

Managing the Risks of Short-Term International Programs

United Educators Roundtable

Tuesday, March 31, 2009
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Speaker Biographies

William P. (“Bill”) Hoye is the executive vice president and chief operating officer of the Institute for the International Education of Students (IES Abroad), a nonprofit organization that has been building study abroad programs since 1950. Prior to joining IES Abroad, he served as associate vice president and deputy general counsel at the University of Notre Dame, where he also taught at the law school. Hoye is the author of *Understanding and Managing the Risks of Short Term International Programs*.

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Frank Vinik (moderator) is senior risk counsel at United Educators, where he specializes in faculty and employment matters. Before joining UE, he practiced education and employment law with a firm in North Carolina and worked in university administration. He received his undergraduate degree from the University of California at Berkeley and his law degree from the University of Virginia.

Roundtable Agenda

Introduction

Instituting Procedures Governing Short-Term Programs

- Importance of written policies
- Process for selecting participants
- Required orientations for program leaders and participants

Overseeing On-Site Administration of Short-Term Programs

- Key risks of short-term programs
- Recommended steps to address these risks

Evaluating Short-Term Programs

- Formal post-trip surveys of leaders and participants
- Informal exit interviews

A Checklist for Campus Administrators Managing Short-Term International Programs

Short-term international programs (STPs) refer to international or study abroad programs lasting less than one semester. Although increasingly popular with students, STPs pose several unique challenges for educational institutions. (For a detailed description, see William P. Hoye’s monograph *Understanding and Managing the Risks of Short-Term International Programs*, listed in “Resources.”) STPs are frequently organized shortly before departure by a faculty member who does not necessarily follow any procedures when planning the trip. As a result, these programs may lack the infrastructure and support of a more established study abroad program. In addition, STPs often occur during break periods when it may be difficult to contact the home campus for assistance.

This checklist is designed for administrators who are ultimately responsible for STPs on their campuses, not for program leaders or participants. It provides a guide to considering and addressing the primary risk management challenges of these programs. Administrators should check the appropriate “yes” or “no” response for each question and then consider what further steps, if any, they may wish to take for certain items.

I. Preparation for the Program

It is prudent to establish a formal approval process for STPs. The process should begin with a written policy to help ensure that consistent standards apply and that program leaders and student participants are adequately prepared before going abroad. In addition, institutions should carefully consider whether to sponsor a program directly or enter into a contract with a third-party provider. Third-party providers can generally customize a program to the institution’s needs and reduce the home campus’s liability exposure.

A. Program Formation and Approval	Yes	No	Further Steps
1. Program Formation. Does your institution have a written policy that identifies specific campus officials who have authority to determine: <ul style="list-style-type: none"> ▪ How and by whom a STP can be established 			
<ul style="list-style-type: none"> ▪ Where the institution’s students are permitted to travel on approved programs, including any countries to which travel may be expressly prohibited 			

A. Program Formation and Approval	Yes	No	Further Steps
2. Program Approval Process. Does the approval process for a new STP include input of representatives from:			
▪ Risk management			
▪ Legal counsel, both at home and at the proposed program site			
▪ Office of the dean of students			
▪ Student health and counseling centers			
▪ Public safety			
3. Institution's Relationship to the STP			
▪ If your institution directly sponsors the proposed program, do you:			
□ Ensure that the institution is legally authorized to operate that program			
□ Require written agreements with all faculty and staff program leaders			
□ Require written agreements with other educational institutions and service providers (for example, tour operators, housing providers, and charter bus companies)			
□ Have a contingency plan in the event that program leaders are injured or unable to perform their duties			
▪ If your institution contracts with a third-party provider to deliver STPs, have you covered the following issues in a written agreement with that provider:			
□ The provider's emergency and crisis management protocols			
□ The orientation and on-site services provided for students			
□ The insurance and travel assistance services available			
□ The provider's vetting process for charter bus companies or other vendors			
□ The indemnification offered for injuries or property damage involving program participants			
□ A resolution process for disputes related to or arising out of the program			
□ Possible naming of the institution as an additional insured on the provider's liability insurance policies			

B. Faculty and Staff Orientation	Yes	No	Further Steps
1. Campus Communications and Contacts. As part of the pre-departure orientation, does your institution review with program leaders your crisis management and emergency response plans and introduce to them the individuals on the home campus to contact in the event of: <ul style="list-style-type: none"> ▪ Death, illness, or injury to a student 			
<ul style="list-style-type: none"> ▪ Natural disasters (for example, earthquakes or tsunamis) 			
<ul style="list-style-type: none"> ▪ Serious student misconduct 			
<ul style="list-style-type: none"> ▪ Arrests or other violations of local law 			
<ul style="list-style-type: none"> ▪ Property damage caused by someone on the trip 			
2. Dealing with Students in Emergencies. Do you train program leaders on appropriate actions, including: <ul style="list-style-type: none"> ▪ The preferred way to reach a student's parent or other emergency contact 			
<ul style="list-style-type: none"> ▪ Procedures for advising students what to do if faculty leaders become incapacitated during the trip 			
<ul style="list-style-type: none"> ▪ Management of the remainder of the group after an emergency involving one student 			
3. Insurance. Do you brief program leaders on the insurance available to them and to participants while overseas, including: <ul style="list-style-type: none"> ▪ Whether health insurance provided through the institution or by their parents applies during travel abroad 			
<ul style="list-style-type: none"> ▪ Whether insurance coverage is available for items such as trip cancellation, property damage, psychological counseling, repatriation, and emergency medical evacuation 			

C. Student Selection and Participation	Yes	No	Further Steps
1. As part of your screening process for student applicants to the program, do you collect information about: <ul style="list-style-type: none"> ▪ The applicant's relevant language ability 			
<ul style="list-style-type: none"> ▪ Prior course work or life experience that prepared the applicant to participate 			
<ul style="list-style-type: none"> ▪ References with personal knowledge of the applicant's maturity and readiness to study abroad 			
<ul style="list-style-type: none"> ▪ Previous academic dishonesty or disciplinary issues that may bear on the applicant's fitness to participate 			

C. Student Selection and Participation	Yes	No	Further Steps
2. With respect to applicants who may have disabilities: <ul style="list-style-type: none"> <li data-bbox="250 331 862 436">▪ Are program leaders advised that applicants should not be asked about disabilities and may not be denied participation solely on the basis of any disabilities? 			
<ul style="list-style-type: none"> <li data-bbox="250 457 813 531">▪ Are all applicants provided information about potential accessibility issues in the program location? 			
<ul style="list-style-type: none"> <li data-bbox="250 552 850 625">▪ Once students are accepted, do you inquire generally about any special needs that might affect their full participation? 			
<ul style="list-style-type: none"> <li data-bbox="250 646 850 814">▪ If a student identifies himself or herself as disabled and indicates that accommodations may be needed, do you consult legal counsel and engage the student in discussions to determine what accommodations may be necessary and whether they are feasible? 			
<ul style="list-style-type: none"> <li data-bbox="250 835 862 947">▪ Do faculty or staff program leaders participate in the process so that they are aware of students' particular needs and any accommodations agreed upon? 			
3. Before departure, do you require all participants to: <ul style="list-style-type: none"> <li data-bbox="250 1024 678 1066">▪ Execute an appropriate waiver of liability 			
<ul style="list-style-type: none"> <li data-bbox="250 1087 883 1161">▪ Sign an acknowledgment that the student handbook and any other rules applicable on the home campus also apply overseas 			
<ul style="list-style-type: none"> <li data-bbox="250 1182 878 1262">▪ Provide emergency contact information for a parent, guardian, or (for students who are not minors) next of kin 			

II. Oversight During the Program

Because program leaders have sole on-site responsibility but often have no staff and limited experience, administrators on the home campus should establish policies governing oversight of STPs. These policies should cover key risks commonly associated with international study and require some level of on-site orientation for participants.

A. On-Site Student Orientation	Yes	No	Further Steps
During orientation at the program site, do you require program leaders to address the following topics, as appropriate for the location: <ul style="list-style-type: none"> <li data-bbox="250 1749 857 1822">▪ Information about your institution's crisis management plan and a list of emergency contacts on the home campus 			
<ul style="list-style-type: none"> <li data-bbox="250 1843 672 1875">▪ Contact information for local authorities 			

A. On-Site Student Orientation	Yes	No	Further Steps
▪ Different cultural practices and beliefs			
▪ Particular risks of criminal activity			
▪ Health care			
▪ Specific health risks (for example, HIV/AIDS or other communicable diseases)			
▪ Risks posed by the political climate, including war, civil unrest, or terrorism and action plans should these risks unfold			
▪ The plan of action following possible natural disasters for the area, such as earthquakes or tsunamis			
▪ Transportation problems, such as poor roads			

B. Managing Key Risks	Yes	No	Further Steps
<p>1. Accidental Death or Injury. To reduce the risk of liability for a student's death or injury during the program, do you:</p> <ul style="list-style-type: none"> ▪ Ensure that all written marketing materials and program materials clearly identify which activities are sponsored as part of the program and state that any others will be undertaken independently 			
<ul style="list-style-type: none"> ▪ Limit sponsored activities to those integral to the academic component of the program 			
<ul style="list-style-type: none"> ▪ State clearly that inherently dangerous activities (for example, cliff climbing and bungee jumping) are not part of the sponsored program 			
<ul style="list-style-type: none"> ▪ Prohibit faculty or staff program leaders from promoting or participating in nonsponsored activities 			
<p>2. Motor Vehicle Accidents. To reduce the risk of liability for motor vehicle accidents during a program, does your institution:</p> <ul style="list-style-type: none"> ▪ Maintain and periodically review a list of approved charter bus or transportation companies for any sponsored activities 			
<ul style="list-style-type: none"> ▪ Consider revising any vehicle usage policy on the home campus to apply to STPs 			
<ul style="list-style-type: none"> ▪ Encourage faculty and staff to use public transportation or approved transportation companies, even if they are allowed to drive during the program 			

B. Managing Key Risks	Yes	No	Further Steps
<p>3. Sexual Assault. With respect to allegations of sexual assault against or by anyone involved in a STP:</p> <ul style="list-style-type: none"> ▪ Do you require program leaders who learn of an alleged assault during the program to report it promptly to designated administrators on the home campus (for example, the dean of students, risk management, public safety, or legal counsel)? 			
<ul style="list-style-type: none"> ▪ Are the designated administrators prepared to provide immediate guidance to on-site staff regarding: <ul style="list-style-type: none"> □ Obtaining medical attention for the victim 			
<ul style="list-style-type: none"> □ Reporting the assault to local authorities 			
<ul style="list-style-type: none"> □ Advising other program participants of the reported assault and necessary details (for example, location and general circumstances) 			
<ul style="list-style-type: none"> □ Taking appropriate action if the alleged perpetrator is a program participant 			
<p>4. Discrimination and Harassment. Because some court decisions indicate that U.S. laws against discrimination and harassment protect students on study abroad programs, institutions and legal counsel should review internal policies prohibiting such conduct to be sure they can reasonably be applied abroad, and revise them if not. Once this task is accomplished, does your institution:</p> <ul style="list-style-type: none"> ▪ Train both program leaders and student participants during orientation on the policies, including: <ul style="list-style-type: none"> □ The definition of discrimination and harassment under the policies 			
<ul style="list-style-type: none"> □ How and to whom to report violations 			
<ul style="list-style-type: none"> ▪ Require program leaders to report any violations to the home campus promptly 			
<ul style="list-style-type: none"> ▪ Provide participants with an alternate contact person on the home campus, in case the alleged perpetrator is a program leader on the same trip 			

B. Managing Key Risks	Yes	No	Further Steps
5. Student Disciplinary Proceedings. Materials for STPs should make clear that student handbooks and codes of conduct apply to overseas study just as they do on the home campus. In addition, do you: <ul style="list-style-type: none"> ▪ Train program leaders to notify the home campus if a participant is involved in any violation of academic or disciplinary rules, or of any specific rules applicable to the particular program 			
<ul style="list-style-type: none"> ▪ Require program leaders to provide the home campus with written documentation of the alleged violation 			
<ul style="list-style-type: none"> ▪ Ensure that all appropriate institutional procedures for investigation and discipline are followed after a violation is reported 			

III. Evaluation After the Program

Institutions should consider establishing a system to solicit feedback from both program participants and leaders, especially since many STPs lack a track record. Post-program evaluations can be useful if the same or a similar STP is proposed in the future.

A. Student Evaluations	Yes	No	Further Steps
Do you request student participants to complete a post-trip survey covering such items as: <ul style="list-style-type: none"> ▪ How well the orientation prepared them for the location (for example, differences in culture, language, and customs) 			
<ul style="list-style-type: none"> ▪ How prepared they felt the program leaders were 			
<ul style="list-style-type: none"> ▪ Whether they experienced any problems on the trip related to their health or safety 			
<ul style="list-style-type: none"> ▪ What overall impressions they had of the program, both positive and negative 			

B. Faculty and Staff Reports	Yes	No	Further Steps
Do you require faculty and staff program leaders to complete a written post-trip report covering such matters as: <ul style="list-style-type: none"> ▪ The effectiveness of pre-trip planning and orientation 			
<ul style="list-style-type: none"> ▪ Ratings of services provided by vendors and contractors 			
<ul style="list-style-type: none"> ▪ Information about the location that should be considered for future trips 			

Resources

- Centers for Disease Control and Prevention: Travelers' Health Information. www.cdc.gov/travel
- Hoye, William P. *Understanding and Managing the Risks of Short-Term International Programs*. Chevy Chase, Md.: United Educators, 2008. www.ue.org/membersonly/getDocument.asp?id=1054
- Hoye, William P.; Rypkema, Pamela J.; and Zerr, Robert. *Legal and Risk Management Issues Involving Student Foreign Travel*. Chevy Chase, Md.: United Educators, 1999. www.ue.org/membersonly/GetDocument.asp?id=68
- U.S. Department of Education. U.S. Network for Information Exchange. Retrieved on March 4, 2009, from www.ed.gov/NLE/USNEI.

