math to estimate how many people to expect and how much food to prepare, or students tutoring ESL students in English might read novels in class describing the historic plight of immigrants. Complementing service projects with books or articles that discuss larger societal problems associated with the project acts to build both reading skills and provide the student a larger lens through which to view the issue.<sup>100</sup> As reflection is a crucial component in any service learning project, writing assignments asking the student to discuss community problems or their experiences in serving fit easily into the service learning curriculum.<sup>101</sup> In addition, service learning can facilitate higher level critical thinking and problem solving skills<sup>102</sup>—tools that are often underdeveloped in today's test-centric education environment. Many experts have stressed that for service learning to result in direct academic benefit to students, the service activity must be fully integrated with traditional classroom instruction.<sup>103</sup> Therefore, the success of service learning often depends on the competence of the

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97. See Jim Sollisch, *Reading Across the Board: It's Not a Subject, It's a Skill That Enhances Learning in All Classes*, WASH. POST, Apr. 2, 2006, at B7 (providing background on the need to integrate reading across different disciplines).

98. See Jon E. Anderson & Engin A. Sungur, *Community Service Statistics Projects*, 53 AM. STATISTICIAN 132 (1999).

99. See Kim Marie McGoldrick, *Service-Learning in Economics: A Detailed Application*, 29 J. ECON. EDUC. 365 (1998).

100. See Kevin Everett, *Understanding Social Inequality through Service Learning*, 26 TEACHING SOC. 299, 301 (1998).

101. *Id.* at 302 (discussing a college sociology professor who mandates that students complete various writing assignments related to their service learning—whether it be keeping a journal, critical analysis of their service experience or pre-service goal setting for what the students hope to gain from the experience).

102. See KY. EDUC. ASS'N, *supra* note 7, at 12.

103. See Gregory B. Markus, *Integrating Community Service and Classroom Instruction Enhances Learning: Results from an Experiment*, 15 EDUC. EVALUATION AND POL'Y ANALYSIS 410, 417 (1993).

implementing community, school district and teacher.

Additionally, service learning can serve as a motivating force for students as they build self-confidence and become interested in the subjects related to their service. In a survey of teachers who employed service learning, the teachers reported that it resulted in “student enthusiasm and excitement about the unit” and that the students “felt a sense of accomplishment” and “a sense of pride;” this was especially true for students who were typically behavior problems in class.<sup>104</sup> Service learning has also been linked to fostering leadership in students, particularly with students who had not displayed leadership traits previously in the classroom environment.<sup>105</sup> One report noted that “[m]otivation toward high academic expectations and a deeper connection to school and community result from seeing themselves as able to contribute to larger causes. As students realize they are needed and capable, their self-confidence grows and school becomes more relevant to their lives.”<sup>106</sup> With this increase in self-confidence, studies have found that service learning projects encourage students to participate in class and ask questions, as well as build positive relationships with teachers.<sup>107</sup> Perhaps most important, the learning is considered authentic to students as they are able to see the real life application of skills learned in the classroom to the outside world.<sup>108</sup>

Further, students will benefit from service learning by gaining a broader appreciation of civic institutions and the value of engaging in these institutions as citizens of a community. Robert Putnam’s theory of social capital is extremely relevant to this issue—the theory argues that voluntary organizations with interpersonal contact are critical to building a vibrant local community.<sup>109</sup> Social capital is defined as “features of social organization such as networks, norms and social trust that facilitates coordination and cooperation for mutual benefit.”<sup>110</sup> The theory posits that increasing social capital among students by linking them to other people, institutions, and networks in the community will increase their likelihood of engaging in civic participation throughout their lifetime. Volunteer activity can serve to increase social capital, and as such, act as a building block to political participation.<sup>111</sup> In a nation where many youth are often intimidated or disillusioned with politics, volunteerism may serve as a useful stepping stool for later political participation. Indeed, political scientists have recognized that service learning fosters greater levels

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104. Ron Schukar, *Enhancing the Middle School Curriculum through Service Learning*, 36 THEORY INTO PRACTICE 176, 182 (1997).

105. KY. EDUC. ASS’N, *supra* note 7, at 12.

106. *Id.*

107. *See* Schukar, *supra* note 104, at 177.

108. *Id.*

109. *See* PUTNAM, *supra* note 15.

110. *See* David E. Campbell, *Social Capital and Service Learning*, 33 POL. SCI. AND POL., 641 (2000) (quoting ROBERT PUTNAM ET AL., MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY, 67 (1993)).

