

1990

## Legal Issues in Combining Service and Learning

Michael B. Goldstein

Follow this and additional works at: <https://digitalcommons.unomaha.edu/slcestgen>

 Part of the [Service Learning Commons](#)

Please take our feedback survey at: [https://unomaha.az1.qualtrics.com/jfe/form/SV\\_8cchtFmpDyGfBLE](https://unomaha.az1.qualtrics.com/jfe/form/SV_8cchtFmpDyGfBLE)

---

### Recommended Citation

Goldstein, Michael B., "Legal Issues in Combining Service and Learning" (1990). *Special Topics, General*. 27.

<https://digitalcommons.unomaha.edu/slcestgen/27>

This is brought to you for free and open access by the Special Topics in Service Learning at DigitalCommons@UNO. It has been accepted for inclusion in Special Topics, General by an authorized administrator of DigitalCommons@UNO. For more information, please contact [unodigitalcommons@unomaha.edu](mailto:unodigitalcommons@unomaha.edu).

11/11/01 529

✓ 1-23-99

Reprinted from Combining Service and Learning: A Resource Book for Community and Public Service, Volume II, 1990, published by the National Society for Internships and Experiential Education, 3509 Haworth Drive, Suite 207, Raleigh, NC 27609-7229. (919) 787-3263.

# Legal Issues in Combining Service and Learning

Michael B. Goldstein

*A basic guide to the legal issues involved in programs that combine educational goals with direct involvement in the community — essential reading for any program administrator. The term "school" is used throughout to indicate any educational institution — elementary, secondary, or postsecondary, public or private — which may sponsor a student service-learning program. The term "agency" denotes any public or private community-based organization which may provide work opportunities or training or supervision of students at work sites. Portions of this analysis of legal issues in internships and experiential learning first appeared in Legal Issues Resource Booklet, by Michael B. Goldstein and John Laster, a publication of the National Center for Service-Learning, a former ACTION Program.*

## Introduction

THE TRADITION OF service-learning is a venerable one, with roots in both the American concept of community service and the ancient apprenticeship system, which understood that one became accomplished in the arts or skilled in crafts only by engaging in them with guidance from masters. For over two decades now, organized programs of service-learning for high school and college students have proliferated, taking on a wide variety of forms and features. Some programs emphasize the value of community service, others stress the educational component, with many attempting to strike a balance between the two. Such programs may be sponsored by schools and colleges, public service agencies, nonprofit organizations and even for-profit companies.

Service-learning embodies many different forms; even the names of programs indicate this variety; internships, practica, work-

National Information Center  
for Service Learning  
1954 Buford Ave, Room R290  
St. Paul, MN 55108-6197

NSLC  
c/o ETR Associates  
4 Carbonero Way  
Scotts Valley, CA 95066

2402

learning, cooperative education, community education, volunteering. While these names may denote different types of activities, for the purposes of this chapter, I will consider all of them to be included under the term, "service-learning," the common denominator of which is the combining of a service component with learning. The work may be compensated or unpaid; it may be on behalf of a public body, a nonprofit or profit-making organization, a community, or a group of individuals; the learning may be formal or informal, for credit or not, and at any educational level from elementary school to postgraduate. Each of these characteristics creates certain legal issues, and each needs to be dealt with both separately and as part of an overall approach.

In this summary I will look at the implications of service-learning from the perspective of the student both as a learner and as a worker. Within each of these roles, I will review the particular characteristics, such as compensation or discrimination, that create legal responsibilities and liabilities. While it is often an anathema for those involved in service-learning to look upon the service component as "working," the law fails to draw neat distinctions in this area; a student volunteer's efforts may be legally construed as "work" even though the intent was only to "serve." For the purpose of this chapter, except as otherwise noted, I will assume that the service component of service-learning is *legally* parallel to working.

In looking at the legal issues of service-learning, it is important to consider all parties involved and the relationships among them. There are almost always three key parties in service-learning programs; the student participant, an organization which provides the work site, and an educational institution (high school, college, etc.) The relationships between and among these parties create and carry with them certain legal relationships and obligations, which vary considerably depending upon the particular circumstances of the service-learning program and the perspectives of each party.