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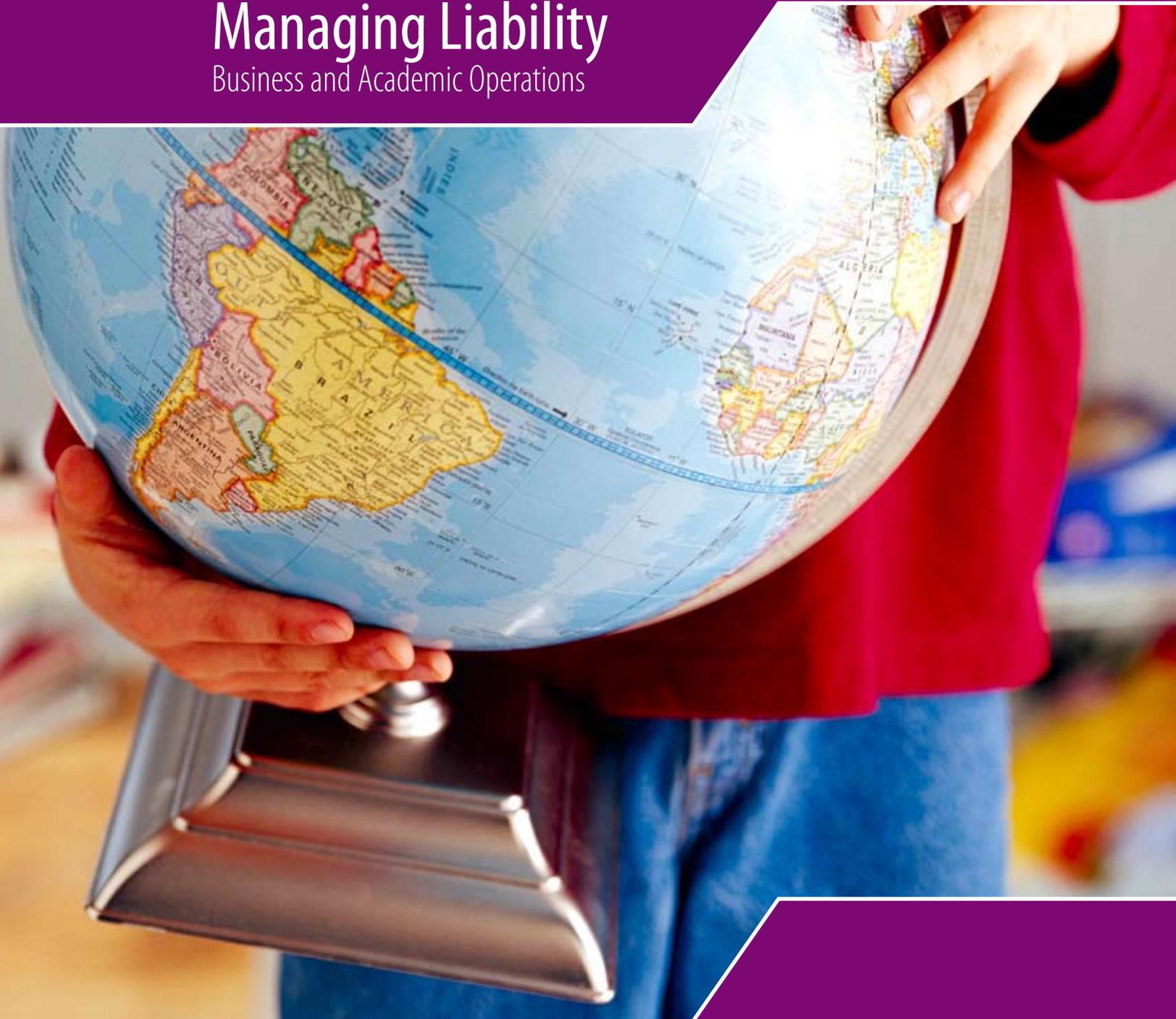
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Understanding and Managing the Risks of Short-Term International Programs

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Preface

The information in this monograph is intended to help administrators at educational institutions understand and manage the risks associated with short-term international programs. Neither the monograph nor any recommendation herein is a substitute for legal advice. Every circumstance, international program, and institution is unique. Each institution should, therefore, consult its own legal counsel for advice on particular issues and determine for itself what steps are appropriate for each of its international programs. This monograph does not create a standard of care for schools, colleges, or universities. The failure of any educational institution to adopt or follow any recommendation contained in this monograph should not be construed as evidence of negligence or wrongdoing of any kind. All of the recommendations contained herein are merely aspirational and illustrative. They are not required, nor do they apply in all circumstances.

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Introduction

Understanding the Challenges International Programs

International programs of less than a semester are increasingly available and attract thousands of American students each year. The number of programs has soared in recent years, growing by 255 percent from 1996 to 2006, according to the directory of international programs maintained by the Institute of International Education (IIE). The most recent IIE statistics also indicate that approximately 70 percent of the more than 220,000 American students who studied abroad during 2005 and 2006 chose short-term programs.

Short-term program options are increasingly varied, with choices such as hiking for several days in the rain forests of Central America, studying wildlife for several weeks in the game preserves of Africa, and attending theater productions for a month in London. While these programs offer a number of educational benefits, they also present a wide array of risks for sponsoring institutions, faculty leaders, administrators, and student participants.

Often organized just a few months before departure, short-term programs sometimes lack the intensive planning and organizational structure of longer and more established programs. Also, short-term programs typically occur during campus breaks or downtime in countries where health and safety standards may be markedly different from those in Western Europe and the United States. Insurance claims and legal cases involving short-term study abroad programs often result from institutional sponsors' insufficient attention to the selection, training, and orientation of faculty, staff, and student participants. Sponsors can increase safety and reduce the risk of claims by preparing faculty, staff, and students for what they can expect while studying and traveling abroad and by training them to manage those risks.

The sections that follow explain many of the challenges that institutions, faculty, and students face. They identify strategies to help manage the risks of short-term programs and offer suggestions about how to orient faculty and students so they can navigate and mitigate many of the risks common to studying abroad.

Program Development

Unlike the more traditional study abroad programs, which are typically developed by study abroad professionals in consultation with many departments on campus, short-term programs are often planned by one or a few faculty members with an interest in a particular country or region. In some cases, the institution has limited experience with the region and must rely upon the faculty member who would serve as program leader to provide the necessary guidance about the feasibility of sponsoring a program to the region. The faculty member might even exert pressure to have a short-term program approved quickly, especially if the person is seeking to capitalize upon a short-lived event or phenomenon. Short-term programs are often scheduled during academic breaks and so may suffer from inadequate home campus support, especially when it comes to dealing with a crisis.

Program Approval

Few campuses seem to require formal administrative review, comprehensive risk assessments, or senior administration approval of short-term programs. The level of due diligence that an institution invests in planning and approving short-term programs can vary and often depends upon the institution's culture and overall approach to managing risk. Complicating matters, some departments within the institution may have more rigorous processes for approving short-term study abroad programs than other departments on the same campus. Inconsistent approaches to program planning and approval can lead to different standards for students within the same university, depending upon the sponsoring department. That, in turn, can lead to legal problems in the event of litigation.

Program Support

The level of institutional support for short-term programs may also be less than for the institution's more traditional and better established study abroad programs. For longer programs, the home campus may employ full-time faculty or staff, own or lease property, enter into service contracts, and have well-developed networks of alumni and friends who can provide assistance in an emergency or crisis. These are often lacking with shorter programs.

With terrorist attacks occurring in places as varied as England, Spain, China, Sri Lanka, and Colombia, institutions may wonder whether anyplace is safe for students. Because risks are widespread, institutions sponsoring short-term programs should appreciate the need for communication between the program site and the home campus in an emergency. However, the resources available for crisis management may be much thinner during breaks, when short-term trips tend to occur, than during an academic term. Key members of the campus community, including senior administrators and members of the institution's emergency and crisis management teams, are more likely to be off campus themselves during those times.

Program Location

The location of short-term study abroad programs can also distinguish them from longer, more traditional study abroad programs. Short-term programs often occur in remote locations in the developing world, such as jungles, islands, or mountainous regions. The very newness of many short-term arrangements means less of a track record. The institutional memory, learning curve, local contacts, and expertise that institutional sponsors tend to develop over time are less likely to exist with short-term programs. These programs often involve travel to the developing world, which can pose an increase in certain risks over those typically found in more Westernized countries. These risks can include:

- Ready access to high-quality medical care
- Exposure to disease
- Challenges to safe transportation posed by poor roads and traffic conditions
- Civil and political unrest in some locations
- Vulnerability to natural disasters because of insufficient preparedness and infrastructure
- Terrorism
- Quick and effective communication with, and ready access to, the outside world in an emergency or crisis

Faculty and Staff Leaders

Short-term international programs typically involve just one or two faculty members and often operate on a shoestring budget with little infrastructure. There may be no one readily available to replace a faculty member who becomes seriously ill or injured during a trip. Faculty members on the home campus who plan and organize short-term trips may not be as intimately familiar with local customs and culture as the on-site staff for semester and yearlong programs, which the institution typically hires to administer its longer term programs on an ongoing basis. Staff members for the longer term programs often are native to the country, speak the local language as their first language, have a network of local contacts in the program's community, and know, from firsthand experience, what behaviors and neighborhoods to avoid. The staff for shorter term trips is often American professors who do not live or work in the country of study. They are also less likely to be fluent in the local language, to have extensive contacts in the area, or to be knowledgeable about geographic areas and appropriate behavior.

Student Participants

With the wide variety of short-term study abroad programs available, students are finding it easier than ever to fit one into their plans. Yet not every student may be academically, developmentally, or mentally prepared to meet the challenges of studying abroad. Due to the short time students will spend at a foreign program site, they are less likely to learn the local language and customs, to become familiar with potentially dangerous geographic areas and behaviors, or acquaint themselves with unique risks associated with program activities.

Institutions sponsoring short-term programs often overlook the need to assess applicants' maturity and academic readiness for the program when considering their participation. Students who lack these attributes can put themselves and others at risk, especially if they do not know or ignore safety precautions, local laws and customs, or program rules.

Managing the Risks of Short-Term Programs

A serious accident or injury involving a student abroad is devastating, not only for the student and his or her family but also for the entire campus community. Such an incident often causes key constituencies to question the integrity and continued viability of the international program, and it can lead to lengthy investigations as well as protracted, time-consuming, and expensive litigation. Intense media scrutiny and negative publicity also can result, causing significant harm to the institution's image and reputation.

The best institutional protection against these potential pitfalls is risk management and assessment before, during, and after each short-term study abroad program.

By exercising due diligence and reasonable care in the formation, planning, and oversight of each program, educational institutions can significantly reduce the risk of injury or harm to students, faculty, and staff.

Before the Program Goes Abroad

A sound risk management program for short-term study abroad programs begins at home with policies and procedures that cover all aspects of the activity, including a formal approval process for short-term program proposals. It also includes faculty leaders' and students' education and training about ways to reduce health and safety risks and the resources available for assisting in an emergency or crisis abroad.

Program Start-Up and Approval

Policies and Procedures

An institution's written policies should identify the campus officials who have the authority to determine the following: (1) when and how faculty and staff can establish short-term study programs abroad, and (2) where students can travel on institutionally sponsored programs. Many colleges and universities prohibit programs in countries that present particular threats, risks, or dangers, such as those subject to the U.S. State Department's travel warnings. Many insurers exclude general liability insurance coverage for terrorism and war-related claims occurring in those countries. And in those circumstances in which institutions *can* purchase this coverage, it is often expensive.

Policies and procedures for short-term international programs should govern when, how, and under what circumstance an institution will allow, suspend, or prohibit international travel. Institutions should adopt these policies before an emergency or crisis actually occurs, and they should identify who decides when to bring students home and the criteria they will use for deciding.

Some colleges and universities significantly mitigate the risks associated with short-term trips and programs by contracting with experienced third-party providers to deliver them. Third-party providers often offer customized programs that colleges and universities can design to fit their curriculum. Customized programming allows home-campus faculty to teach some or all of the courses. The third-party provider, not the home campus, becomes the primary sponsor of the program, which in turn reduces the home campus's potential liability exposure. If the relationship



Third-Party Program Provider

with a third-party provider is established carefully, this approach can help a college avoid long-term overhead and infrastructure costs and potential liability exposure while its students receive support abroad from the third-party provider's trained and experienced on-site staff.

Institutions that decide to hire third-party providers should enter into written agreements that address such factors as:

- Indemnification for property damage and injuries involving program participants
- The third-party provider's insurance certificates and the possibility of naming the college or university as an additional insured on the third-party provider's policies
- The location, method, and forum for resolving any dispute arising out of or related to the international program or its operations

In addition, staff members making arrangements with third-party providers should ask them detailed questions about the following matters:

- The provider's emergency and crisis management resources and protocols
- The orientation and on-site student services they provide for students, especially in emergencies
- The insurance and worldwide travel assistance services they have and provide to students
- Their vetting processes for charter bus companies and other vendors

Due diligence, good communication, common sense, careful planning, and reasonableness are the keys to success when working with a third-party provider.

Program Approval

Many program sponsors limit themselves to academic issues when they consider whether to approve a proposed short-term international program. Academics should not be the sole concern. A complete program approval process should include health, safety, risk, and legal compliance issues as well. A program approval process that includes contributions from the campus's risk management

Rocky Paneno was a student at Pasadena Community College when he enrolled in a study abroad program through the Centres for Academic Programmes Abroad-USA (CAPA-USA), a California corporation that was the U.S. marketing, sales, and pre-departure administration arm of CAPA-UK. The two companies were not owned, operated, or managed concurrently. CAPA-USA contracted with individual colleges, universities, and students to provide services relating to logistics, housing, and excursions. Students paid CAPA-USA, which remitted the fees to CAPA-UK.

In April 2000, Paneno entered into a contract with CAPA-USA to participate in a program in Florence, Italy, which released the U.S. company and its agents and employees from liability for loss or damage. When Paneno arrived in Florence, he lived in a sixth-floor apartment procured by one of CAPA-UK's overseas contractual partners. In October 2000, Paneno was leaning against his balcony's railing when it gave way, causing him to fall to the ground, resulting in paralysis and other serious injuries.

Paneno initially sued CAPA-USA and Pasadena Community College, alleging premises liability and negligence. Paneno later amended his complaint to add CAPA-UK as a defendant in the case. The trial court dismissed CAPA-UK for lack of personal jurisdiction, but on appeal, the court found that CAPA-USA and CAPA-UK were sufficiently closely related for California's jurisdiction to extend to the foreign company. The appellate court also noted that CAPA's marketing brochures did not make clear that CAPA-UK was responsible for operation of the program and could only be sued overseas. Paneno then voluntarily dismissed his claim against the college.

Paneno v. Centres for Academic Programmes Abroad, Ltd.,
13 Cal. Rptr.3d 750 (cal. Ct. App. 2004).

Managing the Risks of Short-Term Programs

team and from the in-house counsel allows the campus to broadly evaluate potential programs and identify any associated risks in light of institutional interests, academic goals, and relevant policies. Other participants may include representatives from the office of a dean of students, a counseling center, a health center, and a public safety department on campus.

In particular, the review should include:

- An examination of potential risks and dangers associated with the program, such as health, security, safety, environmental, and transportation
- Satisfaction of any legal requirements to operate the educational program in the proposed location
- A discussion of how best to manage and transfer significant risks associated with the program to third parties (for example, by contract, insurance, or indemnification)

Counsel licensed to practice in the overseas site should review applicable legal issues. At home, the institution's counsel can help to ensure that the campus is lawfully authorized to operate each institutionally sponsored program site abroad and that there are appropriate written agreements with program staff and faculty and key strategic partners, such as other educational institutions, tour operators, housing providers, charter bus companies, vendors, and other service providers.

Faculty and Staff Orientation

Institutions should implement consistent orientation programs for faculty who lead short-term international programs. Campus administrators can help overcome any faculty reluctance to attend these sessions by providing practical information, including details about student health insurance and the phone numbers of people to call should problems arise. It is also important to emphasize to faculty that the overarching goal of the faculty orientation is to enhance student safety and protect the faculty member's shared interest in offering a positive learning experience for everyone. Some issues that should be reviewed with faculty and staff leaders in pre-departure orientation sessions follow.

Campus Communications and Contacts

Pre-departure orientation for faculty and staff members should include introducing them to individuals and departments on the home campus where student misconduct, accidents, and other types of incidents and emergencies should be reported. This includes, among other things, student injuries or deaths, arrests, serious behavioral problems, and violations of local law or university policies. Because many short-term study abroad programs occur during academic breaks, institutions need to ensure that campus contacts, such as members of the institution's crisis management team and key administrators from the home campus, are available to provide the necessary support should there be an emergency or other serious incident abroad. The first line of contact is often the public safety department. Since most public safety departments are staffed 24 hours a day, seven days a week, emergency calls from abroad are sure to be answered. Institutions choosing to follow this practice will need to ensure that public safety personnel are trained to handle these calls and know where to route them for appropriate and timely responses.

Insurance

Faculty orientation should include a briefing on the types of insurance policies and coverage that the institution makes available to students, faculty, and staff traveling abroad. For example, faculty leaders should know whether student health insurance applies in the venue of travel and whether coverage is available for items such as trip cancellation and personal property insurance as well as for psychological counseling, emergency medical or political unrest evacuation, and repatriation of remains.

Emergency Planning

Pre-departure orientation should also train faculty and staff program leaders on the institution's emergency response and crisis management plans as well as other relevant protocols such as incident and accident reporting. The sponsoring institution should explain what it considers an emergency or crisis and provide examples of the various types of circumstances under which faculty members or trip leaders should contact specific people on the home campus. These circumstances may include, for example, injuries, hospitalizations, complaints of discrimination or harassment, student misconduct, natural disasters, and arrests.

