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### Reading, Writing and Community Service?

According to Mohammed Ali, “Service to others is the payment you make for your space here on earth.” The universal good of community service essentially goes without saying; its role in public schools, however, is heavily debated. While many students these days are encouraged to participate in various community service events, some school districts have gone so far as to make this a requirement to graduate high school. Many parents and students alike felt that school boards crossed the line in implementing various community service policies in high schools throughout the country. Upon examination of these policies, the Courts universally favored the school programs but debates still arise on whether this curriculum is appropriate and what kind of parameters need to be established to ensure its successful implementation.

### **The Policies Upheld by the Court**

There are three required community service programs that have reached the Appellate Court and each was ruled in favor of the school. *Steirer v. Bethlehem Area School District*, 987 F. 989 (3rd Cir. 1993) addressed a Pennsylvania school district’s sixty hour community service requirement for graduation, which included an opt-out option for students in special education classes.<sup>1</sup> The goal of the Bethlehem program, and arguably all required community service programs is to “help students acquire life skills and learn about the significance of rendering

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<sup>1</sup> *Steirer v. Bethlehem Area School District*, 987 F. 989, 991 (3rd Cir. 1993).

services to their communities ...[and] gain a sense of worth and pride as they understand and appreciate the functions of community organizations.”<sup>2</sup>

The other policies in questions were very similar. *Immediato v. Rye Neck School District*, 73 F. 454 (2nd Cir. 1996) required its high school students to perform forty hours of community service and participate in a corresponding classroom discussion on their experience.<sup>3</sup> *Herdon v. Chapel Hill School District*, 89 F.3d 174 (4th Cir. 1996), similarly addressed a program requiring students to perform fifty hours of community service in order to graduate.<sup>4</sup> Unlike Bethlehem, there was not an opt-out option for students receiving special education.<sup>5</sup>

Although not all of the same arguments were made in each case, the court’s reasoning in all three opinions can easily be applied to all the programs at issue. One of the main issues raised was a violation of students’ First Amendment rights to free speech in that mandatory community service is an expression of a belief valuing altruism.<sup>6</sup> The First Amendment is a fundamental right and therefore the Court needs to apply a heightened level of scrutiny when reviewing whether or not the expression of belief in altruism by mandatory community service is in fact constitutional.<sup>7</sup> The Third Circuit Court took issue with whether performing community service in fact constituted expressive behavior that falls under First Amendment protection.

In making the determination on whether community service is an expression, the Court looked to both precedent and the Spence test. The United States Supreme Court held that requiring children of the Jehovah’s Witness faith to salute the flag and recite the Pledge of

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<sup>2</sup> *Id.*

<sup>3</sup> *Immediato v. Rye Neck School District*, 73 F. 454, 457 (2nd Cir. 1996).

<sup>4</sup> *Herdon v. Chapel Hill School District*, 89 F.3d 174, 176 (4th Cir. 1996).

<sup>5</sup> Ronald T. Hyman, *Mandated Community Service in High School*, 16 WEST. ED. L. REP. 847, 848 (1997).

<sup>6</sup> *Id.* at 849.

<sup>7</sup> *Id.*

Allegiance was in fact unconstitutional in *West Virginia State Board of Education v. Barnette*.<sup>8</sup> Along similar lines, that same Court held that wearing black arm bands to protest the Vietnam War was in fact protected free speech and therefore fell under the First Amendment in *Tinker v. Des Moines Independent Community School District*.<sup>9</sup> Next, the court applied the Spence Test, a two-prong test that determines whether an act is “sufficiently imbued with elements of communication.”<sup>10</sup> The elements involved are that the actor must (1) possess an “intent to convey a particularized message” and (2) the surrounding circumstances are such that it is greatly likely that this message would be understood by those who viewed it.<sup>11</sup> The Court held that community service fell short of the Spence test; most citizens in the community would view students’ community service as a requirement to graduation, not an affirmation of altruism.<sup>12</sup>