*This guide is intended to identify legal issues of concern to service-learning educators, administrators, and practitioners, to permit them to know when to seek expert advice and what general steps may be taken to gain the maximum feasible protection, consistent with the educational and social purposes of the program. Of course, at one extreme the ultimate safe course is to avoid all risk by not doing anything at all! In the case of service-learning, however, the social values so far outweigh the limited risks that the application of some basic "preventive law" is usually all that is needed to make the risks that do exist very manageable.*

*Because much of the law relating to service-learning is based on state statutes and decisions, involvement of legal counsel in re-*

*viewing individual programs or activities is strongly encouraged. The information provided in this monograph is not intended to substitute for qualified legal advice. It is particularly important to recognize that laws vary from state to state both in their substance and their interpretation. Counsel should always be consulted regarding questions concerning the legal rights and responsibilities of students, institutions and work sites and before entering into any form of contractual relationship. Particular care should be taken not to adopt documents and forms used by other institutions or programs without the advice of counsel as to whether the form is appropriate under the applicable law.*

### Responsibilities of the Educational Institution

Many service-learning programs are related to a school, college, or other educational institution. This relationship may be limited to the sponsorship of a program that is peripheral to the educational goals or program of the institution or it may be an integral part of the school's course of studies. But regardless of whether the service-learning activity is directly related to the academic program or whether academic credit is rewarded or participation is required, certain unique legal relationships have been found to exist.

### Expectations and "The Contract of Enrollment"

When students enroll in educational institutions, they enter into what has come to be called a "contract of enrollment." At the collegiate level, the institution's catalogue usually embodies the elements of that contract, although application forms and other materials may supplement or modify it. The contract may also be modified by action of either the institution or the student, and become legally enforceable when relied upon by the other party.

The consequences of this concept are especially significant when applied to experiential learning. In a conventional course, the student and the institution have (or should have) relatively clear expectations of requirements and outcomes. In service-learning, however, this is not often the case. Here, students may assume learning outcomes that are very different from those envisioned by the institution. Likewise, the requirements for the award of credit may be understood quite differently by the two parties. The result of such misunderstandings may be confusion and a diminution of the value of the learning experience. At worst, they may result in law suits, with the student alleging a breach (violation) of the contract of instruction. It is important to note that these conflicts

may occur at any educational level and type of institution. Indeed, the courts have been more than ready to enforce a responsibility to teach on primary and secondary schools than they have on colleges. While most courts still try to avoid entangling themselves in academic decision-making, there are cases that point to a new willingness to impose obligations upon schools that in the past were never seriously considered.

To avoid such conflicts, service-learning educators should seek a mutual understanding of expectations, preferably in writing. These may take the form of descriptions of the service-learning program, similar to a catalogue entry, or as "learning contracts" entered into between the student and the institution.

But is a "learning contract" a true contract? The answer is simple: if it establishes mutual rights and responsibilities between the parties entering into it, it is a contract. It is essential to recognize that while contracts are often written in highly legalistic form, they may also be in the form of brief letters or even verbal agreements: the critical issue is whether they establish *mutual* rights and responsibilities binding on all parties. (An agreement that establishes rights and responsibilities for only one party may be unenforceable for what is called "want of consideration," that is, the party binding itself gets nothing in return.)

Since learning contracts can, and indeed should be, binding agreements, they must clearly set forth the rights, responsibilities, and expectations of the student, the school, and the organization providing the work site. The better and more complete this agreement the less likely it is that problems will arise over misinterpretations or misunderstandings. Whether certain of the understandings between the parties in service-learning programs may be intended to be no more than *guidelines* which set forth *expectations* rather than *requirements*, that distinction must be clearly stated and understood. An outline of recommended elements of a "Learning Contract" is provided here.

### Liability for Acts of the Student

If a service-learning program is considered part of an agreement between the student and the school, then the question arises whether the school would be held responsible for the acts of the student. This is an important question: If, for example, a student is involved in an automobile accident, injuring herself, some clients for the agency for which she is working, *and* other persons, under certain circumstances the school or college sponsoring the program could be held responsible.

### Elements of a "Learning Contract"

1. the specific responsibility of the student and the institution in identifying and consummating the internship placement;
2. the nature of the relationship between the student and the institution arising out of the internship placement;
3. the nature of the student's status vis-a-vis the placement site, i.e., volunteer, employee or independent contractor;
4. the duration of the internship placement, as well as the starting and ending dates;
5. the anticipated learning outcomes arising out of the placement;
6. the academic benefit arising out of the student's participation in the internship program (i.e. the credits awarded and the conditions of their award);
7. the method and frequency of evaluations and the manner through which such evaluations will affect the credits earned or grade received;
8. a description of the relative rights and responsibilities of the student, the institution and the work site with regard to acceptance, duties, supervision and termination; and
9. a description of how disputes between the student and the work site coordinator, or between the student and the institution arising out of the placement, will be resolved.

Ordinarily, the organization controlling the work site is responsible for acts of student interns, and injured parties would not, in most cases, be able to successfully sue the school or college. But suppose that, in the above example, the student suffered from epilepsy and was prone to frequent lapses of consciousness, a fact known to school officials but not revealed by them to the agency. If such a loss of consciousness was the immediate cause of the accident, then it is indeed possible that the school could be held responsible. This liability might exist *regardless* of whether the student was receiving credit or compensation; the key issue is whether the school had (or *should* have had) information or knowledge which, if disclosed to the work site would have been likely to have prevented the injury.