111. *Id.* at 642.

of political socialization and engagement among youth.<sup>112</sup> A study of college students with service experiences found that these students tended to view their experiences favorably and were more likely to perform additional service in the future.<sup>113</sup> These types of studies encourage service learning in schools as a type of "prime-pumping" to light a spark in students that will lead to a lifetime of civic engagement.

The learning of other important values such as responsibility, empathy and tolerance through service learning exists as an important corollary benefit to the development of a sense of civic responsibility. Undoubtedly, service learning provides an opportunity to expose students to the less fortunate in society.<sup>114</sup> Educators have reported that students involved in service learning display an increased sensitivity to people who are different and a loss of fear in dealing with "different" people.<sup>115</sup> One student commented, "I now see the city differently. I'm no longer scared walking to the site—far from it. . . Now when I pass people on the street, some say hello to me, and call me by name."<sup>116</sup> In one study, college students complementing a traditional lecture course with service learning reported significant increases in the personal importance they attached to "working toward equal opportunity for all U.S. citizens," "volunteering my time helping people in need," and "finding a career that provides the opportunity to be helpful to others or useful to society."<sup>117</sup> These students also reported higher levels of interest in donating to charity and serving others in need, as well as greater levels of tolerance and appreciation of others. More broadly, service learning has the potential to encompass core values stressed in character education such as respect, tolerance, responsibility, citizenship, honesty and caring. In this sense, service learning meets the demands of proponents of character education who argue that students should be taught not only basic academic skills but also core universal values that nearly all communities embrace.

### ***B. Community Benefits of Service Learning***

While the educational benefits of service learning cannot be overstated, the surrounding community also exceedingly benefits from service learning programs. The substantial impact service learning programs can make in the greater community has been typically relegated in service learning literature as

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112. See Owen, *supra* note 10, at 639.

113. See Susan Hunter & Richard Brisbin, Jr., *The Impact of Service Learning on Democratic and Civic Values*, 33 POL. SCI. AND POL. 625 (2000).

114. See Everett, *supra* note 100, at 299 (because service learning is within a structured classroom environment where reflection is encouraged, students can interact and engage with the poor and needy with maximum support from other students and staff).

115. See KY EDUC. ASS'N, *supra* note 7, at 12.

116. Richard Battistoni, *Service Learning and Democratic Citizenship*, 36 THEORY AND PRAC., 150-56 (1997).

117. Markus, *supra* note 103, at 413.

merely a tangential benefit.<sup>118</sup> However, from the community perspective, a comprehensive service learning program potentially harnesses these “tangential” benefits to something quite substantial. Local governments and school districts must forge relationships and create synergies to maximize the potential effectiveness of service learning. For this discussion, we can divide the benefits that flow to a community from service learning into three categories: an increased sense of community identity and connectedness, the direct tangible benefits the community gains from service activities, and the cultivation of future civic-minded community members.

### 1) Service as a Facilitator of Community Spirit and Integration

By building relationships with local businesses, nonprofit organizations, governmental agencies, citizen organizations and other schools, service learning programs facilitate a greater sense of community identity and inner-connectedness. Through interacting in service learning projects, both students and community members will build social capital and engage in the type of interpersonal contact that Robert Putnam argues is critical to building a vibrant local community.<sup>119</sup> Let us imagine a hypothetical service learning program of seventh graders who have decided to beautify a local park—from a local citizens’ organization, to a local landscaping company to a nearby retirement home to the local parks department, the class could partner with any host of community actors to complete the project. Students in particular report an increased sense of ownership in their communities through service learning programs.<sup>120</sup> If properly implemented, service learning can encourage interaction between students, parents, community members and community organizations to solve community problems and help those in need.<sup>121</sup> In a culture where longer work days and more commitments have made it harder for families to find time for community activity, service learning offers a forum for both community problem solving and interaction. Service learning projects can also build greater community-wide interaction by bringing students and community members in contact with the poor or other segments of the community that many typically do not encounter.<sup>122</sup> Ultimately, these relationships blossom to forge a greater sense of community. In the words of Richard Battistoni, “Partnership underscores mutual interdependence and helps create an understanding of community—not as those with problems but as the group to which we all belong.”<sup>123</sup>

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118. See DANIKA M. BROWN, CORP. FOR NAT’L SERV., PULLING IT TOGETHER: A METHOD FOR DEVELOPING SERVICE-LEARNING AND COMMUNITY PARTNERSHIPS BASED IN CRITICAL PEDAGOGY 4 (2001) available at <http://www.nationalservicerresource.org/filemanager/downloads/720/brown.pdf>.

119. See PUTNAM, *supra* note 15.

120. See generally Koulish, *supra* note 10, at 562; KY. EDUC. ASS’N, *supra* note 7, at 12.

121. See Judith G. Chapman & Joseph R. Ferrari, *An Introduction to Community-Based Service Learning*, 18 J. PREVENTION & INTERVENTION IN THE CMTY. 3 (1999).