The next constitutional claim in all three cases was brought under the Thirteenth Amendment, as parents and students analogized required community service to involuntary servitude.<sup>13</sup> While at first blush it seems like a far-fetched argument since the Thirteenth Amendment was passed to abolish African slavery, the Court acknowledged that the Amendment was not limited to that purpose.<sup>14</sup> Rather, it was meant to protect “those forms of compulsory labor akin to African slavery which in practical operation would tend to produce undesirable results.”<sup>15</sup> Regardless, the Court still held that the argument was unavailing and that the unpaid labor aspect of community service was outweighed by the education benefits it provides for students.<sup>16</sup> Furthermore, the Court explained that there were other options for students who did

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<sup>8</sup> *Id.* at 850

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 850-51.

<sup>13</sup> *Id.* at 851.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

not wish to participate, though markedly less appealing.<sup>17</sup> For example, the Second Circuit Court explained that students could avoid the program by transferring to another school that did not have such a graduation requirement, receive home schooling, or receive a high school equivalency degree.<sup>18</sup> The Courts also recognized that students had their choice of where they would perform the required community service from a wide array of organizations; the school did not endorse any one in particular.<sup>19</sup> The Fourth Circuit took a different approach and held that “subtle or indirect” pressure to perform community service did not rise to the level of invoking the Thirteenth Amendment’s “physical or legal coercion.”<sup>20</sup>

The final constitutional challenge the Courts faced came under the Fourteenth Amendment’s substantive due process clause which addresses the fairness of actions.<sup>21</sup> The argument presented is two-fold; parents claim that they have the right to educate and rear their children and do not believe that an individual is “obligated to help others,” and students similarly claim that the decision to help others “has always been left to the individual conscience and belief.”<sup>22</sup> The Court evaluated the parents’ claims using the rational basis test, as prior case law never explicitly stated whether that or strict scrutiny was appropriate to use for parental liberty rights and therefore proceeded with “humility and caution.”<sup>23</sup> Though the Court acknowledged that parents do have a substantive due process liberty right in the upbringing of their children, they do not have a right to be “unfettered by reasonable government regulation” and furthermore that education of children is a legitimate government concern; the programs therefore passed the

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<sup>17</sup> *Id.* at 852

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 853.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 853, 855.

<sup>23</sup> *Id.* at 853-54.

rational basis test.<sup>24</sup> The Court was similarly hesitant to apply strict scrutiny to the students' claims, with the Second Circuit Court going so far as to say that a student'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."<sup>25</sup> Though the sentiment is somewhat belittling, the Court has always been hesitant to use strict scrutiny where there is no precedent for doing so and may then set a dangerous precedent for subsequent cases.<sup>26</sup>

Students also brought a claim under the privacy rights clause of the Fourteenth Amendment. Students alleged that where they performed their community service work should be kept confidential so they did not have to risk revealing what organizations they support.<sup>27</sup> The Second District Court used an intermediate balancing approach and held that the community service program furthered the state's legitimate educational interest and any disclosure of personal information was minimal and therefore outweighed.<sup>28</sup>

Another key factor in the Courts' decisions was their proper role in regulating local school boards.<sup>29</sup> The only constraints placed on local schools boards are contained in state statutes, state constitutions, or the federal Constitution.<sup>30</sup> The appellate courts recognized that what a school decides to include in its curriculum is an "implicit value judgment" and therefore it is essential that these decisions be kept local and reflect the values of that community.<sup>31</sup> The ability of a school board to gage what in fact are the values of a community can evidently be a difficult task, as the filings of these suits indicate.

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<sup>24</sup> *Id.* at 854.

<sup>25</sup> *Id.* at 855.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 856.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 851.

<sup>30</sup> Cynthia L. Brennan, *Mandatory Community Service as a High School Graduation Requirement: Inculcating Values or Unconstitutional*, 11 T.M. COOLEY L. REV. 253, 261 (1994).

<sup>31</sup> Hyman, *supra* note 5 at 851.