There is an interesting and difficult problem when one speaks of a school or an agency "knowing" something. Of course, organizations cannot "know" anything; their knowledge is nothing more than the collective knowledge of their personnel. However, under the law, such an organization is deemed to have knowledge of a fact *if that fact was known to an employee or agent, and that person had a duty to the organization to do something with that information*. Thus, if a service-learning coordinator at a school knows of a disability that should disqualify a student from engaging in certain activities and yet fails to use that information to protect either the student or the public, then the *school* may be held responsible. The principle is simple: generally an organization will be deemed to know what its employees, in the conduct of their work, know. It is therefore essential that the school or other sponsoring agency inform the organization at which a student will be working of any information that might bear upon his or her capacity to perform the likely tasks, and particularly of any potential risks, either to the student or those with whom he or she will be working.

Remember, however, that it is important to respect the privacy of the student. Particularly when dealing with a student with a mental or physical handicap the school needs to strike a balance between protecting them and the public from potential harm and protecting their rights of privacy. The *Family and Student Educational Rights and Privacy Act*, commonly known as the *Buckley Amendment*, forbids an institution receiving *any* Federal funds from releasing all but the most rudimentary information about a student to most third parties without the student's consent. While a student with a physical ailment may require special consideration in being placed, as would be the case with a student with a history of seizures, and Federal law mandates a school to seek to accommodate those needs in affording access to its programs, the Privacy Act limits the ability of the school to divulge information about the student's infirmity without his or her consent. If the student will not consent to the release of information about his or her physical limitations, and if the school considers divulging that information to be essential to protect the student's health and welfare as well as that of others around him or her, then the only prudent course of action is to decline to make any placement of the student where there is any likelihood that the student will be required to perform hazardous work.

To the extent that third-party risks do exist, they can usually be protected against by insuring that the service-learning program is expressly included under the institution's liability insurance policy. However, whether or not a particular activity is covered by existing

insurance is a complex issue which must be determined by professionals. If the existing insurance does *not* cover activities performed under the service-learning program, it is generally possible to obtain an extension of coverage either under the present policy or through a separate one. In either case, the cost of such additional coverage is usually minimal.

While the school must take reasonable care to insure that the assignment of students to service-learning activities does not pose unreasonable risks, at the same time, neither the student or the agency can, or should, attempt to guarantee the ability of students to carry out specific tasks; they are only required to act with care and prudence.

### Liability for Injury to Students

What if the *student* is injured while performing a service-learning job? Traditionally, it has been assumed that a school has no liability for injuries which may occur when students are beyond the school's direct control. Recent cases, however, have challenged this interpretation; thus the prudent school will act with care in this area.

As discussed above, the key element is *prior knowledge*: if the school (or its employees) knew, or should have known, of a risk to the student, the school may be responsible if the student is injured. For example, assigning students to work sites known to be dangerous may open a school to liability for resulting injury. However, this is not to say that students cannot be assigned to relatively hazardous activities. For example, many types of service-learning programs involve physical activities and some, particularly outdoor wilderness experiences, may encompass significant risks. Other programs may send students into industrial sites, where work-related injuries are not uncommon. There is also the possibility of students suffering mental harm, as in cases of service-learning interns at a mental health center. While schools *should* ascertain that there are no *unusual* hazards, they cannot expect to protect students against *any* risk. The degree to which the school seeks to ascertain the safety of the work depends on both the type of program and the resources of the school. Administrators should be aware, however, that the more responsibility the school assumes for investigating the safety of activities, the *more* closely it may be held accountable. On the other hand, failure to aggressively determine if an activity is safe may itself make the school responsible. There are, however, several ways to minimize these risks, and one way that actually *increases* them.

**A. The Wrong Approach: Waiver of Liability.** The most frequent suggestion is to ask (or require) students and their parents to sign *waivers of liability*. Unfortunately, these are almost useless, because as a matter of law no one can waive the consequences of someone else's negligence. For example, if one person negligently runs down another on the street, the fact that the victim previously signed a waiver of liability would be meaningless. Indeed, the use of waivers has proved extremely dangerous, since it creates a false sense of security.

**B. The Right Alternatives:**

**1. Assumptions of Risk.** This is a quite different concept from that of waivers, with far more value in the service-learning area. It permits individuals to knowingly engage in conduct which may involve certain risks *without creating unlimited potential liability*. For example, a student playing on the school football team assumes the very real risk of injury that goes with playing football, and he and his parents usually sign a statement to that effect. But that assumption of risk is limited to the *ordinary* risks of playing ball. If the student is injured because the school issued him a defective helmet, the school will almost *surely* be held responsible, whether the student signed an assumption of risk statement or not, because he did not accept that risk.