122. See, e.g., Koulish, *supra* note 10 (discussing a program where students tutored immigrants in English and American history).

123. Battistoni, *supra* note 116, at 155.

Further, service learning programs have the ability to forge improved relationships between schools and the surrounding community. In one survey of teachers engaged in service learning, the teachers cited the strengthening of ties between the school and the surrounding community as one of the noticeable benefits of the program.<sup>124</sup> "The town comes to be seen as a 'text', and neighborhoods reciprocally gain the opportunity to reclaim their schools as centers in the community."<sup>125</sup> A more inviting and positive relationship between a school and the surrounding community is undoubtedly a net positive for any community looking to become more interconnected and forge a stronger sense of community identity. Maximizing this potential benefit from service learning will require extensive coordination between schools and local government.

## 2) The Direct Impact of Service on the Community

Perhaps most understated in the literature is the impact service learning can play in providing direct volunteer services to a community. Rahima Wade writes, "of central importance is the fact that service learning activities should be responsive to the needs and interests of the community agencies or individuals for whom the service is intended."<sup>126</sup> Whether it is tutoring younger students, helping the elderly with basic needs, collecting living histories from community veterans, staffing a soup kitchen or planting trees at the local park, students' contributions to the local community should be viewed for what they are: substantial. One begins to understand the impact that service learning, and more broadly volunteerism, can have on a community when one considers that in 2004 students provided some 1.3 billion hours of community service.<sup>127</sup> This realization does not mean that communities should suddenly view service learning as the singular solution to serious community problems, but instead educators and community leaders should appreciate the potential of these programs to supplement existing community initiatives of all types in an educationally-friendly manner.

To better comprehend the benefits a single jurisdiction receives from student service, let us posit a community, whether it be a city neighborhood or a suburban township, where service learning is integrated into the K-12 curriculum. For a district with a middle school of 900 students and a high school of 1,200 students, let us further assume that 70% of these middle school and high school students take one class where some form of community service learning is integrated into the curriculum. If each student provided a mere ten hours of community service through these programs, the community would receive approximately 14,700 hours of community service by its

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124. See Schukar, *supra* note 104, at 181-82.

125. Battistoni, *supra* note 116, at 155 (citing FRANCES MOORE LAPPE & PAUL MARTIN DU BOIS, *THE QUICKENING OF AMERICA: REBUILDING OUR NATION, REMAKING OUR LIVES* (1994)).

126. RAHIMA WADE, *COMMUNITY SERVICE LEARNING* 48 (Rahima C. Wade ed.) (1997).

127. See *BUILDING ACTIVE CITIZENS*, *supra* note 17, at 2.

students annually—the equivalent in work hours of over seven full time community volunteers. For a single community, this is no small matter.

In an environment where state and local governments have been squeezed financially, the need for volunteers to provide social services at the local level becomes even greater.<sup>128</sup> As a result, an important function of service learning programs is to place volunteers in areas where they are able to both learn and meet the needs of the community.<sup>129</sup> Thus, there are two primary justifications for ensuring the service learning activities involve meaningful activities. First, students will take service learning more seriously and gain more of an educational benefit from the activities if they perceive the program is actually helping to address an important societal need.<sup>130</sup> The second reason, however, deals more specifically with the needs of the community. Many communities in the United States face very serious needs; although service learning is not a magic bullet to meeting these needs and certainly should not be viewed as a proxy for real government action addressing them, service learning programs do offer tangible benefits to the local community. As such, communities must not view service learning projects merely from an educational standpoint. Instead, communities should look to harness the energy and educational power of service learning programs to complement existing community programs aimed at addressing community needs. These definitive linkages between educational and community benefits speak to the need for collaboration between educators and community leaders.

### 3) Service as a Means of Cultivating Civic-Minded Community Members

The local community also benefits from a more active and engaged citizenry. De Tocqueville first recognized the role that local schools play in cultivating future actively involved citizens in America. He wrote, “in disengaging the classroom from real world settings, schools. . . fail to do their job and democracy. . . fail(s) to secure the responsible citizens it needs to flourish.”<sup>131</sup> Unsurprisingly, studies confirm a positive relationship between volunteerism and political activity in youth and subsequent volunteerism and political activity as an adult.<sup>132</sup> One such study found that 64% of Americans who volunteered in their youth also volunteered as adults, while only 31% of respondents who said that they did not perform volunteer work in their youth engage in voluntary activity as adults.<sup>133</sup> If we accept the premise that a community with two-thirds of its adult citizens volunteering finds itself in a

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128. See Chapman & Ferrari, *supra* note 121, at 1.