Because the institution will need certain details about the trip and the participants in the event of an emergency, faculty should be instructed to collect the following information and submit it to the institution before the program can depart:

- Program itinerary, including all destinations and dates of travel
- Detailed contact information for the traveling party at each step on the trip, including any faculty, staff, or student cell phone numbers
- A detailed description and itinerary for all planned field trips, side trips, and other activities
- A list of all participants as well as a U.S.-based emergency contact for each participant
- Information concerning each traveler's special needs, if any

Some institutions use third-party databases to electronically collect and store this information so that the home campus can quickly determine where its students are in the event of an emergency or crisis at home or abroad. Electronic course management systems make it possible to store flight schedules, student contact data, the names of faculty and on-site staff, program itineraries, syllabi, and other information. Effective systems are secure, password-protected, Web-based, and accessible from almost anywhere on a round-the-clock basis.

Faculty training should include when and under what circumstances faculty members should complete incident report forms and submit them to the home campus. Many institutions expect faculty and staff who lead study abroad programs to promptly report incidents such as the following:

- Serious student behavioral problems, disciplinary issues, or academic misconduct
- Accidents or injuries involving students, faculty, or staff
- Criminal conduct, arrests, or other misconduct involving participating students, faculty, or staff
- Complaints of harassment or discrimination involving students, faculty, or staff
- Other violations of campus policies or procedures by participating students, faculty, or staff

During orientation, faculty and staff should be encouraged to build redundancy into their planning for crises and emergencies so that the short-term program will always have leadership or supervision in the foreign destination. Faculty and staff program leaders should develop answers to the following questions:

- What will happen if the sole faculty or staff member on-site is injured or unable to perform his or her duties during the trip?
- Is there someone else at the institution who could travel to the location and take over the program or provide the necessary support from the home campus on very short notice?
- Will traveling students know what to do, where to go, and whom to contact if the faculty member is incapacitated or unavailable during any part of the trip?

Faculty training should also provide logistical information, such as the following:

- Whom to notify and update on campus during various kinds of crises and emergencies, both when campus is in session and when it is closed for a break
- Who should communicate with the student's family or emergency contacts when needed and how best to communicate with them
- How best to reach the university's global medical assistance provider, on-site medical providers, emergency personnel, and local authorities
- What to do with the rest of the members of the group in the event of an emergency involving one student

Faculty members should be told not to leave a student who has become injured or ill behind or unsupervised, even if this means changing the group's plans. It is important to review the institution's emergency action plan and procedures for the program, which should detail, among other things, how to handle a health emergency, including how to oversee and supervise a student's medical care. Faculty and staff should be directed to communicate with the home campus, and they should know whether to communicate directly with the student's family when a student becomes ill or is injured (some institutions prefer that student affairs professionals or others communicate directly with the student's family). Specifically, faculty should know who will be the official institutional contact with an injured student's family.

Managing the Risks of Short-Term Programs

Student Oversight

Faculty leaders on short-term international trips have responsibilities beyond academics. They must also provide on-site administration. Faculty leaders will have to know relevant policies and procedures so that they can address student issues just the way administrators would address them at the home campus.



Handling a Medical Emergency

In May 1996, Amy Faye became ill while attending a three-week study abroad program in Peru sponsored by Thiel College. She was taken to a medical clinic in Cuzco, Peru, after which the faculty program leaders and the rest of the group continued with the program itinerary. At the clinic, Faye underwent an unnecessary appendectomy, which the clinic described as “emergency.” While she was conscious but under a local anesthetic, her surgeon and anesthesiologist sexually assaulted her.

Faye sued the college, alleging that its on-site employees were negligent in supervising her medical care and claiming that she would not have suffered injuries if a college employee had remained with her. Thiel College attempted to have the case dismissed, relying on the liability waiver the student signed before the trip and maintaining that, even if an employee had stayed in Cuzco, he or she would not have been able to prevent the sexual assault while the student was in the care of the Peruvian doctors.

The court denied the college’s request to dismiss the case. The court found that the medical consent form was a contract that created a “special relationship” between the college and the student and obligated the college to “secure whatever treatment [was] deemed necessary, including the administration of anesthetic and surgery.”

Faye v. Thiel College, 2001 WL 1910037 (Pa. Comm. Pl. 2001).

Disciplinary Proceedings: Faculty and staff training should include instruction in responding to student disciplinary problems. Many campuses would want faculty and staff to do the following:

- Immediately notify the home campus if one of the students is the victim of, or accused of, a violation of academic or disciplinary rules.
- Provide appropriate officials on the home campus with written documentation of the allegations and any documents or other materials related to the alleged student conduct violation.
- Help ensure that the institution’s student code of conduct is followed with respect to complaints that must be investigated (for example, allegations of discrimination or harassment) and comply with applicable due process requirements, such as giving charged students notice of the allegations and a reasonable opportunity to be heard.
- Separate the complainant from the accused student pending the outcome of disciplinary proceedings or investigation, especially in cases involving allegations or threats of physical violence, intimidation, harassment, or possible danger to a student.
- Inform all involved parties that retaliation, physical violence, threats, intimidation, and harassment will not be tolerated and will be viewed as separate offenses that could constitute immediate grounds for removal from the program.

Students with Disabilities: Students with disabilities who enroll in international programs should consult with campus resources such as the Office for Students with Disabilities to ensure that they obtain any required reasonable accommodations. It is a good idea for program staff and faculty who will implement the accommodations to participate in the discussions so that they understand their students’ specific needs and the measures required to accommodate them. If problems arise, the institution’s legal counsel should be consulted as soon as possible.

Sexual Harassment: Faculty members and staff should receive training in the institution’s sexual and discriminatory harassment policies so that they will know what to do if they receive a complaint or if a problem arises during the program.

Before the group departs, the institution's counsel should review the campus's discrimination and harassment policies to make sure they can be applied reasonably overseas. The institution and on-site program faculty and staff should know:

- Who is to receive complaints of harassment on the home campus
- Who is charged with investigating such complaints under campus policies
- That any such complaints must be reported immediately and responded to swiftly and appropriately by the institution
- What will happen if the alleged harasser is the only university employee on the trip

Student Selection and Preparation

Application Process

Institutions should consider establishing a formal application and acceptance policy for students who want to participate in short-term international programs. Applications allow the institution to review potential participants' qualifications and background in order to determine their suitability for the program. The type of information collected for review may include:

- The applicant's complete name and home and campus contact information
- A description of the applicant's level of fluency or competence in the local language as well as prior coursework that prepares the student for participation in the program
- At least two references who can speak to the applicant's preparation and maturity

To help program leaders and the institution assess an applicant, some colleges and universities also interview students one-on-one or require students to submit an essay detailing the reasons they want to participate in the program, how participation will benefit their education, and any experiences they have that prepare them for successful participation.

The student application process should include a screening of each applicant. References should be checked and past behavior analyzed and discussed. The institution's counsel should be consulted about whether faculty leaders of study abroad programs have a legitimate educational interest in knowing about any academic dishonesty, serious disciplinary

problems, or criminal convictions as part of the application and screening process. If a particular application raises a concern based upon a poor academic or disciplinary record or other issue that could impede the student's ability to participate in the program successfully, the prudent administrator should consult legal counsel for advice.

Institutions should not, however, ask students to disclose disabilities or request accommodations during the application process, and they should not reject an application because of a student's disability. Once a student has been accepted to participate in a program, the institution may ask the student about any special needs that might affect his or her participation. The institution's counsel should review the language of the inquiry.

Pre-Departure Orientation

Pre-departure orientations are events for informing students about institutional resources, expectations during the program, and any significant health, safety, or security risks participants may encounter at the program location. They are also convenient venues at which to have students complete any forms or other documentation. During orientation programs, staff and faculty can provide students with information on such matters as:

- Student health insurance options and coverages, including means of obtaining ready access to high-quality medical care at or near the program site
- Risks of harm or exposure to potential disease and how best to help mitigate them
- The political climate and any expected civil unrest, political demonstrations, or similar strife
- Challenges posed by poor roads or traffic conditions
- Risks of crime and areas and behaviors to avoid in order to mitigate them
- Risks of terrorism and how to mitigate them
- The proper response for natural or other disasters, emergencies, or crises
- Relevant contact information for faculty leaders, key staff, or departments on the home campus as well as local authorities
- The institution's crisis management plan and the program's local contingency plans

Managing the Risks of Short-Term Programs

With assistance from legal counsel, study abroad administrators should develop a detailed statement of responsibility and country-specific liability waiver forms for each participating student to review and sign prior to departure. The statement can explain institutional expectations and student responsibilities during the trip and identify some of the key known risks and dangers associated with the country or region of travel. Including U.S. State Department consular information for the country of travel is also a good practice. If students are permitted to travel to countries subject to State Department travel warnings, administrators should augment existing forms and procedures in consultation with the institution's general counsel and risk manager to explain the enhanced risks those destinations present and to ask the students to acknowledge specific risks in the country of travel by signing the form.

Pre-departure orientation is also a good time to inform students of insurance coverage and other services available to them. Many international health insurance policies provide students as well as faculty and staff with access to medical professionals who are available by telephone 24 hours a day (often in the student or staff member's native language) in cases of injury or illness. The best insurance policies also have provisions for dire emergencies, including medical evacuation, political evacuation, financial support for close family members to join their seriously injured or ill student until they are released from medical care, and repatriation of remains. Institutions should consider informing students in writing and in advance of the trip if the location's medical care is not up to the standards of more economically developed countries or is difficult to reach.

It is also common practice to have students sign liability waiver forms that can help protect the institution from liability for things like an inability to secure, obtain, or adequately supervise medical care for ill or injured students. Such forms typically state that the student releases the sponsoring institution and its employees, agents, officers, trustees, affiliates, contractors, and representatives from all liability for any injury or damage the student sustains as a result of any medical care given in the host country during the program (or any periods of independent travel) and for injuries or damage due to lack of ready access to medical care or treatment that is not in accordance with standards common in more economically developed countries.

Pre-departure orientation also provides an opportunity to inform students of relevant behavioral rules, institutional policies, academic requirements, cultural issues, and emergency and crisis management plans and protocols applicable to the program. Some institutions give students wallet-sized cards containing emergency contact information for local police departments, fire departments, and hospitals, and for program faculty and staff and administrators on the home campus. These cards often include the international cell phone numbers for program faculty and staff on-site, so they can readily be reached in an emergency. A growing number of institutions require program leaders to carry international cell phones (or even satellite phones in remote areas) for emergencies. Other institutions also require that all students carry an international cell phone with them on the program at all times.

Program faculty may also want to conduct a group exercise or drill on how to handle an emergency or crisis abroad. The activity could include discussion of program protocols and identify primary and secondary meeting places in an emergency. It is also reasonable to expect third-party providers to have written crisis management plans, local contingency plans, and evacuation plans in place. Before selecting a third-party provider, some educational institutions ask potential providers about these plans and protocols.

Students with disabilities should be given opportunities to receive accurate information about accessibility issues in the countries of travel, including typical conditions of roads, sidewalks, curb cuts, ramps, lodgings, class rooms, historic buildings, field trips, trains, buses, and other transportation issues at and near the program site. Institutions may be legally required to make reasonable accommodations for program participants abroad, which can involve issues such as providing accessible housing, class locations, transportation, and lodging for coursework, research, field trips, activities, and travel. In specific cases, the institution's legal counsel should be consulted early and often when these issues arise.

Like faculty and staff, student participants should be trained on the institution's sexual and discriminatory harassment policies, including the names and contact information for the people who are to receive complaints under the institution's policies. Emphasize that all such complaints must be reported immediately.

During the Program

Risk management strategies should include on-site orientation sessions and day-to-day program oversight.

On-Site Orientation

Many program sponsors require that soon after students arrive in the country they attend a mandatory orientation session on health, safety, security, and other risks. A guest speaker, such as a local police officer, a representative of a local nongovernmental organization like CARE International or Oxfam International, or a U.S. embassy or local consular official, can be effective in getting students' attention. Because that person lives in the country, he or she can talk with authority about the risks, crime, cultural issues, and criminal penalties or statutes unique to the country, including local health risks and other similar issues.

Program faculty should also take the opportunity during the on-site orientation to remind students of the crisis response protocols and other key materials presented during the pre-departure orientation. Once the students have seen how different the program location is from the home campus, they may be more likely to pay close attention to this important information.

Managing Key Areas of Risk

Some of the leading causes of recent court cases and claims against colleges and universities in the context of short-term international programs involved the following:

- Sexual harassment
- Sexual assault
- Personal injury and accidental death (for example, drowning, defective conditions or facilities leading to injuries, horseplay-related injuries)
- Unlawful discrimination
- Motor vehicle and pedestrian accidents
- Faculty and staff oversight of medical treatment (or lack thereof)
- Due process or unfair dismissal claims

Sound management of these risks can help protect students from harm. Careful planning for these risks is invaluable to institutions and their program faculty leaders and staff should an incident occur during a short-term study abroad program.

Sexual Harassment and Sexual Assault

Sexual harassment and sexual assault during study abroad programs can range from unwelcome touching or inappropriate sexual misconduct by strangers on the streets of a foreign city to date rape, sexual harassment, or assault committed by other students, host family members, faculty members, staff members, or others.

In the event of a complaint of sexual harassment, program staff or faculty should immediately notify the appropriate officials on the home campus and closely adhere to the institution's policies and procedures for responding to such complaints. The institution, through its on-site program leaders, must respond to complaints of sexual harassment with swift and appropriate action. Faculty and staff leaders should work closely and in consultation with the institution's student affairs staff and legal counsel from the time a complaint is reported and throughout the investigation of and response to the complaint.

Program faculty should also be prepared to respond to allegations of sexual assault. Before their departure and before an assault occurs, faculty and staff leaders should become familiar with their institution's policies and procedures for responding to such allegations. Program leaders should also educate students during orientation sessions and throughout the trip on how to avoid a sexual assault. Students need to know that drugs and alcohol are often factors in cases of sexual assault and that the perpetrator can be a stranger or someone the student knows. Specific strategies students should be encouraged to follow to reduce the risk of sexual assault include:

- Avoid overindulging in alcohol and becoming impaired.
- Keep your eyes on your drinks while at parties, clubs, bars, or pubs to ensure that substances are not slipped into them.
- Use a buddy system to the extent practicable when out at night.
- Avoid leaving restaurants, bars, or nightclubs with strangers and do not get into vehicles with people you do not know.

Managing the Risks of Short-Term Programs

- Don't be too quick to trust people you have just met or don't know well.
- Know the local culture as well as areas and behaviors to avoid in order to reduce the likelihood of becoming a victim.
- Know the institution's policies on sexual harassment and sexual assault.
- Immediately report any problems to program faculty or staff leaders or a designated campus contact.

If a sexual assault is reported, program faculty or staff should immediately report the assault to the appropriate office on the home campus. This gives campus administrators, including legal counsel, the opportunity to guide program leaders through the on-site response to the report. Additionally, program leaders should assist the victim in seeking immediate medical attention (before changing clothes, bathing, or showering) and reporting the matter to the local authorities. Faculty and staff leaders will also need to inform other students participating in the program about the following:

- That an assault has been reported, although the victim's name and other personally identifiable information should not be mentioned
- The location where the alleged assault occurred, along with a general description of the circumstances so that other students may take appropriate precautions (for example, "A student was sexually assaulted in a taxicab on her way to the airport last night at approximately 3 a.m.")
- The steps, if any, students, faculty, and staff affiliated with the program should take in order to reasonably protect themselves from similar incidents

Prompt notification to all participants in the short-term program is especially important in protecting others if the incident occurred at or near the program's facilities or in areas known to be frequented by program participants. The assault may require the institution to take certain actions in compliance with the Clery Act, such as issuing a timely warning. The institution's legal counsel, in consultation with the public safety department, is best situated to determine what steps, if any, must be taken in order to remain compliant with the law.