To take advantage of the protection afforded by an assumption of risk, the student must be fully informed, in advance, of any risks inherent in the activity, must knowingly consent to undertake such risks, and must have the requisite level of knowledge and maturity to make an informed judgment accepting the risk.

In the case of minor students, parental consent will also be required, although the age varies from state to state. Examples of service-learning assignments in which informed consent is important are medical and psychiatric placements, criminal justice activities, and field expeditions.

**2. Insurance.** Most risks can be covered by appropriate commercial insurance. However, school or college policies will very often *exclude* from coverage liability arising from activities of students beyond the direct control of the institution. The school's risk management officer or attorney must be consulted to determine the extent to which present insurance provides sufficient protection, and the propriety of obtaining additional coverage for any unprotected risks.

3. *Indemnification.* This is nothing more than a form of insurance in which a private party agrees to protect the "indemnified" party from loss, just as an insurance company agrees to do for a policy holder. An agreement between a school or college and an organization which provides volunteer experience may provide for one party to indemnify (protect) the other from any loss, *regardless* of who was at fault. Unlike waivers of liability, indemnification agreements are generally enforceable. They also create complex legal issues, and should be entered into only with the advice of counsel. In considering an indemnification agreement, it is important to determine if:

- The indemnifying party has sufficient resources to protect against the potential loss (a poverty stricken agency with no assets is a poor choice to protect a school);
- Insurance policies that are expected to protect against loss cover liability arising out of an indemnification agreement (most do not); and,
- State law forbids or limits particular types of institutions or agencies from agreeing to indemnify other parties (this is particularly important for public agencies or institutions where such restrictions are common).

### Equal Opportunity and Civil Rights

With very few exceptions, schools and colleges engaged in service-learning are subject to the non-discrimination requirements of federal laws, such as those relating to discriminations based on race and sex, discrimination against the handicapped, and laws protecting veterans and other "protected classes." The administration of service-learning programs must therefore take into account the requirements of these laws.

Very simply put, the basic premise of all of the civil rights statutes is: *No organization receiving federal support can deny access to, or the benefits of, its services to persons on the basis of race, sex, or handicap.* Two things are implied by this requirement: first, service-learning programs themselves cannot discriminate on the basis of any proscribed characteristic, and second, where service-learning programs are operated under the auspices of schools, colleges, or other organizations covered by civil rights legislation, prohibited discrimination on the part of a cooperating agency can be attributed back to the school or college. The following summary of issues provides guidance for the service-learning programs:

1. **Racial Discrimination** in any form except in the limited context of an institutional affirmative action program, is unquestionably a violation of the law. This is particularly important in placing students in service-learning positions with other organizations which may discriminate on the basis of race. Because participation in service-learning programs may be considered a benefit afforded students by schools and colleges, they can be held responsible if a student is denied access to a placement because the *receiving* agency discriminates.

2. **Sexual Discrimination**, or the use of sex as a criterion for placement, is a more complex issue. Unlike race, which is virtually never a *bona fide* qualification for a job, there are some situations in which sex may indeed be a valid criterion. Thus, a rape counselling project could legitimately request the referral of only female students. However, job specifications that are not related to the actual work but have the effect of eliminating access for women are illegal. For example, being able to lift a 50-pound sack is a proper qualification *only if the job actually requires such work*.

3. **Disabilities**, whether physical or mental, pose the most difficult problems. The law requires recipients of federal funds to offer access to their services in such a fashion as to not exclude those with disabilities. This "reasonable accommodation" text means the school or college must attempt in good faith to *reasonably accommodate* the special needs of persons with disabilities. When it comes to work, this accommodation must permit the person to carry out the task despite the disability, so long as the disability itself does not preclude the work. Thus, a wheelchair-bound student who seeks an internship in a social service agency may reasonably expect not to be excluded from consideration because the office is two steps above the street. On the other hand, a student who is blind could not expect to qualify for a volunteer job that would involve driving a vehicle. The problem becomes more difficult if the placement agency declines to make a reasonable accommodation, in which case the school or college may have to decline to place *any* students there or risk facing a potential legal challenge.

4. **Affirmative Action Programs**, especially if established as a result of a formal finding of prior discrimination, may legally include an institution's service-learning program as a way to provide special opportunities for minorities or women. However, the degree to which an institution can provide *favorable* treatment to protected classes remains to be defined, and caution must therefore be exercised in this area. The advice of experienced counsel is strongly recommended.

5. **Reverse Discrimination** on the part of a receiving agency poses an extremely difficult dilemma. Even if an organization requesting interns has an affirmative action plan under which it seeks only women or minorities, a school or college would be at risk in agreeing to refer *only* such persons. The reason for this is that while the receiving agency may be carrying out a permissible affirmative action program, the school or college would be *impermissibly* discriminating by denying access to persons *other than* minorities or women. There is, however, a difference between a preference and a *requirement*: an agency that *encourages* the referral of minorities is showing good citizenship. However, an agency that insists on *only* interviewing members of a certain protected class may put the institution in considerable legal jeopardy, and may have to be excluded from participation!