129. See *generally id.*

130. See JAMES YOUNISS & MIRANDA YATES, COMMUNITY SERVICE AND SOCIAL RESPONSIBILITY IN YOUTH 136-38 (1997).

131. Koulisch, *supra* note 10, at 566 (quoting Alexis de Tocqueville).

132. See Campbell, *supra* note 110, at 643; YOUNISS & YATES, *supra* note 130, at 68-82.

133. Campbell, *supra* note 110, at 643 (“A similarly dramatic increase is observed for volunteer activity on behalf of a political organization or campaign. Just under 2% of those who did not volunteer while young did as adults, while 6.3% of those who did perform youthful volunteer activity continued doing so later in life.”).

much better place than a community with half that number, implementing a successful service learning program in schools becomes crucial for communities to create an ethos of volunteerism among its citizens. Thus, to the extent that many students stay in their communities after graduating high school, communities benefit from service learning by cultivating a future core of volunteers that will give back to the community throughout their lifetime. Or as one student participant commented, "I enjoy my community service. It has opened my eyes as to the role I play as a citizen in the community."<sup>134</sup>

In addition to citizens who are willing to volunteer, communities also benefit from a citizenry that is more informed about civic affairs. A 2006 study by the Corporation for National and Community Service reported that students who had participated in service learning activities were more likely to be interested in current events and to discuss politics than those who had never participated in school-based service.<sup>135</sup> By raising the awareness and interest of future community members in the arena of civic affairs, properly designed service learning programs offer communities a more informed, and thus more powerful and effective, citizenry.

#### A COMMUNITY MODEL FOR SERVICE LEARNING

Because the benefits of service learning flow to the students and the community at large, both educators and community members should partner in designing an effective community service learning program. Local policymakers should not view service learning as merely the dominion of school administration; instead, policymakers' participation is vital to securing the necessary resources to ensure a successful service learning program. The initiative for such a partnership can come from either the school administration or the relevant local government body. Entrusting the planning and collaboration process to the local levels of administration will guarantee that valuable community input is gathered regarding the needs and resources of a particular community. This will maximize the effectiveness of the service program, as well as help build the type of community relationships that community service is ultimately intended to foster.

School based community service projects are too often undertaken in isolation, with activities, and the resulting school-community relationships, restricted to that one school year.<sup>136</sup> A more community-oriented approach to service learning would build long-term relationships that would allow a substantial institutional memory to evolve and inform the progress of the projects.<sup>137</sup> This would improve both the educational benefits that students

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134. Battistoni, *supra* note 116, at 150.

135. See EDUCATING FOR ACTIVE CITIZENSHIP, *supra* note 8, at 24-26.

136. See Brown, *supra* note 118.

137. Many community service projects have large start-up costs in terms of both time and money, but once they are up and running they are easy to maintain. In an environment where relationships are uncertain and not institutionalized, community actors and schools may be

receive from service learning, along with maximizing the potential benefit to the community. Because of their unique knowledge of local communities and their expertise of community affairs across disciplines, local governmental institutions, whether it be school boards, town boards or city councils, are perfectly situated to lead the charge in this area of policy. Additionally, institutionalizing the structures that support service learning programs will alleviate some of the legal questions and uncertainty that may arise in the course of designing such a program.

The Points of Light Foundation suggests the creation of a community advisory board to plan and coordinate service learning in a community.<sup>138</sup> I suggest this board include students, teachers, parents, school administrators, community policymakers, social service providers, business leaders and representatives from various community organizations. The goal of the advisory panel would not be to micromanage individual classrooms, but to (1) identify community needs, (2) facilitate partnerships between classes and willing community actors, (3) gather information about best practices and successful programs, (4) develop an institutional memory regarding these partnerships and (5) plan celebratory activities honoring student service in the community.

We could imagine a meeting of this advisory board, where a principal from the local high school reports that six classes are seeking new service learning projects, two with a particular focus on serving the poor. A local councilperson or alderman might then point out that the community soup kitchen has been understaffed on Fridays because the retired volunteers that usually staff it take long weekends. With this important local knowledge shared, the principal would then go back and present the idea to her teachers. If the teacher agreed to undertake a service learning project at the soup kitchen, the advisory board would then serve as a resource center for potential activities or assignments that the class could engage in to prepare for their service activity. Parent representatives of the advisory group might want to perform the service activity with the class and facilitate small discussion groups after the event to allow students to reflect on their experience. Local businesses might be tapped to provide resources for a small celebration after the class finishes its service learning unit. The possibilities for building community partnerships through service learning are infinite.<sup>139</sup>

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hesitant to embark on such projects. However, if there was a body that solidified these relationships, it would provide an incentive to undertake such projects.