Personal Injury and Accidental Death

Each year, some American students abroad suffer serious and sometimes fatal injuries from participating in programs, field trips, sporting or other activities, independent travel, or even horseplay. Sometimes alcohol is involved. Although it will never be possible to prevent all serious accidents or injuries, institutions can help reduce risk in a number of ways, including by:

- Limiting sponsored field trips and activities to those that are required for the success and integrity of the academic program.
- Relegating inherently dangerous or risky activities such as cliff climbing, swimming in or crossing dangerous waters, or bungee jumping to independent activities that are only available to students who choose to participate in them during their free time. To avoid being considered the sponsor of such activities, program staff and faculty should not:
 - Promote those field trips or activities
 - Include them in marketing materials for the program
 - Collect money for them
 - Pay for any part of the activities
 - Make arrangements for the activities with transportation companies or other vendors
 - Allow faculty or staff to accompany students on them
- Ensuring that marketing and other program materials state which events and activities are (and are not) part of the sponsored program and clarifying when the official program (and individual field trips or activities) begin and end.

Discrimination and Harassment

Incidents of unlawful discrimination and harassment occur abroad, just as they do on the home campus. These types of allegations may include claims of racial, sexual, or religious harassment as well as claims of unlawful discrimination on the basis of national origin, sexual orientation, disability, race, gender, religion, and other grounds. A student recently alleged in a disability discrimination claim that she was unable to gain access to certain field trip sites, facilities, and activities that other students on the program used. In another lawsuit female students alleged that male students directed inappropriate sexual comments and behaviors toward them.

Several federal court decisions suggest that many U.S. anti-discrimination laws apply to American students attending U.S.-sponsored study abroad programs.

Program faculty leaders must take complaints of discrimination or harassment seriously by reporting them immediately to the home campus, which should help make sure they are investigated promptly and handled in accordance with the institution's written policies and procedures. Swift and appropriate action is necessary to help protect the rights and welfare of the complainant, the alleged harasser, and others involved. Retaliation in the wake of complaints cannot and must not be tolerated (as it, too, is unlawful), and both the complainant and the alleged perpetrator should be informed of their rights and responsibilities right away.

At the beginning of each program, the sponsoring institution should inform students, faculty, and staff members about the institution's harassment and discrimination policies and identify the people to whom any complaints should be immediately reported. Institutions should plan for the possibility that the institution's only on-site faculty or staff member might be the alleged perpetrator by building redundancy into its policies and procedures. Participants should be given the name and contact information for a person on the home campus to whom complaints involving faculty or staff are to be reported.

Before problems arise, institutions should carefully examine their sexual assault and harassment policies and procedures with their legal counsel to make sure they realistically can be applied overseas. If not, institutions can amend existing policies with respect to international programs or consider adopting a separate policy altogether for international programs.

Motor Vehicle Accidents

Motor vehicle and pedestrian accidents abroad are another leading cause of injuries and legal claims involving international programs. The causes are typically poor roads or unfamiliar vehicles, streets, and rules of the road. Each of these risks can make getting behind the wheel in a foreign country more dangerous, especially for less-experienced drivers. Even when motor coaches are used and professional drivers are hired, there still can be accidents.



Applicability of Discrimination Laws

Six female students from Eastern Michigan University (EMU) brought a federal court claim under Title IX, alleging gender discrimination in the form of sexual harassment against the university. The women maintained that they were forced to leave EMU's five-week South African summer study abroad program early because they were subjected to repeated incidents of harassment by three male EMU students. Two of the alleged harassers were participating in the program, and another student was the designated assistant to the on-site faculty advisor. The case turned on whether Title IX has extraterritorial application outside of the United States and whether the court had subject matter jurisdiction over the female students' claims.

The court found in favor of the women, holding that barring jurisdiction in a U.S. federal court over a Title IX claim arising out of an international study abroad program would be tantamount to limiting a woman's opportunity to participate in such programs. Further, it found that such a result would allow conduct that would be unlawful in the United States to occur abroad. The court recognized that "Study abroad programs are an integral part of college education today," holding that "a denial of equal opportunity in those programs has ramifications on students' education as a whole and detracts from their overall education."

King et al. v. Eastern Michigan University, 221 F.Supp.2d 783 (E.D. Mich. 2002). However, see *Philips v. St. George's University*, 2007 WL 3407728 (E.D.N.Y. 2007), in which the court concluded that "U.S. anti-discrimination law cannot be applied extraterritorially in cases where the complainant student was directly enrolled in a foreign university and allegedly harassed by an employee of that university."

Managing the Risks of Short-Term Programs

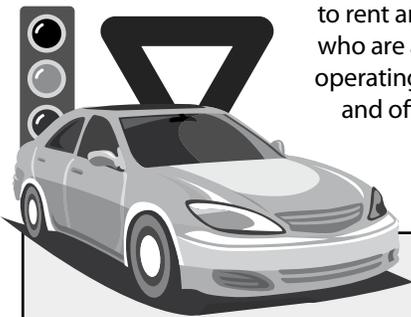
While motor vehicle accidents will never be entirely preventable, there are steps program providers can take to help manage and reduce the risk. First, it is a good idea to maintain a list of approved charter bus and transportation companies for field trips, excursions, and other events and activities funded or sponsored by the short-term study abroad program. Institutions that have multiple programs going to the same countries may want to consider requiring that approved charter bus companies and other transportation providers supply certificates of insurance annually, naming the institution as an additional insured on the provider's automobile liability insurance policy to the extent practicable or permitted under local law and practice.

Second, program sponsors should determine whether to restrict driving by student program participants. Some institutions adopt policies prohibiting their students from operating all motor vehicles while abroad. Others permit students to rent and drive cars but prohibit students who are abroad from renting, buying, or operating motorcycles, mopeds, scooters, and off-road vehicles.

Third, to help reduce the likelihood of claims and potential legal liability, it is advisable whenever practicable to use safe and effective public transportation and hire experienced, well-insured, and reputable charter or transportation companies rather than to depend on vehicles owned or rented by the sponsoring institution or driven by its employees and agents. If students are permitted to drive abroad, they generally should not be allowed to operate vehicles owned or rented by the institution. In addition, it is risky to allow students to drive other students. Whoever is driving should know and adhere to the local rules of the road and any recommendations contained in applicable U.S. State Department consular information regarding the operation of motor vehicles. If the institution has vehicle usage policies for students, faculty, or staff on the home campus, at a minimum those policies should be followed in the study abroad settings, adapted to them, or at least revised to clarify whether they apply in connection with international programs.

In the less likely situation in which the institution owns or operates the vehicles in a short-term program, those vehicles should be adequately insured for operation in the program venue. If faculty or staff members are permitted to drive students during the program, then the institution should do the following prior to the program's departure:

- Check faculty or staff members' driving or motor vehicle records
- Ensure that required and appropriate automobile insurance is in place and that the coverage provided is effective in all countries of travel
- Confirm that the faculty or staff member who will be driving is licensed to drive in the venue and has the proper insurance coverage in effect



News reports on bus crash in India

In 1996 a bus crash in India claimed the lives of four American college students participating in the Semester at Sea program, which was then associated with the University of Pittsburgh. The accident occurred at night during a six-hour chartered bus trip to the Taj Mahal. According to police reports, the driver lost control of the bus during an attempt to pass another vehicle and veered off the road into a gorge. Parents of the deceased students sued the university and program operators, alleging negligence in planning the side trip at night, failing to consider the poor condition of the road, and selecting an unknown bus operator. Parties to the lawsuits resolved the claims before trial.

"Bus Crash Kills U.S. Students in India," CNN News (March 28, 1996).

"India Crash Wake Up Call for Schools and Parents," *USA Today* (Sept. 12, 1997).

After the Program

Upon the return of short-term study abroad program participants, a thorough assessment of the program should occur through the use of one or more of the following: surveys, evaluations, or reports.

Student Surveys and Evaluations

Surveys, in writing or in person, offer the sponsoring institution and program faculty the opportunity to learn about key aspects of the program, including the efficacy of the pre-departure and on-site orientations; students' preparedness for safety, security, health care, and other risk-related issues; and their overall program experiences, both good and bad.

Surveys or evaluations with open-ended questions allow students to share their experiences and identify possible areas for improvement. For example, institutions could ask participants whether they or any other students participating in the program were injured or were a victim of crime, harassment, or other wrongful conduct while abroad. If students answer positively, institutions should try to obtain as much detail as possible. This information can be useful to institutions in improving their programs for future students, by helping to protect them from reasonably foreseeable harm. Similarly, asking students whether any university-sponsored or university-funded field trips or activities caused them safety, security, health, or risk concerns can be very helpful. Finally, asking students whether program faculty or staff conducted fire or crisis management drills or discussed with them the details of the program's local emergency action or crisis management plan during or after the on-site orientation is a good idea. If they did not, then corrections can be made for future programs.

Some institutions also use post-program surveys to ask students to rate the quality of vendors providing services to the program, such as charter bus companies, health and other insurers, academic partner institutions, and housing providers, and to ask them to identify any defects or problems encountered in residential or academic facilities in connection with the program. Collecting, carefully reviewing, and following up, as needed and appropriate, on student survey responses can help institutions improve short-term study abroad programs for future participants, identify future training topics, and expose potential safety, security, health, and risk issues connected with particular program sites.

Faculty and Staff Reports

Similarly, sponsoring institutions can ask faculty to complete a survey or prepare a report about their experience. These surveys and reports can include questions about such matters as:

- The pre-departure faculty orientation and training
- Faculty's preparation, especially in terms of safety, security, health care, and risk-related issues, and their experiences in these areas, both good and bad
- Contractors' services, especially their professionalism and attentiveness to student safety
- Problems and issues encountered
- Important facts about the location that should be recorded and referred to when planning future programs

The relevant campus administrator who oversees short-term programs should review the post-program reports. The reports can lead to improved oversight of programs to help ensure a safer academic experience for all participants.

Conclusion

Short-term international programs are increasingly popular among college students today. At the same time, many aspects of short-term programs create unique risks for faculty and staff who lead them and students who participate in them. Managing the many and varied risks associated with short-term international programs before, during, and after the program can help significantly reduce the likelihood of serious accidents or injuries abroad.

Resources

(Online documents were retrieved on Aug. 28, 2008.)

Higher Education Resources

Auburn University

Auburn Abroad: Setting Up Your Program (Faculty Information)

www.auburn.edu/academic/international/oie/auburnabroad/setting_program.htm

Center for Global Education at Loyola Marymount University

- www.globaled.us

- *Crisis Management Handbook* www.globaled.us/peacecorps/crisis_h.html

- Emergency Planning www.studentsabroad.com/planning.html

Emory University Center for International Programs Abroad

Study Abroad Health Information Form www.cipa.emory.edu/pdf/Health_Form.pdf

Michigan State University

- Study Abroad: Faculty and Staff Information

<http://studyabroad.msu.edu/people/faculty.html>

- Study Abroad: Student Information

<http://studyabroad.msu.edu/people/students.html>

San Diego State University

Guide to Developing a Personal Emergency Action Plan for Study Abroad Participants

www.sa.sdsu.edu/isc/study_abroad/PersonalEAP.pdf

Texas A&M University

Pre-Departure Faculty Handbook for Study Abroad

<http://studyabroad.tamu.edu/apps/maroon.doc>

University of Chicago

Safety Tips for Students Studying Abroad <http://study-abroad.uchicago.edu/safety.html>

University of Notre Dame

Mental Health and Crisis Management: Assisting University of Notre Dame

Study Abroad Students

http://ucc.nd.edu/assets/2288/international_eds_hdbk_2004.pdf

University of Richmond, School of Continuing Studies

Faculty Handbook for Off-Campus Programs

<http://summer.richmond.edu/document/abroad/facultyhandbook.pdf>

Other Resources

The Council on Standards for International Educational Travel

www.csiet.org/mc/page.do

NAFSA: Association of International Educators www.nafsa.org

U.S. Department of State <http://travel.state.gov>

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Legal & Risk Management Issues Involving **Student Foreign Travel**

TRAVEL ROAD MAP:
UNDERSTANDING INSTITUTIONAL
RESPONSIBILITIES AND PROGRAMS
—PAGES 4 & 6

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The information in this monograph is intended to help administrators at educational institutions understand and manage the risks associated with student foreign travel programs. Neither the monograph nor any recommendation herein is a substitute for legal advice. Every circumstance, international program, and institution is different. Each institution must, therefore, consult its own legal counsel for advice on particular issues and determine for itself what steps are appropriate for its international programs. This monograph does not create a standard of care for independent schools, colleges, and universities. Thus, the failure of any educational institution to adopt or follow any recommendation contained in this monograph should not be construed as evidence of negligence or wrongdoing of any kind. All of the recommendations contained herein are merely aspirational, not required. They are illustrative and will certainly not apply in all circumstances.

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THE ISSUE

Foreign study is an important part of the educational experience. The opportunity for students to experience other cultures and languages helps them become citizens of the world. However, travel and study abroad create added risks for students and faculty—and the institutions that support them. That doesn't mean we should abandon study-abroad programs. Rather, by planning and preparing for the inherent risks, institutions can improve the value of foreign travel programs.

Effective risk management for foreign study requires a team effort involving individuals and functions from throughout the campus community. This monograph and a companion United EducatorsSM publication entitled *Audit Guide: Risk Assessment for Student Foreign Travel Programs* provide a road map for bringing together the expertise of all who can help ensure the safety and well-being of students, faculty, and staff who travel abroad. Foreign study coordinators, faculty, risk managers, legal counsel, human resources staff, and students all have important parts to play.

Whether your institution offers spring break trips, sponsors year-long research projects, or supports a branch campus overseas, I urge you to read and share these publications with your colleagues. Here's to a safe and successful journey.

—*Janice M. Abraham, President and CEO*

INTRODUCTION

For students seeking to broaden their educational perspectives, few learning opportunities are as exciting and worthwhile as the chance to travel abroad. Foreign travel lets students experience new cultures, walk where history was made, see firsthand humankind's greatest art, compete in sports against world-class opponents, and perform before international audiences.

But student foreign travel carries risks as well as rewards. Several recent headlines paint a dark picture of the problems institutions may face when students, faculty, and staff travel abroad:

- A university urgently recalls students from an institution-sponsored program in the Middle East after terrorist threats target Americans.
- A group of university students traveling in south Asia are detained for protesting the local government's crackdown on pro-democracy protesters. Despite efforts to free them by officials from the U.S. consulate and their university (which had no role in planning or sponsoring the trip), the students are jailed for several days, before eventually being deported.
- An American student in a Japanese study-abroad program sponsored by her college is sexually assaulted by the father of the host family with whom she is staying.
- In Latin America, 12 university students,

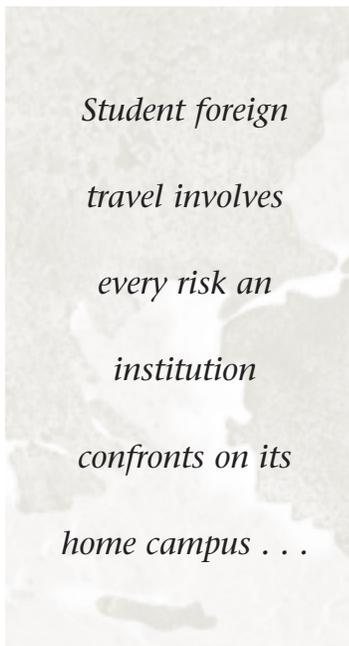
a professor, and the professor's wife on a university-sponsored language program are ambushed by bandits who rob them of their money and passports. As the robbers leave, they fire their guns indiscriminately, fatally wounding the professor's wife.