### Responsibilities of the Work Site

An increasingly common concern of agencies and organizations that provide work sites for service-learning students revolves around the applicability of the federal minimum wage law. It is *not* automatically true that declaring a student's activities to be part of an "internship" or "volunteering" renders them exempt from minimum wage and other requirements of the Fair Labor Standards Act. Indeed, a student may receive no compensation whatsoever and yet conceivably come under the provisions of the law. The correct answer to this question depends in large measure upon the nature of the particular program, and particularly the relationship of the program to the *learning* component.

#### Minimum Wage Laws

As a general rule, the U.S. Department of Labor has agreed that uncompensated *community service* activities do not fall within the purview of the minimum wage laws. Likewise, interpretations of Labor Department rulings and court decisions support the position that service-learning activities, whether performed for non-profit or profit-making entities, do not require payment of the minimum wage *if* they are part of a *structured academic* program administered by an educational institution, the work site does *not* receive substantial benefit from the student's efforts, *and* there is no promise of a job after the completion of the program. The "substantial benefit" test is not as difficult to meet as it may at first seem since it has been interpreted to mean that the agency or organization providing the

work experience is providing "learning" services to the student that tend to offset the value of the work performed.

An explicit statement to that effect in the school-agency agreement will usually be sufficient to avoid minimum wage problems for uncompensated work.

The issue becomes more complicated when the student receives *some* monetary reward, but still less than minimum wage. Many organizations provide students with small stipends, intended to defray the cost of meals or transportation. If such funds are paid on an actual reimbursement basis, there is no problem. But if the agency decides to pay the "reimbursement" on the basis of a certain amount per hour of service performed, the Labor Department may well decide that what is being paid is compensation rather than actual reimbursement, and may require minimum wage levels. Worse, a failure to pay minimum wage can result in the assessment of *treble* damages: *three times* the amount that would have been due under the minimum wage law. Thus, it is important to make sure that the program is so configured as to fit within the exemption to the Fair Labor Standards Act afforded experiential learning programs. Counsel should be consulted to ensure that all the agreements and program operations conform to these requirements.

It is also important to determine whether the work performed falls within the limitations of state and federal child labor laws. While this is not a concern for college-level programs, the increasing number of service-learning activities at the secondary and even primary grade levels makes this an issue that should be carefully considered.

### Employer-Employee Relationship

One of the most important elements of the relationship of the service-learning student to the work site is the existence of an employer-employee relationship. The existence of such a relationship depends only in part upon the payment of compensation. The cases are divided as to whether a person may be "employed" without being paid for the work: the Fair Labor Standards Act implies that one cannot, but the decisions remain unclear. Payment of compensation generally *does* create an employment relationship, although in certain circumstances the recipient may be deemed an independent contractor and not an employee. While liability, tax, and other consequences are different (and often preferable) for an independent contractor situation it is not enough to simply declare that a student is an independent contractor and therefore not an employee. The level and manner of control over the work to be

performed, the power to hire and fire, the provision of the workplace and instruments of work, and the manner of payment and calculation of rate all figure into the determination of whether one is an employee or independent contractor. Generally, in order for a person to be deemed to be an independent contractor, he or she must have great latitude in the manner through which the work is performed, have a relatively high level of skill in the performance of the particular work, provide his or her own tools and equipment, and function on a project-specific basis. It is obviously difficult for a student engaged in a service-learning program to meet these tests, and except in rare cases it is not worth the effort to try. Note particularly that work-study students are almost always deemed employees.

**Taxes.** Unless a compensated student is an independent contractor, he or she is an employee, and appropriate taxes *must* be withheld from compensation and remitted to the appropriate government agencies. Declaring that payments are "stipends" or "scholarships" rather than compensation is in itself virtually meaningless: the form of payment and the nature of the involvement must meet certain very narrowly defined tests in order to be considered scholarship or fellowship aid and therefore exempt from taxation. The terms "scholarship" and "fellowship" are increasingly narrowly defined in the tax code, and unless payments meet these rigid definitions the tax exclusion will not apply. Likewise, the term "stipend" should not be construed to render payments free from tax. Unless counsel has advised that payments to a student are specifically not includable as taxable income, it is wise to advise students that payments are taxable. (*Note that payments made to students under the College Work-Study Program are virtually without exception considered to be compensation for work performed and are fully taxable, regardless of whether payments are made by the institution or by the agency to which the student is assigned.*)

**Liability for the Acts of Student Workers.** Unlike the case of schools or colleges, the agency that provides the service-learning experience will, in most cases, be responsible for the acts of students assigned to it. An agency may avoid liability for the acts of students only if it can show that the student was acting entirely outside the scope of his or her assignment or as an independent contractor rather than as an agent for the organization. However, insuring against liability is relatively easy and, in most cases, inexpensive. Counsel should be consulted, however, to assure that existing coverage is sufficient.