138. Points of Light Foundation, *Building Effective Partnerships for Service-Learning* (June 2002) [http://servicelearning.org/resources/fact\\_sheets/k-12\\_facts/partnerships/index.php](http://servicelearning.org/resources/fact_sheets/k-12_facts/partnerships/index.php).

139. See *id.* (The Points of Light Foundation has divided possible school-community partnerships into four categories of increasing closeness: networking, coordination, cooperation and collaboration. Networking involves simple information sharing, such as a community organization putting a teacher on their mailing list of upcoming community activities. However, collaboration should be the goal for school-community service learning relationships. Collaboration involves sharing resources and information, along with altering activities to enhance the capacity of other partners. This type of relationship is typified by open

Thus, local governments and school districts must forge close relationships and create synergies in order to maximize the potential effectiveness of service learning. In addition to a forum for community dialogue and planning as discussed above, a successful school-community partnership might be built with some particular points of emphasis:

**An Emphasis on Helping Others:** service learning projects can best support the educational and civic maturation of students, along with the needs of the community, by emphasizing service for those in the greatest need in the community<sup>140</sup>—whether it be poor, elderly, infirmed, immigrant or illiterate populations. A recent study showed that making high school “more relevant” would help prevent students from dropping out of school.<sup>141</sup> Activities that link students to those in need in their community by applying skills learned in the classroom would certainly serve to engage students in more “relevant” activities.

**Institutional and Financial Support to Teachers & Service Instructors:** not surprisingly, service learning programs that have the support and involvement of teachers tend to be more successful. Service learning should not be another unfunded mandate thrust upon teachers; instead, communities and school administrators should support and empower teachers at the planning stages of the project and then reward them at its completion.<sup>142</sup>

**Facilitating Reflection & the Celebration of Service:** evidence shows that direct service is not enough to build a sense of community and civic engagement—students must conceptualize their service in a larger context via reflection activities.<sup>143</sup> Students also need to know that the community appreciates their work.<sup>144</sup> Likewise, community members should be made aware of the work that is being done in their own backyard and encouraged to celebrate it as a community.

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communications, a very high level of commitment and often working hand-in-hand).

140. See, e.g., YOUNISS & YATES, *supra* note 130, at 138.

141. See JOHN M. BRIDGELAND ET AL., THE SILENT EPIDEMIC: PERSPECTIVES OF HIGH SCHOOL DROPOUTS (Bill and Melinda Gates Foundation) (March 2006) <http://www.civicerprises.net/pdfs/tehsilentepidemic3-06.pdf>.

142. See Skinner & Chapman, *supra* note 23, at 7 (one study found that 83% of public schools that offered service learning provided support to teachers interested in integrating service learning into their curriculum—66% support for attending conferences, 58% financial support, but only 18% provided part-time service learning coordinators and 3% full-time service learning coordinators).

143. See YOUNISS & YATES, *supra* note 130, at 143; Steven Rathgeb Smith, *Volunteering and Community Service*, 62 LAW & CONTEMP. PROBS. 169 (1999) (discussing the work of Sally Raskoff and Richard Sundeen); Parker-Gwin & Mabry, *supra* note 21, at 278.

144. See YOUNISS & YATES, *supra* note 130, at 149.

**Minimizing Legal Uncertainty:** legal considerations should not inhibit communities from moving forward with a comprehensive service program. In fact, the three leading cases on the subject all find for the school district. However, as this Article has discussed, there are important steps that communities can take in implementing service learning programs to minimize the risk of litigation. A detailed and long-term risk management plan should be drafted, along with best practices that can easily be followed by implementing teachers and administrators.

**Building a Sense of Community:** an important goal of service learning should be to forge a greater sense of community in both students and community members alike. Civic participation as a youth begets greater participation as an adult.<sup>145</sup> Spreading this sense of community and volunteerism to the large populace requires partnerships that link various community actors to service activities.

If structured properly and with the enlisted support of the community at-large, communities can harness the power of service learning to complement traditional educational areas, build a more active citizenry and forge a greater sense of community. Because communities greatly benefit from service learning, the traditional disengagement of community policymakers and actors in the planning and support of service learning is inappropriate. Instead, community actors should actively build long-lasting partnerships with local schools to fund, support, staff and celebrate these service learning activities.

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145. See Janoski, *supra* note 20, at 515 (arguing that by encouraging people to volunteer and get involved as a child, we develop positive attitudes towards volunteer work and thus plant a seed for later volunteer work).