Incidents such as these not only affect the students, faculty, and staff directly

involved. They also affect their families, their institutions, and the institutions' administrators. Those administrators wonder if they could have prevented the mishaps. They wonder if claims will result, and whether and to what extent the institution will be held liable for damages. They may even question whether they should ever consider sending students overseas again.

Student foreign travel involves every risk an institution confronts on its home campus, plus an array of risks unique to international programs. That does not mean

that schools,* colleges, and universities should abandon educationally valuable travel programs. It does mean that officials should thoroughly evaluate international activities and proactively manage the risks that are inherent in such activities. That is especially important now, with overseas study and charitable programs on the rise¹ and increasing numbers of students traveling to nations that were once considered far too dangerous for them.² While most institutions understand the importance of



*The term "school" is used throughout this monograph to refer to higher education institutions as well as independent schools.

INTRODUCTION

conducting such an evaluation, do they truly understand the consequences and ramifications for not doing so?

A serious incident (e.g. the detention, serious injury,³ or death of a student abroad) can be devastating for a school community. Staff, students, and parents may grow concerned about overall safety and start to question the institution's ability to provide a safe learning environment. Media scrutiny may tarnish the institution's reputation. If litigation results,⁴ investigations, depositions, and court proceedings will detract from coursework and general operations. Staff time will be diverted — for producing documents, attending depositions or court sessions, and cooperating with the institution's attorneys. The costs to the institution, not to mention attorneys' fees and damages, will be tremendous.

Consider this monograph your travel guide as you evaluate your institution's student foreign travel exposures and work to strengthen your risk management program. This evaluation process cannot be done overnight; it is a continual journey. Each year, scrutinize the management of a few campus programs, planning to regularly cycle each program through the evaluation process. Solicit input and ideas from various departments on campus and people involved with the foreign programs. Consider possible risk management strategies in light of

the institution's philosophy and resources, and implement appropriate strategies to improve each program's activities.

This monograph will show you the lay of the land. First, it describes the external environment — the legal climate in which your foreign programs operate — and the internal environment — the internal campus structure of your programs.

Next, you will read about seven recommended stops on the journey toward foreign travel risk management:

- careful participant selection
- effective communication
- established expectations
- clear safety policies and procedures
- realistic crisis management planning
- adequate insurance coverage
- appropriate documentation procedures.

By stopping to assess each of these seven areas, your school can enhance the thorough-

ness of its evaluation of each foreign travel program and avoid or minimize its program risks.⁵

A companion publication, *Audit Guide: Risk Assessment for Student Foreign Travel Programs*, offers a practical discussion of how to systematically identify and manage specific risks. It provides you with the tools necessary to start your journey.



To appropriately manage risk, start by examining the external environment in which your institution operates. Evaluate your responsibilities under the law and protect against inadvertently assuming liability that the school would not otherwise have.

THE THEORY OF NEGLIGENCE

Most of the litigation in the foreign travel area involves “negligence.”

Negligent conduct is the careless performance of a legal duty that causes harm to another. It is the failure to act reasonably under circumstances when you have a duty to do so.

Institutions and program staff can be held liable for negligent conduct.

Under U.S. law, liability can be created in several ways. First, someone may be found to be

to ensure that the person was well suited for his or her job). Second, a school can be held accountable for those persons acting on its behalf — regardless of whether these “agents” are paid or volunteer. Under the

owned and operated by other entities. In this situation, the school has no formal relationship or agreement with the entity that plans and operates the trip, but its involvement may go beyond merely posting flyers

on a bulletin board. The school’s role might be limited to providing a directory of travel opportunities, making facilities available so external programs can communicate

TRAVEL ROAD MAP: Understanding Institutional Responsibilities

doctrine of respondeat superior, the institution (the “master”) is held vicariously liable for staff (its “servants” or “agents”) acting on its behalf within the scope of their duties. The international nature of foreign travel programs does not alter the basic liability rules of the United States.

In the context of international programs, the existence of a legal duty depends upon the institution’s relationship to the program. Generally, as the degree of ownership, sponsorship, or control over a particular international program by the institution increases, the institution’s potential liability exposure also increases, in the absence of a contractual provision to the contrary.

Most institutions tend to structure their relationships to their international programs in three distinct ways, and the risk management strategies vary by the type of program. These types are:

- **Permissive.** In permissive programs, the school is merely an intermediary between its students and travel programs

directly with students, and helping students apply for programs. For international study-abroad programs, the school often gives participants academic credit and makes financial aid available to them.

Typically, institutions whose students participate in permissive programs do not bear direct or vicarious liability for planning a trip or operating it.

- **Collaborative endeavor.** In these programs, international program offerings result from a cooperative arrangement or a contractual agreement (written or verbal) between the campus and another organization, such as a higher education consortium, a foreign university, a tour operator, or a global nonprofit organization. Typically, the school recognizes the trip as an approved campus activity and promotes the international program directly or indirectly. While the school is not responsible for the structure, content, or staffing of the overseas program because it has delegated these responsibilities to the other entity, it does select its collaborator

HEIGHTENED STANDARD FOR MINORS

When young people under the age of 18 participate in international programs, schools have a heightened level of responsibility. Under the doctrine of in loco parentis, the school stands in place of the parent and is charged with the parent’s rights, duties, and responsibilities. Courts have rejected this heightened level of responsibility for adult students.⁶

“negligent” if a reasonable person would not have acted the same way under similar circumstances. An injured party can then sue the person responsible for the injury as well as the institution responsible for selecting and supervising the person (possibly arguing that the school did not adopt screening procedures or other policies

and may be responsible for the collaborator's ability to perform these tasks. Also, the school is likely to distribute promotional material, advise interested students, and help with registration for the collaborative endeavor.

■ **Extension of U.S. campus operations.** Here, the home campus sponsors the trip and operates programs abroad as an extension of its home campus offerings. It employs the academic and administrative staff, selects and operates the facilities, plans the itinerary, and controls program activities. Though specific tasks may be delegated to a contractor or outside service (such as hiring a local bus company for transport to an activity), the school maintains ultimate control over the program and its activities.

Some institutions lease or actually own the overseas facilities in which their international programs take place. Typically, these are permanent programs where the school also plans and operates the academic activities and employs the faculty and staff who operate the program and facilities. The school is also responsible for the maintenance and security of the premises. In those cases, the institution is exposed to both direct and vicarious liability.

Institution-owned or leased overseas premises must be reasonably safe and secure. The school must regularly inspect and maintain the facilities, and establish procedures for requesting both emergency and routine repairs. If a hazard cannot be adequately corrected, the school must warn of any reasonably

foreseeable dangers or abnormally dangerous conditions. The institution may be liable if a program participant or a visitor to the facilities is injured due to unsafe or poorly maintained premises.

When institutions operate international programs as extensions of U.S. campus operations, they must use special care to comply with applicable foreign statutes, regulations, court rulings, ordinances, foreign building and fire-safety codes, and other legal requirements in the foreign venue.

Given such significant involvement, there is greater liability exposure for the institution. The school might be directly or vicariously liable (or both) for planning and operating the trip.

OTHER TYPES OF LIABILITY CLAIMS

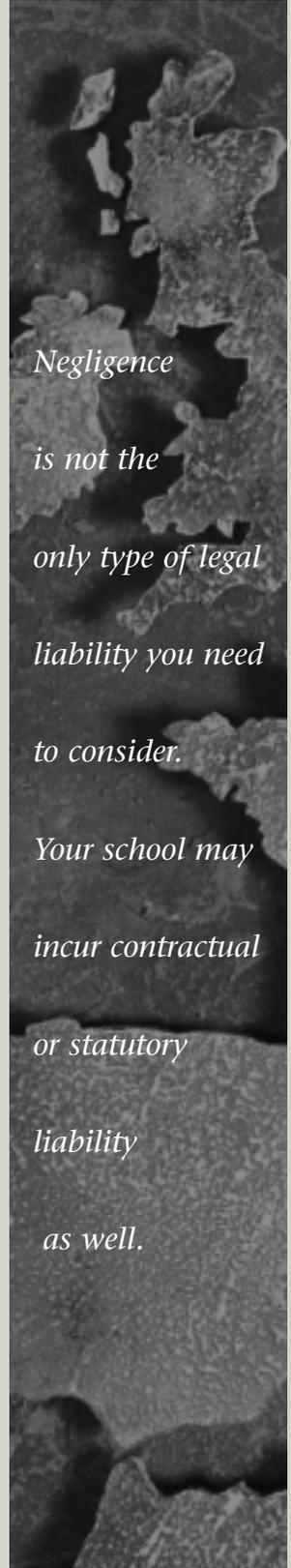
Negligence is not the only type of legal liability you need to consider. Your school may incur contractual or statutory liability as well. For instance, Title VII of the Civil Rights Act of 1964 appears to apply to overseas faculty or staff⁷ and the Drug Free Schools and Communities Act specifically extends to campus-sponsored events overseas⁸. To comply with the law, institutions must prevent sexual discrimination and harassment, use of illegal drugs, and the misuse of alcohol in the foreign venue. Institutions should consult with legal counsel to determine whether other statutory requirements apply to their activities overseas, including OSHA safety regulations, ERISA benefit protections, FERPA pri-

vacy shields and various civil rights laws such as Title IX, the Americans with Disabilities Act, and the Age Discrimination Act. Even if your school determines that it is not legally required to comply with some of these laws overseas, consider whether your institution desires to comply voluntarily anyway.

Contractual liability is also an issue. Schools may be held accountable for any promises, warranties, or representations made while promoting or operating a program or advising students. For example, if a trip itinerary changes from the one advertised in a program flyer, there may be potential liability. If an advisor states that the streets are safe for evening strolls, a student may sue if she is attacked. In essence, the school may be held contractually liable for promises not kept.

Hiring or collaborating with other entities such as other nonprofits or tour operators can also result in breach-of-contract claims. Such claims are likely to involve the interpretation of a written contract or verbal agreement, rather than a marketing brochure, and can be prevented by carefully negotiating and drafting all contracts. To avoid problems, use written agreements and have legal counsel prepare or review each contract so that it accurately defines the responsibilities of the parties and their relationship.

Understanding the legal environment can help you focus on key requirements while evaluating and improving your program activities.



Negligence is not the only type of legal liability you need to consider. Your school may incur contractual or statutory liability as well.

Do you know where your students are going and for how long? Are overseas activities and risk management strategies consistent with the type of program, such as permissive, collaborative, or extensions of U.S. campus operations? Does your school's structure and governance ensure efficient administration and safe travel? Does the program administration

minimize the institution's potential liability exposure?

A single institution might structure its various international programs in very different ways, owning or operating some programs itself, entering cooperative or contractual arrangements in others, and merely permitting students to participate in still other programs. It is difficult to manage such a variety of programs without a coordinated plan.

A TEAM RESPONSE FOR STUDENT TRAVEL ISSUES

Student safety abroad is a team effort involving program faculty, staff from various campus departments, and outside service providers. Centralized coordination of this team facilitates communication between academic advisors, parents, legal counsel, student affairs staff, finance officers, housing staff, the institution's insurance agent, and other interested parties. With central coordination, an institution can schedule reg-

ular meetings to share information, address new concerns, develop risk management strategies, discuss lessons learned from particular incidents, and debate possible solutions to problems that arise.

TRAVEL ROAD MAP: Understanding Your Institutional Programs

Regular meetings also provide a forum for insurers, tour operators, and other vendors to make presentations to staff who are involved in international programming.

Centralized coordination makes it easier to identify and monitor international programs, standardize basic forms and procedures, and administer a central repository of information for all programs, regardless of which department or faculty member sponsors the trip. It ensures a level of consistency between all the school's programs. In a single place, students, faculty, and staff can obtain basic travel information (such as program descriptions and useful Internet sites), travel documents (including waivers and health insurance forms), and checklists of administrative requirements for each program offering. Centralization also makes it much easier to access documents and records from past trips.

The form this centralization takes will depend upon the

types of programs offered. For instance, a school with only permissive programs may establish a central committee to evaluate program offerings and organize quarterly meetings for

faculty and staff who advise students interested in participating. Another school with a mix of permissive programs and programs that are extensions of U.S. campus activi-

ties may find it helpful to develop basic program sponsorship criteria, travel policies and procedures, and minimal insurance requirements for all programs. Thus, a centralized team effort can be accomplished with various levels of formality.

Institutions may choose to consider adopting a formal approval or registration process. Work on such a process begins before a trip is offered to students. A faculty or staff member describes the program and its activities, develops basic safety policies and procedures, and either demonstrates compliance with set criteria or seeks approval prior to the trip. The institution can condition funding or faculty and staff indemnification on compliance with such an approach. Thus, the power of the purse (both as a carrot and as a stick) secures cooperation. Any established criteria will probably be created or modified by consensus.

Another option is creation

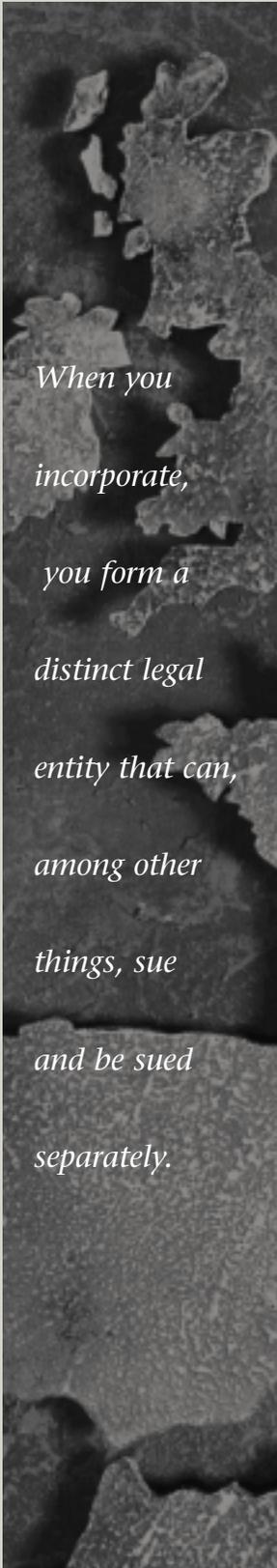
of a separate corporation to administer program activities. This approach is most appropriate for programs with the greatest liability — extensions of U.S. campus operations and institutionally owned or leased facilities. When you incorporate, you form a distinct legal entity that can, among other things, sue and be sued separately. This transfers risk directly to the newly incorporated entity and

may help shield the home campus from liability and litigation.

If the incorporation option is selected, it is essential to respect the separate identity of the new corporation — with a separate board of directors, bank accounts, policies and procedures, letterhead, and so forth. Any contacts and transactions between the new corporation and the school should be at arm's length. Any services pro-

vided to each other should be governed by written contracts. The new entity must comply with applicable foreign laws as well.

Each school must adopt a structure that furthers the interests of its own unique programs and staff. Once the school maps out the administrative aspects of program management, it can turn its attention and focus its energies on the substance of the trip.



When you incorporate, you form a distinct legal entity that can, among other things, sue and be sued separately.

RECOMMENDED SIGHTS:

Proactively Managing Risks

This seven-stop tour of the foreign travel risk management landscape is designed to help you identify the best ways to limit institutional liability.



Every program must consider selection criteria for its participants — faculty, staff, and students. The appropriate length of time to spend at this stop depends upon the type of program. Let's look at each type of foreign travel program in turn.

- In a permissive program** (where the institution is merely an intermediary between its students and travel programs sponsored and operated by other entities), the school generally does not directly select the program participants. It can, however, influence the quality of the program by scrutinizing the program management in this area. For each program, ask such questions as: Are the supervising faculty or staff members familiar with the culture and hazards of the country? Are screening protocols in place to ensure that they have the necessary skills and experience? Are students adequately screened to ensure that they have the necessary maturity and skills for the trip? Do screening protocols exist for retained service providers, host

families, and vendors such as tour guides or bus companies? Are written contracts required with these providers?