**Liability for Injuries to Students.** The agency providing the service-learning opportunity will generally be held liable for inju-

ries arising from its negligence. Where students are deemed to be employees, Workmen's Compensation statutes provide protections regardless of who is at fault. In a few states, certain *volunteer* activities are also protected under Workmen's Compensation laws; these tend to be very narrowly defined and should be reviewed carefully with counsel.

As discussed above, liability may be shifted back to the school or college, both for injuries to students and for damages caused by students, if the institution can be shown to have acted carelessly in improperly assigning students. Where both the institution and the agency share the supervision of students, the determination of liability becomes considerably more complex.

A special case arises out of injuries incurred by students while travelling to or from service-learning activities. Generally, where students make their own travel arrangements neither the school nor the agency will be held responsible for injury. However, if the school or agency either *provides* the transportation or *requires* a particular type or manner of transportation, there could be liability, but only if the injury arose out of the negligence of the agency or school. Where the student travels to a service-learning activity during the school day, *as part of his or her educational activity*, then the responsibility of the school to assure the student's safety becomes more apparent. Since most of this risk will involve the use of motor vehicles, liability insurance should usually protect all parties. As noted earlier, however, the policies should be reviewed by counsel to make certain that service-learning students are covered.

*School-Agency Agreements.* Because of the potential complexity of the relationship between institutions and agencies providing service-learning experiences, it is always advisable for these parties to enter into written agreements describing their mutual rights and responsibilities. Elements to be included are: determination of the existence of an employment relationship, identification of the employer, liability and indemnification, control of activities, the role of the school's service-learning coordinator, student report and writing requirements, confidentiality of information, duration of assignments, the right to suspend or dismiss students, supervision, training, evaluation, transportation, and the nature and manner of compensation, if any. Institution-agency agreements can create important legal rights and responsibilities, and therefore they must be prepared with the advice of counsel. It is appropriate for each student to receive a copy of such agreements and to signify his or her understanding by signing a copy. Regardless of whether there is compensation, a written understanding between school and

agency can avoid many problems and misunderstandings. A minimum amount of time and effort expended in establishing the rights and responsibilities of all parties before the service-learning program begins may save vast amounts of time, effort, and money later on.

### Student Responsibilities

The fundamental purpose of any service-learning program is to promote the educational, social, and intellectual development of the participating student. Thus, it is essential that students fully understand their rights and responsibilities as participants in the service-learning program. The growing willingness to seek legal redress makes this understanding not just ethically correct but also economically imperative.

Students have responsibilities to both their school and to the agency which provides the service-learning experience. They are responsible to the school for completing all service-learning assignments in a manner consistent with all educational or other requirements. This may require reading assigned materials, keeping journals and other records, attending classes, and preparing papers or oral presentations. If academic credit is involved, students must be fully aware of credit requirements before entering the service-learning program; otherwise the school may have difficulty enforcing its requirements.

Students are also responsible to the agency which provides service-learning experiences for completing all assigned tasks in a proper manner. The more this relationship is that of employer to employee the more obvious it is that students must work under the direct control and supervision of agency personnel. Problems may arise if this relationship is ill-defined, for example, if there is a lack of clarity about who is responsible for training or supervising the students.

*Written Agreements.* As discussed earlier, the inclusion of students as parties to the written service-learning agreements can help resolve such ambiguities, especially if the agreements are clear and simple. To be effective, such agreements should specify: (1) the student's responsibilities and to whom they are owed; and (2) the student's rights and how these can be exercised. For example, an agreement should provide a mechanism for students to deal with problems of their conduct on the job.

While it is probably unnecessary to apply full due process procedures to the assertion of student rights, neither is it appropri-

ate to assume that either the school or the agency can act without regard for them. The courts have become very serious about student rights and are more willing than ever to enforce them against institutions or other parties. Even if students are not being paid, they may have rights that must be protected, especially with regard to the learning component of their programs.

Students also have an obligation to inform their schools or agencies of any special or unusual characteristic, such as illness, allergy, or other limitation, which might restrict their participation in service-learning programs. If a student (or his or her parents) knows that a particular activity, although generally safe, might pose a special problem, but fails to inform the school or agency of this fact, the student may be unable to recover for injuries that might result. Furthermore, students or their parents could be held personally responsible for injuries to others if these result from undisclosed incapacities. However, as noted above, once the student or parents notify the school or agency of such limitations (or once these have been discovered through independent means), the school or agency *must* take them into account or bear the possible consequences.

