Study Abroad: Managing a World of Opportunities in a World of Risk

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* These documents are readily available on the internet and were not prepared by and are not endorsed by Gray Plant Mooty.
I. INTRODUCTION

More American students are choosing to study overseas than ever before. According to a recent study by the Institute of International Education, the number of American students studying abroad for academic credit increased by 9.6 percent in 2003-2004, building on the previous year's 8.5 percent increase. This surge in interest brings the total number of U.S. students studying abroad annually to a record 191,321. Since 9/11, the number of U.S. students studying abroad has gone up by almost 20 percent. Another recent trend is travel to nontraditional locations such as China, Kenya and Pakistan.

II. WHY AN INCREASING DEMAND FOR STUDY ABROAD OPPORTUNITIES AND PROGRAMS

A. Recognition of importance of international experience.
B. Desire to learn more about other people, cultures and countries.
C. Increased interest in foreign policy and international relations.
D. Career preparation and career opportunities.
E. Ease of global communications and travel.
F. Need and desire for global competence.

Higher education institutions have recognized and responded to the demand of students and others for study abroad opportunities. According to the Institute of International Education, there were approximately 2,400 international study programs administered in 1996. More than 6,000 study abroad programs were available in 2005.

III. PROGRAM ALTERNATIVES AND STRUCTURE

The level of liability risk facing higher education institutions operating or facilitating international study programs varies in significant part depending on the degree of ownership and control exercised over the particular program by your institution.

A. Program duration options.

1. Full academic year – 6 percent of participating students.
2. Semester – 38 percent of participating students.
B. Risks greater with short-term programs.

1. Greater number of participants.

2. General attitude of participants.

3. More *ad hoc* program characteristics and less program consistency.

4. Less organizational familiarity with local customs, language and environment.

5. Limited infrastructure in foreign country.

6. More likely institution owned and controlled.

C. Program structure alternatives.

1. Institution owned/controlled programs.
   
   a. Institution operates programs and facilities. In essence, an extension of the home campus.

   b. Institution employs/contracts with academic and administrative staff, an arranges transportation and facilities.

   c. Duty to operate programs and facilities in a reasonably safe manner – like home campus.

   d. Potential liability of institution is thus greater.

2. Contractual programs.

   a. International program offerings result from a cooperative arrangement.

      (i). With another higher education institution.

      (ii). Through a consortium.

      (iii). Some other study abroad program provider.

   b. Academic credit typically given by student’s institution.

   c. Legal obligations primarily governed by the agreements of the involved parties – institution, student and provider – which agreements should be in writing.
d. Due diligence essential.

3. Permissive programs.

a. Institutions allow students to participate in study abroad programs, but there is no formal legal relationship and no agreement between institution and any other party.

b. Students may take a leave of absence or withdraw from home institution.

c. Academic credits may or may not transfer.

d. Institution has less liability exposure.

4. Hybrid programs.

D. Identify all of your institution’s international program offerings and understand the institution’s specific relationship with each program. “One size” policies, procedures and documentation will not be the best fit for each program.

IV. THE RISKS: LEGAL ISSUES RELATED TO STUDY ABROAD PROGRAMS

There are a myriad of risks and legal issues that institutions should consider in developing and operating international study abroad programs. The following list provides examples of a few of the most significant risks associated with international programs.

A. Sexual Harassment and Assault

- A student sued the University of Louisville after she was raped while she was studying overseas at the school’s study abroad program in Portugal. The former student alleged that the school failed to take proper measures to prevent the assault or respond to it.

- Earlham College in Indiana was sued by a student who alleged she was raped by her host family father in Japan during a study abroad program.

- Female students sued Eastern Michigan University, claiming that they were discriminated against when fellow male students sexually harassed them, and supervisors were indifferent to their complaints, while they were on study program in South Africa. A federal district court in Michigan who decided the case determined that Title IX had extraterritorial application.
B. Personal Safety: Crime and Terrorism

- In 2003, Duke University canceled its Andes study abroad program in Bolivia and evacuated 15 participants because of political instability and rioting in the capital, La Paz.

- This summer hundreds of U.S. college students were evacuated from Lebanon. During the evacuation, a Harvard graduate student was injured after Israeli military forces shelled his taxi as he made his way to an evacuation point in Beirut.

C. Special Relationship

- A student sued Thiel College after she was subjected to the unnecessary surgical removal of her appendix and was later raped by the doctors who performed the operation. A court concluded that the college owed the student a special duty of care as a result of the special relationship that arose between the college and the student pursuant to the consent form that she was required to execute prior to participating in the school-sponsored study abroad program. Pursuant to the consent form, and in the event that the student became sick or injured, the faculty supervisors had a duty to “secure whatever treatment is deemed necessary, including the administration of an anesthetic and surgery.”

D. Duty to Warn

- Armed gunmen forced a group of 13 students and three faculty members out of their rented bus all 16 were robbed and five women were raped. At the time, U.S. State Department consular information warned that violent crimes were a serious problem in Guatemala and that there had been an increase in robberies, rapes, kidnapping and other acts of violence that had affected American tourists.

- A college student brought a personal-injury lawsuit against her own college and the Christian College Coalition, after she contracted leishmaniasis, a potentially disfiguring skin disease, while on a study abroad program in Costa Rica. The student alleged that the college and the Coalition failed to adequately warn her of this disease.