If your institution finds that a program has inadequate screening procedures, ask the program not to solicit your students. Also ask that the program remove its literature from your campus. The school should not be tempted to take on screening responsibilities. Doing so might create liability that the school would not otherwise have.

To protect the institution, document your school's lack of control over the selection of faculty, staff, and students. Keep your school's name off any travel brochures, itineraries, or tickets. Send letters to the sponsoring entity and supervising faculty that confirm the sponsoring entity's obligation to perform this task. Keep this correspondence on file for at least five years.

- Collaborative endeavors** (involving a cooperative arrangement or contractual agreement), warrant taking all of the above steps and more because the school may incur liability for selecting a tour operator or service provider that

is incompetent for the task. Consider such questions as: How many years have the supervising faculty or staff members offered tours and operated programs in the specific country? Are the screening protocols adequate to ensure that they have the necessary skills and experience for the position? Does the program have adequate written safety policies and procedures (including a crisis-management plan) to protect students? Does the collaborator carry adequate insurance coverage? (Note that the actual amount available may depend on the country involved.) Are the collaborator's screening protocols adequate to ensure that independent vendors and service providers have the necessary skills and experience for the job?

Document your screening of the collaborative partner and the decision to collaborate. Keep reference-check notes, records of contacts, and negotiation correspondence. Use disclaimers to remind students that the tour operator or collaborative partner controls trip activities. Ask the collaborative entity to include your school's name on any waivers or releases. Also ask the

collaborating entity to indemnify the institution in the event of an accident, injury, death, or lawsuit. If the collaborator does not use waivers, make sure it has adequately informed participants of the risks, and obtain your own signed waiver or release form for each participant.

■ **Programs that extend U.S. campus operations** require much more diligence in selecting program participants. First, the school must decide whether its own faculty and staff from the United States will travel to the foreign country, or whether it will hire local citizens from the foreign country. The school should clearly define its relationship with any foreign employees and ask legal counsel to review those relationships, and any resulting employment contracts, to determine the institution's rights and obligations under both U.S. and foreign law. In some countries, even employees with no formal employment contract are entitled to benefits upon termination that would not be available in most American jurisdictions. Also, the tax consequences of operating the program and employing foreign nationals should be examined by the institution's tax advisers and domestic and foreign legal counsel.

As in the United States, candidate screening should rely on written position descriptions that concentrate on the necessary skills and experience for the position. This is especially important for faculty because more than academic credentials matter overseas. Faculty mem-

bers serving abroad often need to be counselors, administrators, and safety officers as well as accomplished academics. Position descriptions can clarify institutional expectations, define when a person is acting on the institution's behalf, and outline the type of conduct that is within the scope of the person's duties. This minimizes confusion and the likelihood of

typically administering the foreign program on site. The emphasis must be on "reasonable" and "realistic." These policies pronounce what your institution deems to be reasonable under a variety of circumstances. Noncompliance may be construed to mean that your conduct was unreasonable by your own definition (the standard for basic negligence). Establishing policies that can be realistically applied abroad may mean the difference between institutional liability and exoneration in the event of litigation

Some modification of existing policies may be needed. A candidate's physical health may be more important overseas. If so, does the institution need to require a physical examination that staff members on the U. S. campus do not otherwise have to undergo? Is such an examination permissible or advisable under the Americans with Disabilities Act? Will the advisor have greater access to program funds? If so, is a credit check advisable? Can the school replicate overseas the safeguards that regularly keep records confidential on the home campus?

What if an institution's harassment policy requires particular home-campus administrators to take alleged harassment reports and investigate them? In such cases, consider amending the policy to provide for the off-campus venue — taking into account the skeleton staff, reduced level of resources, and the locality's cultural differences. If a U.S. policy — verbatim or modified for the venue — extends to the overseas location, foreign employees should

Student participants should be screened as well. Establish criteria for student qualifications that go beyond academic, musical, or athletic achievement.

vicarious liability for "off-the-clock" social conduct. Generally, any institutional indemnification should be limited to "on-the-clock" activities.

During the faculty and staff selection process, evaluate the institution's U.S. employment policies and procedures to determine whether they can be reasonably and realistically applied or implemented abroad — especially by a skeleton staff

be made aware of their rights and obligations, as well as their responsibility to report alleged harassment back to the home campus.

Institutionally owned and leased foreign facilities involve the greatest investment of time and attention. Your institution should anticipate employing a variety of foreign contractors and professionals, from attorneys to electricians and janitorial staff. Consult with foreign lawyers about the existence of a

be screened as well. Establish criteria for student qualifications that go beyond academic, musical, or athletic achievement. Maturity and cooperation are essential to a successful trip. Require references from faculty and others. Subject candidates to a series of interviews. Ask students to write essays about their objectives for the trip. Consider their student discipline records and whether they have criminal convictions.

Consider circulating a list of

discrimination on the basis disability and perceived disability in all of an institution's programs and activities. Attorneys have disagreed on whether the ADA has extraterritorial application. American courts do not appear to have finally resolved the issue, although the U.S. Department of Education has processed student complaints against U.S. educational institutions for their alleged failure to investigate and respond to civil rights¹⁰ complaints arising overseas. Institutions should consult their own legal counsel concerning this issue. Counsel should also be asked to examine the institution's potential contractual liability arising out of its non-discrimination statement, at least to the extent that it promises not to discriminate on the basis disability in any of its programs or facilities.

Additionally, any questionnaires, forms, or application materials soliciting health information from participants should be reviewed by counsel in advance to ensure that they do not unlawfully screen applicants on the basis of disability or request information deemed inadvisable under the ADA. In appropriate cases, foreign counsel should be consulted about the existence of a foreign equivalent of the ADA in the overseas venue. Finally, senior administrators should determine whether the institution should voluntarily make its international programs ADA-compliant as a matter of policy (whether or not the institution's counsel considers it legally required).

International program administrators, faculty, and staff

foreign equivalent of U.S. law (civil rights, building codes, health and safety requirements) and the institution's compliance with the law. Scrutinize contractor training and qualifications. Check insurance and references. Evaluate the safety programs and accident records of all companies. Obtain and keep copies of work permits, professional or driver's licenses, and other required government documents. Written contracts with specialists such as plumbers and electricians should describe the scope of work and required liability insurance.⁹

Student participants should

participants to the registrar and dean of students, and also to the counseling and health center. Doctor-patient confidentiality rules will prevent medical professionals from notifying program administrators if a participant is not fit for the trip, but they can contact the student directly to discuss the advisability of participating in the program. Once again, be sure to consult with the institution's legal counsel if student health issues arise.

With respect to participants' physical condition and mental health, the Americans with Disabilities Act (ADA) prohibits

WHAT IS THE LEGAL SIGNIFICANCE OF FREE TIME?

Someone is injured during a faculty-led excursion to a gorge for bungee jumping. The outing occurs during a period of time designated as "free time," which was not part of the trip itinerary, nor was it discussed in literature or orientation. Is the school responsible? Is the faculty member entitled to indemnification from the school? Does the school's insurance coverage protect the institution and the faculty member? The answers to many of these questions will depend upon the evidence — which, absent documentation created before the trip, can only be gathered after the fact. Ambiguity is an expensive and uncertain way to go. The better course is to clearly outline the school's obligation to control and monitor "free-time" activities.



should be interviewed regarding how the respond to inquiries and applications from disabled students. They should be instructed to consult counsel before discussing whether or how to reasonably accommodate program participants or applicants with disabilities. They should also be counseled against automatically discouraging or denying participation in international programs on the basis of a person's disability or perceived disability. Foreign employees also should be made aware of the existence of the ADA and of the institution's policies on the subject.

In order to minimize the risk of legal liability, the home campus should immediately be apprised of every complaint of disability discrimination (and other forms of discrimination) occurring abroad. The institution should carefully follow its own policies and procedures in investigating and handling every complaint, even if it arises overseas.

In the final analysis — as a matter of policy and educational mission, as well as legal compliance — students and employees should not be discouraged or prevented from applying for or participating in any aspect of an international program on the basis of their disability, race, gender, age, ethnicity, national origin, religion, or other classification prohibited by law.



STOP TWO: Effective Communication

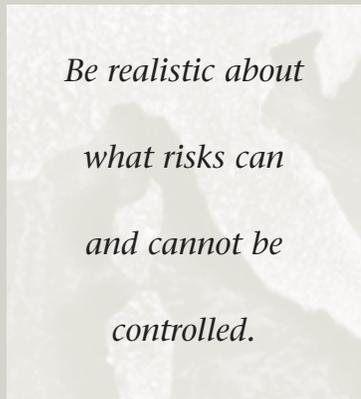
Every foreign travel program at the institution must strive for effective communication, though the length of time at this “stop” depends upon the type of program. The extent of your communication with students — and the detail it includes — will depend upon the program type and philosophy of the school.

■ **In permissive programs**, start a dialog with students, parents, and staff before the trip. Sending promotional, health and safety, and other program materials directly to parents may encourage them to engage their children in discussions about important issues (and encourage students to read and better understand all of the materials). With greater information, parents will be better able to guide students when deciding where to go and which program to join.

Use multiple forms of media to communicate with potential travelers, including brochures, Web information, and verbal instructions. Remind potential travelers and the sponsoring entity of the school's extremely limited control over the program. Disclaim any responsibility for supervising program faculty and staff. Don't express opinions or make recommendations unless you are sure that the information on which it is based is accurate. Be realistic about what risks can and can-

not be controlled; if you do not know, defer to the entity organizing the trip.

When communicating with participants, parents, and others, do not minimize the risks of the trip. Make sure that your communications do not make unrealistic or misleading promises, representations, or statements that could give rise to liability. Encourage students to personally investigate the safety of the country using external resources (such as those listed in the back of this monograph) and consider their own interests before traveling abroad. Suggest that they contract alumni in the foreign country, solicit feedback from returning students, or search



the World Wide Web to assess conditions. Encourage students and parents to create their own communications plans and prepare for unanticipated events.

When advising program participants, do not give legal or medical advice. For example, unless staff members are medical professionals, they should refrain from answering “yes” or “no” when students ask if they need a vaccination. Instead, refer to primary authorities

(such as the U.S. Centers for Disease Control and Prevention) for additional information.

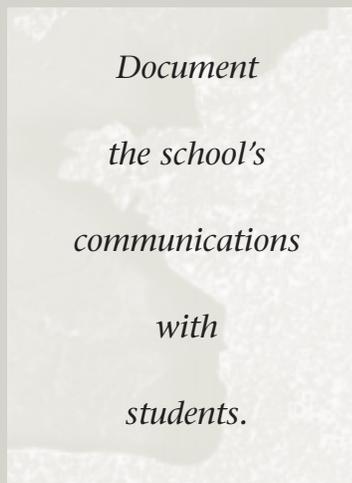
In all cases, document the school's communications with students. When advising students, make contemporaneous notes of your discussions.

■ **In collaborative endeavors**, do all of the above, plus document communication with, and about, your school's collaborative partner. Negotiate agreements with tour operators that specify in writing everything that is expected of each party to the relationship and set forth the legal liability each party is assuming. Discuss each contract provision instead of simply incorporating standard "boilerplate" language. Consult with your institution's legal counsel before signing contracts.

Also, increase the level of communication with the students traveling on the trip. Describe the school's involvement, or lack thereof. Ask participants to sign a statement of responsibility and waiver form demonstrating that they understand and accept the risks associated with the program and venue, assume the risks of participation, and release the school from liability. Retain

information about the content of the school's orientation program, emergency plans and procedures, and dissemination of security information, such as U.S. State Department consular advisories.¹¹

■ **In programs that extend U.S. campus operations**, increase the level of intensity of the communication described



above. Begin faculty and staff preparation for the trip with a special orientation that covers:

- cultural, safety, and other issues
- how faculty and staff roles abroad may differ from roles at home
- the duties of on-site faculty

- members and foreign staff
- crisis management
- travel procedures and processes
- field trip procedures, approval processes and requirements
- responding to and reporting student complaints during the trip, including problems of crime and harassment, changes in medical conditions, and activity or itinerary changes
- codes of behavior for staff and students, addressing such issues as fraternizing, consuming alcohol, controlling activities, and conduct during "free time"
- communicating with the U.S. campus to give progress updates or report injuries or incidents
- basic first-aid procedures.

Each year, consider holding a staff retreat to outline new legal requirements or other developments, conduct training sessions, discuss appropriate responses to various scenarios, and think about improvements to overseas programming. Encourage professional development by approving attendance at conferences and training sessions sponsored by professional societies and trade associations. For inexperienced staff, encourage attendance at multiple training sessions throughout the year.¹²

Conduct a student orientation that includes many of the same issues covered in the staff orientation. Discuss the policies and procedures of the U.S. campus that follow the student abroad and those that don't — including codes of conduct,

STARTING A DIALOGUE—CREATING LIABILITY?

With respect to providing information and warning students about risks, some risk managers and lawyers fear that an institution assumes a legal duty to warn of dangers by disseminating health and safety information. However, many schools believe that the risk of creating a duty is low and that they have a moral obligation to students to communicate this information. To a large extent, the level of your dialog depends on your school's philosophy towards its students. Warnings show genuine interest for their well being. You may want to offer relevant information if you know of risks that the sponsoring entity has not disclosed.

harassment policies, and counseling and support programs. In the orientation, help students learn to safely conduct themselves overseas. Advise participants to keep a low profile and refrain from drawing unwarranted attention to their nationality or wealth. Tell them to avoid crowds, protest groups, and potentially volatile situations. Remind them to lock doors and windows, and avoid divulging personal or program information to strangers.

Advocate a buddy system. Impose neighborhood and territory restrictions if necessary. Warn students not to impair their judgment by abusing alcohol or using illegal drugs.

Reinforce the orientation topics. Give students reminders and notices before departure. Conduct another orientation when students arrive overseas. Students may focus more on this material when faced with real-life experience, and it is easier to retain information the second time around.

The U.S. campus should keep in touch once students arrive overseas. Depending upon the resources in the country, ask the supervising faculty or staff member to check in periodically via phone, e-mail, or fax. Ask the trip coordinator to assess the local conditions, level of student cooperation, and provide any actual or anticipated changes to the itinerary or emergency contact information.

Require immediate reports of any emergency. Staff may be tempted to handle some situations alone, because they don't want people to think they are not in control of the trip or

wasteful with money on minor problems. Your policy should require a report in emergency cases and give faculty and staff members explicit permission to spend money when appropriate and coordinate with U.S. campus staff. Such reports would be warranted, for example, when:

- an incident occurs involving death or serious injury
- faculty or staff want to terminate the trip early due to civil

- an official notice (subpoena, warrant) from the local jurisdiction is received
- the program receives notice that litigation has been threatened or filed
- an incident occurs that might trigger insurance coverage
- the coordinator receives an inquiry from the local press.

■ **In programs where the institution owns or leases the foreign facilities**, follow all of the communications guidelines offered above. In addition, adopt programs designed to prevent sexual assault and to report crime statistics as required by the Campus Security Act. Address the facility's security measures and fire safety equipment. Use orientation sessions to make participants aware of the risks of the trip and precautionary steps to protect their own safety.

Finally, make communication a two-way street. Solicit communication from returning participants and conduct a post-trip evaluation. Did the participant feel well prepared for the trip? Were program activities and events well planned and managed? Did the trip meet participants' expectations? If not, why not? Does the participant have any suggestions to improve the quality or the safety of the trip?

Staff may be tempted to handle some situations alone, because they don't want people to think they are not in control.