### Legal Implications for Sponsoring Organizations

Since the operation of service-learning programs may bring with it certain legal obligations and potential liabilities, the issue of how the sponsoring organization is organized becomes important. Service-learning programs that are administered by educational institutions (public or private, secondary or postsecondary) will usually be considered activities or programs of those institutions and thus will fall within their corporate or public body structure. Similarly, service-learning programs sponsored by government agencies (federal, state, or local) or by private corporations (profit or non-profit) would be considered activities of those corporate bodies. Liability would generally be limited to corporate assets and, in the case of public bodies, may be even further limited by law. However, conduct by trustees, directors, officers or employees that show a flagrant or negligent disregard for the protection of the public or the students may puncture this insulation and make such persons directly liable.

Every organization sponsoring a service-learning program, including corporate bodies, must determine whether it has the power to carry out the program and whether it is authorized to do so, either by law, its own by-laws, or its governing body. A teacher who

establishes a service-learning program on his or her own initiative may be personally liable if that activity is found to be outside the scope of his or her employment. To protect against this risk, it should be made clear that the teacher's supervisor or superior is aware of, and has condoned the service-learning program. Since such programs are often outside the normal scope of an institution's program, such approval should not be taken for granted; preferably, there should be written authority to undertake such an effort.

Some service-learning programs are operated on an *ad hoc* basis, by groups or organizations that are not incorporated. In these cases, *each and every officer or member of the organization could be held personally responsible for damages.* Incorporation as a non-profit organization is usually easy to accomplish, and is a very prudent step to take.

### Legal Issues Checklist for Schools and Colleges

The following questions should be asked — and answered — to insure that basic legal issues have been covered.

1. Is there a clear understanding of the learning responsibilities of the student participant? Does the student know what is expected, and what he or she must do to receive any specific academic reward? (See list of recommended contents of a "Learning Contract" earlier in this chapter.)
2. Does the experience provider understand and share responsibility for that learning? Is this also in writing? Has counsel reviewed it?
3. If there is a learning agreement or contract, is everything stated in that agreement intended to be enforceable? Has counsel reviewed the agreement?
4. Does the teacher or faculty sponsor have express authority to supervise the program or activity? If school facilities are used, is the use authorized?
5. Does the school or college liability insurance cover the activities of the student participants? Are teachers and staff protected, particularly when off campus?
6. Does the school or college offer the opportunity to take part in the program on a nondiscriminatory basis? Does it place students with organizations that discriminate? Does it insure that reasonable accommodation is made for students with disabilities? Does it insure that requests for male or female students are based solely on a *bona fide* requirement of the work, and that other requirements, such as physical size or strength, are actually related to the expected activity?
7. Does the school, college, or any employee or agent with responsibility for the service-learning program, have any information about the student participant that should either keep him or her out of the program, restrict his or her activities, or require notification to the experience provider?

**Legal Issues Checklist for Community Agencies  
and Other Providers of Work, Training or Supervision**

1. Is there a clear understanding as to whether an employment relationship exists between the student participant and the experience provider? If so, are the legal requirements of employment being followed?
2. Is there a clear understanding as to whether any money is to be paid to the participant? Does the student understand the terms of such payment? If the payment is compensation, have taxes been withheld and the student apprised of his or her obligation to report the earnings to the IRS? If the payment is a scholarship or fellowship, is there clear IRS authority in the current tax laws to exclude it from taxable income?
3. Does the liability insurance of the experience provider cover the activities of the student participants?
4. Does the experience provider offer the degree of supervision and support necessary for the participant to adequately and safely carry out the activity? Is there a clear understanding as to who is responsible to provide such supervision and support?
5. Does the experience provider understand the conditions upon which a student is participating in the activity, particularly as to changing the nature of the assignment or terminating the student's assignment entirely?
6. If the experience provider has agreed to protect or indemnify the school or college, is it financially capable of doing so? If relying on insurance, will its insurance policy cover losses arising out of an indemnification agreement?
7. Is the experience provider organized in a manner to properly conduct the program? Does its corporate form protect the individual officers, trustees, and members (if any) from personal liability?
8. Has the experience provider asked the school *and* the student whether there are any special problems, medical conditions or other circumstances that may affect the student's capacity to participate in the intended activities? Knowing of any such limitations, has the experience provider acted to insure that they are respected?