E. Transportation

- 35 Syracuse University students were killed in the bombing of Pam Am Flight 103 over Lockerbie, Scotland.

- The wife of a professor was killed by a stray bullet fired by bandits who boarded a bus and robbed students and faculty of the University of Mexico studying abroad in Ecuador.
• Four American college students participating in University of Pittsburgh’s Semester at Sea were killed when their bus overturned in India.

F. **Accommodating Students with Special Needs**

A wheelchair-bound paraplegic student brought action alleging that Lewis & Clark College violated Rehabilitation Act and Title III of Americans with Disabilities Act (ADA) and breached its fiduciary duty by failing to reasonably accommodate her disabilities during overseas program in Australia. The Ninth Circuit Court of Appeals did not address the issue of whether the ADA or the Rehabilitation Act applied outside the United States, but concluded that the College did not discriminate against student.

G. **Premises Liability**

• A student at Pasadena Community College (PCC) enrolled in a study abroad program in Florence, Italy through a contracting agency, CAPA-USA. He suffered serious personal injuries when he fell six stories after the balcony railing gave way in the apartment house where he resided during his stay in Florence. The student filed a lawsuit against PCC, and the U.S.-based and European-based contracting agencies.

V. **MANAGING THE RISK**

There are a number of ways that an institution can address and reduce the risk of legal liability arising out of study abroad programs. The appropriate steps for your institution will depend on the relationship your institution has with each study abroad program.

A. **Institution Owned/Controlled Programs**

• Require on-site personnel to perform regular safety inspections of all facilities.

• Keep safety equipment in all facilities.

• Develop and maintain emergency preparedness plans.

• Review insurance coverage for the program to ensure all activities are properly covered without exclusion.

• Require all participants to sign releases, waivers and statements of responsibility.
• Require students to certify that they have health insurance that covers them overseas (many policies do not).

• Verify that any individual or company that provides transportation for the program uses a safe vehicle and carries appropriate insurance with adequate coverage.

• Train on-site personnel to report harassment or discrimination complaints and other problems or crises that occur abroad to your institution.

• Provide reasonable accommodations for participants with disabilities.

• Maintain regular communication between on-site personnel and your institution.

• Review all orientation and promotional materials to make sure they provide adequate warnings of known risks to participants.

B. Contractual Programs

• Require written agreements for all cooperative arrangements and agreements with foreign institutions including an indemnification provision in favor of your school.

• Clearly articulate each party’s obligations and responsibilities in the written agreement.

• Require all participants to sign releases, waivers and statements of responsibility.

• Require the owner/operator of each program to provide proof of adequate insurance coverage and require that your school be named as an additional insured on all applicable policies.

• Request information regarding criminal activity that has occurred on the program site.

• Review the program’s emergency and security plans and policies.

• Arrange for reasonable accommodations for participants with disabilities.

In addition to the steps set forth above, your institution may want to have in-house or outside counsel perform a comprehensive legal audit of your international programs. Again, the components of a legal audit will vary depending on your
institution’s needs, requirements and unique programs, but the following are general topics that should be addressed as part of a legal audit.

1. A clear identification of all study abroad programs and opportunities available through your institution.

2. A comprehensive review your institution’s policies and procedures to determine whether they can reasonably be applied to study abroad programs. Revise and replace such policies and procedures as needed.

3. When appropriate, conducting background checks for faculty, staff or students prior to participating in study abroad programs.

4. A comprehensive review of orientation and promotional materials given to participants. Similarly, a comprehensive review of all agreements and forms being used in connection with study abroad programs.

5. An evaluation of existing insurance policies to determine whether coverage is adequate and whether additional or special insurance should be purchased.

6. An evaluation of all on-site institution owned, leased or recommended facilities, both academic and residential, to assess general safety and to determine compliance with local zoning and environmental laws and regulations as well as building and fire codes.

VI. CRISIS AND EMERGENCY MANAGEMENT

A crisis is a significant event with potentially severe consequences which requires immediate action or response. Crisis management is the process of preparing for, mitigating, responding to and recovering from a crisis situation.


B. Crises and emergencies are foreseeable, therefore your institution has a duty to act reasonably in preparing for and dealing with a crises or emergency.

C. Use of student/parent releases and waivers.

D. Again, review existing insurance coverages and consider special insurance coverages.

VII. CONCLUSION

Student and parental demand for overseas study programs is high. The competition between higher education institutions for talented students is also high. It follows that many
higher education institutions will emphasize and expand their participation in and involvement with study abroad programs. Such participation and involvement on the part of the institution should be done thoughtfully and carefully, having in mind enhancing student opportunities and experiences while not exposing the institution to undue and unreasonable risks and liability.
RESOURCES FOR HEALTH, SAFETY AND RISK MANAGEMENT FOR STUDY ABROAD PROGRAMS

1. United States Department of State Travel Warnings and Consular Information Sheets: http://www.travel.state.gov/travel_warnings.html

2. United States Department of State Tips for Students: http://www.travel.state.gov/studentinfo.html


4. NAFSA: Association of International Educators: http://www.nafsa.org/secussa

5. Center for Global Education: http://www.lmu.edu/globaled


7. Interorganizational Task Force on Safety and Responsibility in Study Abroad: http://www.secussa.nafsa.org/studyabroad