- unrest, terrorism, or hazardous conditions
- there is a need to tap emergency funds
- a disciplinary matter may result in sending a participant back to the United States
- an allegation of racial, sexual, or discriminatory harassment of any kind is made
- there is suspicion of theft or embezzlement
- activities will exceed the program budget by 5 percent or more





STOP THREE:
Establishing Expectations

Every program needs to establish appropriate expectations — for students, parents, faculty, staff, host families, and local contractors and employees. To a large extent, these expectations will depend on the nature of the relationship between the school and the overseas program.

- **In permissive and collaborative programs**, determine whether students are bound by all or part of the campus code of conduct while overseas. Can they be subject to discipline for activities occurring during a program sponsored by another entity? If not, make sure that the sponsoring entity's code of conduct is acceptable to the home campus and appropriately enforced overseas. Make sure the sponsoring organization has appropriate employment policies for faculty and staff. For collaborative endeavors, go further and evaluate the adequacy of the policy terms. Also, make sure that the sponsoring entity has made provisions to prevent and police the use of illegal drugs and the misuse of alcohol.

- **In extensions of U.S. campus programs**, consider whether existing student codes of conduct and employment policies are appropriate for the particular country and the length of the trip. Consider any differences in the school's expectations between supervised and "free" time, and outline the scope and availability of indem-

nification of students and staff during the trip.

Examine disciplinary and financial policies and procedures to determine if they can be realistically and reasonably applied and implemented overseas. For example, can the institution practically comply with its disciplinary hearing requirements several thousand miles from the home campus? Are students abroad being treated or disciplined differently than those on the home campus under the institution's policies

Carefully select and train the person who will investigate violations of codes of conduct and employment policies.

and procedures? Is the home campus kept apprised of disciplinary problems abroad? Policies or procedures that do not satisfy these tests may need to be modified or replaced with written policies specially tailored for overseas venues.

Carefully select and train the person who will investigate violations of codes of conduct and employment policies. He or she

should be fair and impartial. Be sure to develop a contingency plan in case the investigator is involved in the incident in question or is unavailable. Pick someone who can resolve matters promptly, efficiently, and respectfully. Limit intrusions into people's privacy; limit discussions about the matter to those who need to know and do not needlessly repeat allegations. Take steps to secure records, notes or other confidential information used or generated during the investigatory and disciplinary process.

- **In institutionally owned or leased facilities**, enact all the measures mentioned above. In addition, describe your expectations for retained experts — quality and safety of performance, adherence to schedule, reporting, and communication requirements. Monitor the progress of the work and resolve minor problems quickly and amicably.





STOP FOUR: Clear Safety Policies and Procedures

Every program should try to challenge participants' assumptions about safety conditions and legal protections overseas. Students may have a false sense of security, especially in countries generally considered "developed." In the excitement of a foreign culture, they may forget common-sense safety precautions that would be second nature at home. Students, faculty, and staff should not assume that U.S. legal protections will follow them overseas.

Efforts to establish clear safety policies and procedures often depend on the type of program in which students participate.

■ **In permissive and collaborative programs**, check to make sure that the sponsoring program has safety policies and procedures and a written crisis management plan. Consider whether you feel comfortable with student-to-faculty or staff ratios, given the risks of the country and the anticipated activities. Evaluate how well the sponsoring organization communicates safety policies and procedures to trip participants. Your institution should promptly distribute safety information provided by the program sponsor. In addition, consider alerting students to safety information issued by the U.S. Centers for Disease Control and the U.S. State Department.

In cases where sponsored programs are operated by another entity, request the following information from the travel planner:

- a copy of the organization's policies and procedures for the program
- copies of building inspection reports from the previous year
- work orders and documentation showing all corrective action taken for identified risks
- proof of adequate insurance, listing your school as an additional insured.

Ask for descriptions of incidents reported on previous trips, and

occur may be dangerous.

Second, consider the kinds of activities that are appropriate for the venue, the knowledge and skill of the participants, and the available supervision. Does the school want to sponsor rock climbing, skiing, or bungee jumping? If the school operates the program activity, it may have a duty to give reasonable instructions, issue warnings, and supervise participants. For all trips and field trips sponsored by the institution, supervision should be adequate and institutional employees should exercise good judgment and prudence concerning all participants' health and safety.

SPECIAL ISSUES INVOLVING HOST FAMILIES

Because you probably will not be able to inspect the homes of host families, you must rely on other risk management strategies. Consider increasing scrutiny of host family activities and actively reaching out to students to solicit feedback and concerns. Provide guidelines to host families clearly outlining the institution's expectations of them. You may be able to provide host families with basic safety equipment such as smoke detectors, and outline emergency procedures for them to follow if a student is injured in their home.

make sure that unique safety issues have been addressed.

■ **In programs that are extensions of the U.S. campus**, your school must be much more proactive on safety issues. Living abroad, even temporarily, is not just a quaint version of life in America. Remind students not to expect the same conditions they know in the United States. Also remind them to be cautious — phrases and actions of little consequence in U.S. can cause significant problems abroad. Myths about when and why crimes

Could such activities be deemed "sponsored" by the school if its employees or agents plan or promote the trip, or collect registrations or fees for the trip? The school should ask administrators to avoid planning or promoting unsponsored events, and to clearly identify the event and the period of time as the participants' "free time." The alternative is to control and manage the activity as a sponsored event. For all sponsored events, consider imposing time and place restrictions, and specify the manner in which the event will take place.

Consider restricting where students may go or implementing a buddy system.

Third, consider transportation risks. Schools do not have a duty to provide transportation to or from an activity. However, a school can voluntarily assume such a duty by offering transportation¹³. When assessing the risk of a program, first scrutinize the types of transportation that are used in connection with the program. If public bus or rail services are used, the institution faces a lower level of exposure (and will not need to do as much research) than if transportation involves an institutional employee, a program-owned vehicle, or a privately chartered plane or bus. Public transportation typically provides regular, predictable service, and public carriers typically bear the liability for accident and injury.

When public transportation is not an option, or if the school voluntarily assumes the risk, use chartered vehicles and drivers whenever it is practicable. If possible, screen the company to make sure it is covered

by an automobile liability insurance policy with an acceptably rated company and adequate policy limits. Before allowing travel, verify coverage by hav-

Before allowing travel, verify coverage by having the risk management department review the certificates of insurance.

ing the risk management department review the certificates of insurance.

If students or employees are allowed to rent or operate vehicles in connection with program-related activities, the risk manager for the home campus should

ensure that the institution's insurance coverage is adequate, and that policies cover everyone who will be driving. The program should also have a driver safety plan, either based on the existing plan from the home campus or a modified plan for the overseas program. The plan should assure that drivers are competent to drive in the local jurisdiction and familiar with such procedures as assessing road conditions, inspecting the vehicle, loading cargo, choosing routes with safety in mind, and responding appropriately in case of an accident.

■ **In institutionally owned or leased facilities**, use all the measures discussed above. Also adopt written safety objectives for the facility and make someone accountable for meeting those objectives. Periodically — at least once a year — identify and correct hazards that may create risks in both facilities and equipment. All institution-owned or controlled residential and academic facilities should comply with all applicable health and safety codes, regulations, and policies. Consider sending a safety representative from the U.S. campus, a safety consultant from the foreign venue, or an insurance company loss-control representative familiar with the foreign venue to conduct inspections.

An inspection by on-site personnel can help confirm whether offices, classrooms, and dormitories have:

- working smoke detectors
- working fire alarm systems
- properly maintained automatic sprinklers (when required in the country)

EARLY TERMINATION OF THE TRIP

Who decides to bring home a group of students because of terrorism, war, civil unrest, or disease? What are the criteria or standards that will determine whether and when to bring them home? If the institution acts too rashly, it may be vulnerable to claims for refunds by the affected students and their families. If the school fails to act and a terrorist incident injures or kills someone, it may be vulnerable to a negligence claim by the victims or their families.

Your decisions will be evaluated with the benefit of hindsight. What can an institution do to protect itself in this context? First, examine your policies and procedures to identify how they apply to international study-abroad programs. Specifically, determine who has the authority to decide when to bring students and staff home, what criteria they will use, and how the institution will respond if students or employees refuse to return. Clearly communicating policies and procedures will help ensure everyone's safety, and the school's best interests, in the event of an emergency that warrants evacuation.



- properly maintained kitchen extinguishing systems
- an adequate number of working portable fire extinguishers
- unhindered means of exit, with proper 'EXIT' signs
- properly working security systems, including an access control and alarm system
- facilities or equipment for properly stored flammables and combustible materials
- been maintained to comply with local building and life safety codes
- been repaired or refurbished to correct previously noted deficiencies
- generally good housekeeping.

As you would in the United States, practice fire drills in all facilities on a regular basis.

You surely will experience unique challenges. Even in some relatively developed countries, basic firefighting equipment such as fire extinguishers is nonexistent, and fire-safety devices like smoke detectors may be rare. You may be able to install smoke detectors, but accommodating a lack of fire extinguishers, for example, may require reconfiguring the institution's emergency plan. At the least, you should alert participants when resources are rudimentary and describe the safety implications.

Finally, determine whether each facility will be leased or used by outside parties. If so, establish criteria to select those groups and the rules that will govern outside use. Have legal counsel review all applicable contracts and legal documents.



STOP FIVE: Realistic Crisis Management Planning

Every program needs a crisis management plan. Even if your school does not sponsor the trip, your students' parents and friends will look to you for information and assistance in case of an emergency. The level of the institution's involvement in crisis management, however, will vary depending on the type of program.

■ **In permissive and collaborative programs**, make sure your school is in the communications loop if a crisis occurs. You may be called upon to respond to parents, the press, students on campus, and other interested people, even though you did not sponsor or operate the program. Limit your school's role to being a channel for communication. Diligently update concerned parties, stay in close contact with the sponsoring entity, and provide a sympathetic ear. Do not, however, take responsibility for responding to the crisis or make admissions of responsibility.

■ **In U.S. campus extensions and owned or leased facilities**, your school will be expected to be more than a channel of communication. Students and parents will expect you to take appropriate action if the safety of the local environment deteriorates or someone is injured. Your onsite staff needs to be prepared for an emergency. Consider impaneling an emergency team

before the trip, both to help draft a written plan and be available during a crisis situation. Team members might include the provost, general counsel, risk manager, public relations director, dean of students, head of campus security, health and counseling staff, and others. If institutionally owned facilities need to be shut down or evacuated, you may need to consult with U.S. embassy officials.

Your school's crisis management plan should:

- build upon your existing emergency-preparedness plans and crisis management protocols. (Clearly post disaster and emergency-preparedness plans, and ensure that safety equipment is accessible and clearly labeled.)

*Your onsite staff
needs to be
prepared for an
emergency.*

- treat physical injury and personal safety as a top priority
- include contingencies, such as likely temporary facilities if a location is destroyed, and back-up communications systems. (Communications plans should keep overseas staff in touch with the U.S. campus, as well as with local authorities, the media at home and overseas, and family members of those affected by the emergency. Provide faculty and



STOP SIX: Adequate Insurance Coverage

staff with a calling card that guarantees access to U.S. phone lines.)

- describe how to contact the U.S. consulate
- include access to emergency cash, perhaps with an unlimited credit card, or a line of credit with a bank
- spell out procedures in an easy-to-follow emergency checklist, with contact information for program administrators
- contain abbreviated documentation procedures to keep track of what was done and by whom.

The crisis plan should be more than paper in a notebook. Discuss these issues during orientation. Circulate training materials so faculty and staff know what to do if a crisis arises.



Financial matters, including appropriate insurance coverage, play an important part in conducting overseas student programs.

■ **In permissive and collaborative programs**, make sure that the organization planning or sponsoring the trip has adequate insurance — including general liability, workers' compensation, employer's liability, and automobile coverage. Make sure the sponsor requires health and accident insurance for participants. Require that the sponsoring or collaborative organization add the school to any

liability coverages as an additional insured.

■ **In U.S. campus extensions and owned or leased facilities**, provide adequate levels of insurance. Work with your institution's risk manager and insurance providers to carefully review the quality and scope of applicable insurance coverage for each program. Verify that worker's compensation and employer's liability insurance applies to the school's U.S. employees and that foreign employees are covered by a separate policy purchased in the host country. Make sure all program activities are covered, without exclusions or limitations, and that the institution is covered against employment

" BUT WE THOUGHT IT WAS COVERED "

Your institution needs to verify that coverage exists — not necessarily purchase it. Piggyback on insurance provided by others, but evaluate the coverages, policy terms, and limits. Risk managers should examine certificates of insurance provided by housing-management firms, catering companies, travel agencies, transportation companies, and contractors that the program uses to provide program-related services. In contractual or cooperative programs, you should also collect and review certificates of insurance from the host institution.

This story shows why such an evaluation is so important. A faculty member at a state-supported university was conducting research with a group of students in the Bahamas at an affiliated oceanographic facility. While the faculty member was driving a truck down a narrow road, a local man in a small car collided violently with the truck. The driver of the car died. Although the faculty member was not at fault, the dead man's parents sued him in Florida. The Bahamian facility had insurance, but it did not adequately cover the faculty member in his individual capacity. While the faculty member normally would have been covered by the school's insurance plan, that coverage was not available because the Bahamian facility's insurance superseded it.¹⁴



practices, discrimination, or Americans with Disabilities Act claims.

If your school will transport program participants in institutional vehicles or use employees as drivers, ensure that your automobile insurance applies in foreign countries. Purchase foreign insurance if necessary. If the program will use contractors for transportation services, ensure that the contractor has appropriate insurance and adequate insurance coverage. The institution may want to purchase travel accident insurance, which provides accidental death and dismemberment coverage.

Risk managers on the home campus also should address the adequacy of any health insurance offered to program participants. Prepare participants for the possible loss of their personal property as well. Guide participants to professionals (such as insurance agents or brokers) who can evaluate the scope of their current insurance in foreign countries and help them file claims in the event that property is lost, stolen, or damaged overseas.

Finally, home campus risk managers should examine the need for and adequacy of insurance covering accidental death and dismemberment, kidnap and ransom, medical-emergency evacuation, and repatriation of mortal remains for students, faculty, and staff. Risk managers are best qualified to determine the adequacy of the financial position or rating of the insurer.



STOP SEVEN: Appropriate Documentation Procedures

Maintaining accurate documentation is an important part of any risk management process, and it is especially important for programs involving student foreign travel.

■ **In permissive programs**, look for and eliminate exaggerations, absolute statements (such as “it never rains”), and inaccurate or misleading statements. When

All agreements affecting the program should be reviewed and approved by legal counsel just as contracts at the home campus are.

travel terms are discussed, use qualifying language, such as “subject to availability” or “anticipated schedule.” If possible, make sure that any waivers provided by the sponsoring organization release your institution from liability.

Find a way to document and publicize the limited nature of the school’s role in the program.

Keep copies of all brochures and disclaimers. Retain all promotional material and correspondence received from the travel planner.

Make sure you retain any confirming letters from sponsoring organizations, student waiver or participation forms, and insurance certificates. Centralized record keeping will make it easier to organize, store, and retrieve documents in case they are requested during a lawsuit. Work with legal counsel to determine the appropriate length of time to keep such records.

■ **In collaborative programs**, in addition to reviewing and retaining promotional brochures, also scrutinize key contract provisions (scope of work, insurance, compensation, time period, indemnification) with collaborators to ensure that written contracts accurately reflect the relationship between the parties. Also consider alternative dispute-resolution requirements (such as mediation or arbitration) in an effort to avoid litigation, and choice-of-forum clauses to funnel any litigation to convenient jurisdictions.

Find a way to document the school’s diligence in selecting and evaluating the travel planner. Retain the contractor’s initial proposal to organize the trip and the written contract. Distribute and review student evaluation forms. Keep copies of any disclaimer forms. Ask the contractor to include the school’s name in any waiver and release forms, and retain a copy of each participant’s form.