## Backlash Against the Court

Community service is not the only non-traditional topic that has been added by state legislatures as required curriculum.<sup>32</sup> The Michigan School Code requires instruction on communicable disease and HIV.<sup>33</sup> Alabama, Alaska, and California all require students to be taught cardiopulmonary resuscitation (CPR) before they can receive their diploma.<sup>34</sup> New Jersey requires instruction on the Holocaust.<sup>35</sup> Various other states and districts mandate students learn about civics, be discouraged on drug use and premarital sex, and even learn good eating habits.<sup>36</sup> Why, then, has community service received such backlash from parents and students alike?

The first argument has somewhat already mentioned and relates to the Thirteenth Amendment claim on involuntary servitude: required community service “puts students and prisoners in the same category.”<sup>37</sup> While it is true that both groups are in a way “required” to do community service, the implications of not complying vary greatly between the two: not receiving a diploma from their public school of choice for the former and criminal proceedings that may result in jail time for the latter. In a way, they both do have alternatives to not performing community service; students may switch schools, be home-schooled, and/or receive a GED and prisoners may remain in jail. While perhaps there may be a certain stigma with being required to perform community service, the context of the requirement cannot be ignored and it is doubtful that members of the community would confuse the intentions of either group.<sup>38</sup>

In examining the context, required service really is not that far of a departure from other programs. Cosmetology students are required to perform professional services for tuition

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<sup>32</sup> Brennan, *supra* note 30.

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

<sup>34</sup> *Id.*

<sup>35</sup> N.J.A.C. 6A:7-1.7

<sup>36</sup> Hyman, *supra* note 5 at 851.

<sup>37</sup> Brennan, *supra* note 30.

<sup>38</sup> *Id.* at 271.

credit.<sup>39</sup> Attorneys are required to provide pro bono legal representation in order to retain good standing for the bar, although specific enforcement and hour requirements are vague in many cases.<sup>40</sup> Most of all, being drafted to serve in the military is undoubtedly a hefty service requirement to fulfill where many have lost their lives. Community services pales in comparison.

A more tangible concern is for students who already have many other obligations to fulfill that would inhibit them meeting the requisite hour requirement.<sup>41</sup> Particularly in these difficult economic times, students may have a paying part-time job that is needed to supplement his/her family income or may be necessary to pay for the student's higher level education, whether for college or for a vocational school. There simply may not be enough hours in the day for the student to go to school, work part-time, and fulfill a community service requirement. The student may also be responsible for watching a younger sibling or relative or perhaps caring for an elderly or ill parent or grandparent. While this is assuredly a valid concern, a reasonable service requirement may be the best answer. The challenged schools required forty to sixty hours of community service over the course of four years which does not seem like an unreasonable burden to bear. Banneker High School in the District of Columbia, however, requires 270 hours of community service over the course of four years; it is highly unlikely most schools would make such a large requirement.<sup>42</sup>

Another concern is the students' accessibility to service projects.<sup>43</sup> While some projects may be performed at the school before or after regular hours, transportation may then become an issue if the student relies on school buses. Off-site community service projects raise another

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<sup>39</sup> *Id.* at 272.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 260.

<sup>42</sup> *Id.* at 258.

<sup>43</sup> *Id.* at 260

multitude of concerns; mainly who should be liable if something goes wrong.<sup>44</sup> Before the school can establish such a requirement, they must make sure their insurance is able to cover accidents that may arise or make some kind of waiver policy for students commuting to and from service events.<sup>45</sup> It is likely the school will need to devise an entirely different policy to accommodate this requirement, unlike simple permission forms that parents sign for supervised field trips.<sup>46</sup>

### **Looking Forward: Straddling the Fence**

While the legitimacy of required community service programs in public high schools seems to be well-established based on court holdings, the backlash to some of these programs need to be considered as more schools follow suit. Former New Jersey Governor Richard Codey stated that “[b]y making community service part of the high school experience, we can teach students that life is much bigger than the individual and that each of us has the ability to impact other.”<sup>47</sup> It is further postulated that “[p]art of being a good citizen, and our interpretation of being a good citizen is giving back to the community in various kinds of ways. If kids are not doing things like community service now, they tend not to do so later in life.”<sup>48</sup> While this may be true, the precise measures for implementing the program must be carefully thought out and ultimately be reasonable.