### Legal Issues Checklist for Students

The following list may be provided to students and their parents, or used as the basis for insuring that legal issues are being adequately explained to them:

1. Do you know *exactly* what is expected of you in performing the service-learning assignment? By your school and by the experience provider? Is it in writing?
2. Do you know who is responsible for supervising your activities?
3. Do you know what you can do if you have a problem with your assignment? Who has the right to change your activity?
4. If you are getting credit or any other kind of academic reward, do you know what you must do to qualify? How is your performance to be measured?
5. If you are getting any form of payment, do you know whether it is compensation, reimbursement for expenses or a scholarship or fellowship payment? Do you know if it is taxable income that must be reported to the IRS?
6. Do you know who is responsible if you are injured in the performance of the service-learning activity? Do you have your own insurance?
7. Have you informed your school or the experience provider of any special problem or medical condition that should limit or be taken into account in your participation in the service-learning activities? Are they respecting your needs?

---

*Michael B. Goldstein is a partner with the Washington, DC law firm of Dow, Lohnes & Albertson, where he is in charge of the higher education practice. He was the first Executive Director of the New York City Urban Corps and in the early 1970s under a Ford Foundation grant worked with many cities and states in the establishment of urban internship programs. Prior to joining his firm he was an Associate Vice Chancellor for Urban and Governmental Affairs and Associate Professor of Urban Sciences at the University of Illinois-Chicago, and before that was Assistant City Ad-*

ministrator and Director of University Relations in the Office of the Mayor of the City of New York. He has served as President of the National Center for Public Service Internship Programs, a predecessor of NSIEE, and has been NSIEE's general counsel since its creation.

### References

The following materials were consulted in the preparation of this chapter.

- Berte, Neal R., general editor, *Individualizing Education Through Contract Learning*, University of Alabama Press, 1975.
- Experiential Education Advisory Panel, *Experiential Education Policy Guidelines*, National Center for Research in Vocational Education, 1979.
- Far West Laboratory, *Legal Issues Study*, National Institute of Education, undated.
- Gaffney, Michael et al, *A Guide to Operating an Off-Campus Work-Study Program*, National Association of Student Financial Aid Administrators and American Association of Community and Junior Colleges, 1975.
- Goldstein, Michael B., "Academic Internships: Can Cash and Credit Coexist?," *Synergist*, National Center for Service-Learning, ACTION, Vol. 5, No. 1, Spring 1976, pp. 27-29.
- \_\_\_\_\_, *Federal Policies Towards Experiential Education*, Institute for Educational Leadership, December 1977.
- \_\_\_\_\_, "Liability for Volunteers' Injuries," *Synergist*, National Center for Service-Learning, ACTION, Vol. 7, No. 3, Winter 1979, pp.
- \_\_\_\_\_, "Using Federal Work-Study Funds," *Synergist*, National Center for Service-Learning, ACTION, Vol. 10, No. 1, Spring 1981, pp.
- \_\_\_\_\_, "Injured Volunteers: Who is Liable?," *CASE CURRENTS*, Winter 1981.
- \_\_\_\_\_, "Legal Issues in Experiential Education," Panel Resource Paper No. 3, National Society for Internships and Experiential Education, December 1981.
- \_\_\_\_\_, "Policy Issues in Experiential Education," National Society for Internships and Experiential Education, March 1982.
- \_\_\_\_\_, "Achieving the Nondiscriminatory Recognition of Experiential Learning," *Learning by Experience*, New Directions in Experiential Learning, No. 1, Jossey-Bass, 1978.
- \_\_\_\_\_ and Wolk, P., "Legal Rights and Obligations of Students, Employers and Institutions" in Kenneth Ryder, James Wilson, et al, *Cooperative Education in a New Era*, Jossey-Bass, 1987.
- Hollander, P. A., *Legal Handbook for Educators*, Westview Press, Inc., 1978.
- Jennings, E. K., "Breach of Contract Suits by Students Against Postsecondary Institutions: Can They Succeed?" 7 J. Coll. & U.L., 1980-81, pp. 191-121.
- Larson, A., *The Law of Workmen's Compensation*, Matthew Bender, 1980.

- Nordin, V. D., "The Contract to Educate: Toward a More Workable Theory of the Student-University Relationship," 8 J. Coll. & U.L., 1981-82, pp. 141-181.
- Riesman, David, *On Higher Education*, Chapter 9, "Student Consumerism and Educational Change," Jossey-Bass, 1980.
- Stark J. S., *The Many Faces of Educational Consumerism*, D. C. Health and Co., 1977.
- U.S. Department of Labor, *Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Acts*, WH Publication 1330, Revised 1978.
- \_\_\_\_\_, *Employment Relationship Under the Fair Labor Standards Act*, WH Publication 1297, Revised February 1973.
- \_\_\_\_\_, *Employment of Full-Time Students at Subminimum Wages Under the Fair Labor Standards Act*, Employment Standards Division, WH Publication 1250, Revised February 1980.

(Note: All Synergist articles listed here are available from the National Society for Internships and Experiential Education, 3509 Haworth Drive, Suite 207, Raleigh, NC 27609, (919) 787-3263.)