▪ **In programs that are extensions of the U.S. campus or owned or leased facilities**, the school must establish more extensive record keeping requirements. Records to keep include:

- employment, payroll, and student selection records (applications, screening information, orientation materials, interview notes, etc.)
- waiver and release forms (for the trip itself as well as specific potentially dangerous activities)
- documentation that students and staff attended orientation sessions
- accident and incident reports and any investigation notes
- contracts with external contractors, specialists, and professionals
- insurance policies
- foreign facility inspection and maintenance checklists
- premises and equipment inspection and repair records.

All agreements affecting the program should be reviewed and approved by legal counsel just as contracts at the home campus are. Local and institution counsel should review all agreements entered by or on

behalf of the program. Counsel should review and approve purchase or lease agreements for academic or residential facilities, contracts with other institutions, contracts involving adjunct or other faculty and staff, service agreements, contracts with host families, waivers, and any other agreements. The institution's counsel should consult with foreign counsel when necessary. If and when legal issues arise, they should immediately be brought to the attention of legal counsel.



Conclusion

These recommended steps will help you thoroughly analyze the risks involved with student foreign travel and study programs. They will improve your ability to plan a journey toward a solid foreign travel risk management plan.

For additional, practical guidance on these issues, review *Audit Guide: Risk Assessment for Student Foreign Travel Programs*, a companion publication to this monograph.



Appendix

In the summer of 1998, a group of 20 colleges, universities, and international-education associations developed the following guidelines for ensuring the health and safety of participants in study-abroad programs. For information on the guidelines, contact William Cressey, Vice President, Council on International Educational Exchange, 205 E. 42nd Street, New York, NY 10017.

Guidelines for Responsible Study Abroad: Health and Safety

STATEMENT OF PURPOSE

Because the health and safety of study abroad participants are primary concerns, these guidelines have been developed to provide useful practical guidance to institutions, participants, and parents, guardians, and families. The guidelines are intended to be aspirational in nature. Although no set of guidelines can guarantee the health and safety needs of each individual involved in a study abroad program, these guidelines address issues that merit attention and thoughtful judgment. Although they address general considerations, they cannot possibly account for all the inevitable variations in actual cases that arise. Therefore, as specific situations arise, those involved must also rely upon their collective experience and judgment while considering the unique circumstances of each situation.

A. GUIDELINES FOR PROGRAM SPONSORS

To the extent reasonably possible, all program sponsors should endeavor to implement these guidelines as applicable. At the same time, it must be noted that the structure of study abroad programs varies widely and that study abroad is usually a cooperative venture that can involve multiple sponsors. The term "sponsors" refers to all the entities that together develop, offer, and administer study abroad programs. Sponsors include sending institutions, host institutions, program administrators, and placement organizations. The role of an organization in a study abroad program varies considerably from case to case, and it is not possible to specify a division of efforts that will be applicable to all cases. All

entities should apply the guidelines in ways consistent with their respective roles.

In general, guidelines that relate to obtaining information and assessing circumstances apply to all parties involved. Much of the information called for by these guidelines is readily available and can be conveyed to participants by distributing it and referring them to, or utilizing materials from recognized central sources. Guidelines that refer to the provision of information and the preparation of participants refer to parties that advise, refer, nominate, admit, enroll, or place students. Guidelines that suggest operating procedures on site apply to the entities that are directly involved in the operation of the overseas program.

In addition, program sponsors that rely heavily on the collaboration of overseas institutions may exercise less direct control over specific program components. In such cases, sponsors are urged to work with their overseas partners to develop plans and procedures for operating consistently with these guidelines.

Program sponsors should:

1. Conduct periodic assessments of health and safety conditions for the program, and develop and maintain emergency preparedness processes and a crisis response plan.
2. Provide health and safety information for prospective participants so that they and their parents/guardians/families can make informed decisions concerning preparation, participation and behavior while on the program.
3. Provide clear information concerning aspects of home campus services and conditions that cannot be replicated at overseas locations.
4. Provide orientation to participants prior to the program and as needed on site, which includes information on safety, health, legal, environmental, political, cultural, and religious conditions in the host country, dealing with health and safety issues, potential health and safety risks, and appropriate emergency response measures.
5. Consider health and safety issues in evaluating the appropriateness of an individual's participation in

a study abroad program.

6. Either provide appropriate health and travel accident (emergency evacuation, repatriation) insurance to participants, or provide information about how to obtain appropriate coverage. Require participants to show evidence of appropriate coverage.

7. Conduct appropriate inquiry regarding the potential health and safety risks of the local environment of the program, including program-sponsored accommodation, events, excursions and other activities, on an ongoing basis and provide information and assistance to participants and their parents/guardians/families as needed.

8. Conduct appropriate inquiry regarding available medical and professional services, provide information for participants and their parents/guardians/families, and help participants obtain the services they may need.

9. Provide appropriate and ongoing health and safety training for program directors and staff, including guidelines with respect to intervention and referral, and working within the limitations of their own competencies.

10. Communicate applicable codes of conduct and the consequences of noncompliance to participants. Take appropriate action when aware that participants are in violation.

11. Obtain current and reliable information concerning health and safety risks, and provide that information to program administrators and participants.

12. In cases of serious health problems, injury, or other significant health and safety circumstances, maintain good communication among all program sponsors and others who need to know.

13. In the participant screening process, consider factors, such as disciplinary history, that may impact on the safety of the individual or the group.

14. Provide information for participants and their parents/guardians/families regarding when and where the sponsor's responsibility ends, and the range of aspects of participants' overseas experiences that are beyond the sponsor's control. In particular, program sponsors generally:

- a. Cannot guarantee or assure the safety of participants or eliminate all risks from the study abroad environments.
- b. Cannot monitor or control all of the daily personal

decisions, choices, and activities of individual participants.

- c. Cannot prevent participants from engaging in illegal, dangerous or unwise activities.
- d. Cannot assure that U.S. standards of due process apply in overseas legal proceedings or provide or pay for legal representation for participants.
- e. Cannot assume responsibility for the actions of persons not employed or otherwise engaged by the program sponsor, for events that are not part of the program, or that are beyond the control of the sponsor and its subcontractors, or for situations that may arise due to the failure of a participant to disclose pertinent information.
- f. Cannot assure that home-country cultural values and norms will apply in the host country.

B. RESPONSIBILITIES OF PARTICIPANTS

In study abroad, as in other settings, participants can have a major impact on their own health and safety abroad through the decisions they make before and during the program and by their day-to-day choices and behaviors.

Participants should:

- 1. Read and carefully consider all materials issued by the sponsor that relate to safety, health, legal, environmental, political, cultural, and religious conditions in host countries.
- 2. Consider their health and other personal circumstances when applying for or accepting a place in a program.
- 3. Make available to the sponsor accurate and complete physical and mental health information and any other personal data that is necessary in planning for a safe and healthy study abroad experience.
- 4. Assume responsibility for all the elements necessary for their personal preparation for the program and participate fully in orientations.
- 5. Obtain and maintain appropriate insurance coverage and abide by any conditions imposed by the carriers.
- 6. Inform parents/guardians/families, and any others who may need to know, about their participation in the study abroad program, provide them with emergency contact information, and keep them informed on an ongoing basis.
- 7. Understand and comply with the terms of

participation, codes of conduct, and emergency procedures of the program, and obey host-country laws.

8. Be aware of local conditions and customs that may present health or safety risks when making daily choices and decisions. Promptly express any health or safety concerns to the program staff or other appropriate individuals.

9. Behave in a manner that is respectful of the rights and well-being of others, and encourage others to behave in a similar manner.

10. Accept responsibility for their own decisions and actions.

11. Become familiar with the procedures for obtaining emergency health and law enforcement services in the host country.

12. Follow the program policies for keeping program staff informed of their whereabouts and well-being.

C. RECOMMENDATIONS TO PARENTS, GUARDIANS, AND FAMILIES

In study abroad as in other settings, parents, guardians, and families can play an important role in the health and safety of participants by helping them make decisions and by influencing their behavior overseas.

When appropriate, parents, guardians, and families should:

1. Obtain and carefully evaluate health and safety information related to the program, as provided by the sponsor and other sources.

2. Be involved in the decision of the participant to enroll in a particular program.

3. Engage the participant in a thorough discussion of safety and behavior issues, insurance needs, and emergency procedures related to living abroad.

4. Be responsive to requests from the program sponsor for information regarding the participant.

5. Keep in touch with the participant.

6. Be aware that some information may most appropriately be provided by the participant rather than the program.



Resources on Student Foreign Travel

The following organizations offer information that can help you assess the risks that study-abroad programs may involve.

The U.S. Center for Disease Control

International Traveler's Hotline: (404) 332-4555

The Center for Disease Control also has an international traveler's health web page at <http://www.cdc.gov>.

Click on "Traveler's Health" to find updates on disease outbreaks, health recommendations for visitors to various regions, and other reference information.

The U.S. Department of State

The U.S. State Department Bureau of Consular Affairs issues official foreign travel warnings and advisories on its Web site at <http://travel.state.gov>.

The U.S. Department of Health and Human Services Public Health Department

Publishes a book entitled Health Information for the International Traveler, ("The Yellow Book"), 1996-97 Stock No. 017-023-00197-3, available from the U.S. government printing office for \$20.00. To order by phone, call (202) 512-1800. This book contains all immunization requirements and disease-risk precautions and prevention information for travel to other countries.

NAFSA: Association of International Educators

NAFSA's site includes general guidelines for safety abroad, as well as directories and resources for both administrators and students. There is also an education-abroad library for NAFSA members. In addition, NAFSA has a network of advisers and overseas representatives. The home page is located at <http://www.nafsa.org>.

Council on International Education Exchange

Provides health and safety guidelines for program sponsors, participants, and participant's families. Information is available at <http://www.ciee.org>. Choose "Responsible Study Abroad: Health and Safety Guidelines."

National Association of College and University Attorneys

NACUA provides a legal-information exchange program and sample waiver and assumption-of-risk forms. To obtain these forms call (202) 833-8390. Additional information is available at <http://www.nacua.org>.

Association for Safe International Road Travel

The organization provides extensive information about foreign road and travel conditions, regional and seasonal hazards, medical care, and the like. In order to get regular reports, a subscription is required. To obtain general information call (301)983-5252. To obtain a free travel report, access the web site at <http://www.asirt.org> and choose "Road Travel Reports," then "Other Road Travel Reports Available."

Mobility International USA

Advises organizations on how to include students with disabilities in international programs. In addition, this organization provides information, referrals, and publications for travelers with disabilities. For more information, access the web site at <http://www.miusa.org>.

International Association for Medical Assistance to Travelers

This organization helps travelers to deal with illness or other health emergencies in foreign countries. Although membership is not mandatory, donations are requested. Membership includes a world directory, traveler clinical records, world immunization charts, and other guides. When preparing to travel call (716) 754-4883. Also access the web site for additional information <http://www.cyber-mall.co.nz/NZ/IAMAT>.

International SOS Assistance

Provides overseas assistance and has a scholastic overseas services program. The organization offers on-line security information, 24-hour service centers, and a global health care program. The web site address is <http://intsos.com/index.htm>.

Several private-security firms also offer travel advisory information, usually for a fee. Two such firms are Kroll Associates (<http://www.Krollassociates.com>) and Pinkerton, whose Web site (<http://www.pinkertons.com/pgis>) provides some free information.



ENDNOTES

- ¹ *Chronicle of Higher Education* 12/12/97.
- ² A. Saltzman & A. Mulrine, "Roads Less Traveled: Developing Countries are New Magnets for Collegians Studying Abroad," *U.S. News & World Report*, Vol. 120, No. 14 (April 8, 1996).
- ³ Such accidents are a real and tragic possibility. In January of 1998 five students from St. Mary's College (Maryland) were raped in Guatemala after their bus was ambushed by armed gunmen. The students were on a 17-day program offering students an anthropological and cultural look at the Central American nation. U.S. State Department consular information dispatches warned that violent crime was a serious and growing problem in Guatemala, and that there had been a recent increase in shootings, kidnappings, rapes, and other violent assaults, and that entire groups of American tourists had been affected. See David W. Chen, "Maryland College Students are Raped on Guatemala Trip," *New York Times*, (January 19, 1998).
- ⁴ For example, in 1997 Earlham College (Indiana) was sued for \$3 million by a student who participated in its study abroad program in Japan. She alleged she was sexually assaulted by the host father of the family she was assigned to live with during her stay in Japan. She also alleges that she complained to the university about the host father's unwelcome advances prior to the sexual assault; but that the university took insufficient action in response to her complaint. The university denies the student's allegations and asserts that it did take appropriate action. See "Suit Raises Questions About Liability in Study-Abroad Programs," *The Chronicle of Higher Education*, p. A37 (April 11, 1997).
- ⁵ This monograph focuses on group student activities: study abroad, musical performance tours, athletic competitions, community-service opportunities. Similar issues affect alumni travel tours and faculty travel, but they are beyond the scope of this monograph.
- ⁶ International programs that are open to participants under 18 years of age have a heightened level of responsibility. Under the doctrine *in loco parentis*, the school stands in place of the parent and is charged with the parent's rights, duties, and responsibilities. BLACK'S LAW DICTIONARY 403 (5th ed.1983). Courts have rejected this heightened level of responsibility for adults students. *Nero v. Kansas State University*, 861 P.2d 768, 773 (Kan. 1993) (citing *Bradshaw v. Rawlings*, 612 F.2d 135 (3d Cir. 1979), *cert. denied*, 446 U.S. 909 (1980)). One author has questioned whether an increased duty of care is required in a foreign travel context, but the article does not account for the various classifications and diversity of program structure in the field. See R. Evans, "A Stranger in a Strange Land: Responsibility and Liability for Students Enrolled in Foreign-Study Programs," 18 J. COL. AND UNIV. LAW 299 (Fall 1991).
- ⁷ See *EEOC v. Arabian American Oil Company*, 499 U.S. 244 (1991).
- ⁸ College activities are defined as "all student activities on or off campus considered to be university sponsored events, including overseas campuses." The Drug Free Schools and Communities Act does not indicate whether "unlawful" means under U.S. or foreign law. In some countries, there is no legal drinking age.
- ⁹ Certificates of insurance are often the best proof. The recommended minimum policy limits for primary general liability insurance are \$1 million, along with umbrella coverage of \$2,000,000/\$5,000,000 or more.
- ¹⁰ By civil rights laws, we mean those prohibiting discrimination on the basis of gender, race, religion, national origin, disability, etc.
- ¹¹ Although some risk managers and lawyers fear that their institution assumes a duty to warn by disseminating consular information, we believe the institution is in the best position to do so. Moreover, if it does not provide consular information, the failure to warn students of dangers the institution knew or should have known about the host country creates its own potential cause of action. The authors also believe an institution has a moral obligation to its students (and their parents) to communicate this information to them. With consular information now widely available on the Internet at (<http://www.state.gov/>) providing this information should not create an administrative burden.
- ¹² K. Rubin, "Safety in Study Abroad: How Much More Can Programs Do to Protect Students?," P. Burling, *Managing the Risks of Foreign Study Programs* (1992).
- ¹³ If the home institution directly organizes any of the travel for the international program it should include in the statement of responsibility each participant signs an acknowledgment indicating that the home campus is not responsible for changes in plans, delays, failures of tour operators or airlines, etc. If the home institution acts as a travel agent and retains a tour promoter, it should be aware of duty to exercise reasonable care. See *Grigsby v. O.K. Travel*, 1997 WL 839442 (Ohio App. 1 Dist. 1997)(travel agent liable for failure to make reasonable inquiries into financial stability of tour promoter which proved to be defunct); *Marcus v. Zenith Travel, Inc.*, 178 A.D.2d 372, 577 N.Y.S.2d 280 (1991) (travel agent liable for breaching duties of reasonable care and diligence in selecting wholesaler and for negligent misrepresentation).
- ¹⁴ R. Kast, *In Loco Parentis and the "Reasonable Person," International Education*, Vol.VII, No. 1 (Fall 1997/Winter,1998).



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