It is this precise concern that is delaying Nashua High School in New Hampshire from implementing a community service requirement. In addressing some of the concerns previously expressed, the school is planning on requiring varying hours of community service depending on

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<sup>44</sup> Hyman, *supra* note 5 at 863.

<sup>45</sup> *Id.*

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

<sup>47</sup> *Community Service to be Required at 2 Area School*, ASBURY PARK PRESS (N.J.), Dec. 17, 2005, at A1.

<sup>48</sup> Rob Rogers, *Novato may Require Service from High School Students*, MARIN INDEP. J (Cal.), June 16, 2010.



the type of diploma students wish to receive.<sup>49</sup> Students performing forty hours would be eligible for a “diploma with distinction;” fifteen hours would be required for the standard diploma and ten hours for a “core” diploma.<sup>50</sup> Another unique twist to Nashua’s graduation requirements is to require each student to fill out at least one job or college application.<sup>51</sup> These activities were planned in tandem so that students would have material to include on their resume, in an interview, and in college entrance essays.<sup>52</sup> Implementation was put on hold, however, when the plan only received support from 74 percent of school staff member, 59 percent of parents, and just around 50 percent of students.<sup>53</sup> The school was wise to delay enactment in hopes of gathering more support for an easier transition. Despite the support the school would likely receive from the Courts, the school board realized that local support would be more advantageous to the new curriculum.

While certain, arguably reasonable, community service requirements have been held constitutional, many schools, like Nashua, are turning to various alternatives to integrate community service into their school districts. Our neighbor to the North employs a variety of alternatives across the community service spectrum. Principal Keith Shaw of Lincoln High School in Manitowoc, Wisconsin believes that required community service is a “wonderful concept” because “[t]here’s so much emphasis in today’s society on receiving a paycheck, and the community service the students do shows them they can do something for others without being compensated.”<sup>54</sup> His school requires a modest twenty hours of community service.<sup>55</sup> Within that same district, Two Rivers High School does not require community service, but

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<sup>49</sup> Michael Brindley, *School’s Service Proviso on Hold*, TELEGRAPH (N.H.), Apr. 19, 2011.

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

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Community Service Plays Big Role in Education*, HERALD TIMES REP. (Wis.), Aug. 28, 2005, at A01.

<sup>55</sup> *Id.*

recognizes those student who do community work by giving out cords to be worn at commencement ceremonies.<sup>56</sup> Other schools in the area do the same and also may recognize such service at senior awards events and/or on the participating student's transcript.<sup>57</sup> This may be an attractive alternative to encourage and recognize community service without bearing the burdens of an implementation plan and community backlash that is likely to follow.

Kiel High School takes an interesting approach: not requiring community service to graduate but allowing students who do want to participate to join a senior release program that allows them to leave school about 90 minutes early.<sup>58</sup> This plan appropriately addresses the issue of students who are already pressed for time with many familial or economic obligations but who would still like to serve their community. While community service is not a graduation requirement for Kiel High, this may be a good model for other schools to follow that do require it. Students would then be able to use this time that was already set aside for school to complete their service requirement.

Ultimately, the best option for schools to integrate community service into their curriculum is to determine what best suits its surrounding community. There is a good reason why the Courts defer to the school board's decision – the school board is local and knows the values and beliefs particular to their district.<sup>59</sup> They are the best equipped group to determine what kind of community service program would be the most influential and beneficial, not only to the students but to the community as well. While school boards will likely have legal support in most programs they implement (given recent precedent) that means little compared to the support received from the local community. Put another way, in the eloquent words of Hubert

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<sup>56</sup> *Id.*

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

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

<sup>59</sup> Dean Michael Kaufman Lecture, Education Law & Policy, Jan. 19, 2011.

H. Humphrey, “The impersonal hand of government can never replace the helping hand of a neighbor.”