

Chapter I

SPONSORING STUDY ABROAD PROGRAMS

Overview

Not too many years ago, study abroad programs were mostly for a few thousand students from exclusive private universities; students who would take a “junior year abroad” and study at a foreign university while staying with a local family. Outside of Europe, other American students, often the children of faculty, might study at American universities that were established primarily to benefit local students.

Today that is no longer the case. According to the International Institute of Education, approximately 100,000 American students are now studying abroad in approximately 5,000 different venues. Every year the volume is increasing. Unfortunately, if inevitably, the number of accidents and other casualties is increasing too. The current war on terrorism, however, requires a detailed and thorough assessment of appropriate venues for overseas study.

Application

RISK ANALYSIS

From Argentina to Zanzibar, American students are engaged in studying everything from agriculture to zoology. In this imperfect

I. Sponsoring Study Abroad Programs

world, tragedies will inevitably take place and despite the best efforts of everyone involved, students will suffer serious injuries and will die. For the most part, the kinds of risks to which students are exposed are similar to those they face in the United States. Unfortunately, the consequences that flow from mistakes committed abroad may often be more severe.

Take, for example, the automobile accident. It may come as something of a surprise to discover that Americans are not the worst drivers in the world. And while we may complain to our governors and our congressional representatives about the quality of our roads, they are generally the envy of the world. Safety equipment that is required on cars sold in America is not always present even on those same models sold elsewhere.

Moreover, in many parts of the world the cars on the road are not as new and are not as well maintained. Add to the mix, the common culprits of alcohol, speed, bad weather, poor lighting, and fatigue, and the risk of a serious accident increases. Then consider the emergency and follow-up medical care. Most Americans live within close proximity to an interstate highway and a first rate trauma emergency room.

Most people in the rest of the world do not. Hence, while students who have auto accidents in many countries of western Europe may get rescue treatment equal to or better than that available at home, the same can not be said for many parts of the globe. The question of automobile safety can also be analogized to other health and safety issues. The adage “don’t drink the water” still obtains in many parts of the world and the consequences flowing from food and water poisoning or from building and fire codes that are either non-existent or poorly enforced can be considerably more severe than a case of diarrhea.

While recent cases of criminal acts against students in Ecuador and Guatemala have garnered headlines, the problem of

crime against students is often not worse and in many places much better than at home. But the lack of awareness as to “safe” neighborhoods and common criminal scams can make traveling students more vulnerable than they would normally be at home.

Added to these risks is the apparently widespread belief of many travelers that the laws of physics don’t apply away from home. At any warm beach resort, from Bermuda to Thailand, you can routinely see scores of otherwise sane vacationers busily imbibing and then traveling around on motor bikes or scooters, often without even a helmet. The resorts, of course, don’t advertise the accident rate but it is significant.

An additional factor that often increases the risk of study abroad is the nature of the study activity itself. Reading books in a library is a relatively safe activity whether done in Trenton, New Jersey or Timbuktu, Mali. Scuba diving, mountain climbing, exploring archeological ruins, and other types of field research can be dangerous whether done at home or abroad. Often the study abroad component of a student’s curriculum will be heavily loaded with field study. Educationally this makes a great deal of sense but it does increase the risk of harm.

While an increase in the number of accidents is an inevitable by-product of the increasing number of students studying abroad, managing programs well can make an enormous difference in the frequency and severity of the accidents and in limiting the liability of institutions against lawsuits.

The principles of managing study abroad programs well are similar to the standards used at home. These include:

- Understanding the nature of the program activity so that the educational benefits can be measured against the risks of harm. Absent extraordinary circumstances, program administrators and faculty should have a good knowledge of the “lay of the land” before taking a group of students on

I. Sponsoring Study Abroad Programs

the first trip. This means having someone on staff actually view the places that will be visited and experience the itinerary including the food, housing, transportation, and study venues.

- Breaking down the program into distinct components and assigning clear staff responsibility for each component. This is important during the normal running of any program but it is essential during a crisis and can be more complicated when happening abroad. The sorts of relationships with local hospitals, government officials, police, and media upon which the institution can rely on at home are usually not present in the foreign locale. Hence, the foreign study administrator should make an effort to develop these relationships abroad.
- Requiring appropriate adherence to safety standards when negotiating contracts with entities providing tours, housing and transportation. Insurance policies with well rated companies must also be required and reviewed so that if an accident occurs, medical services and, if necessary, repatriation of students and staff can take place without concern for finances. Whenever possible, it is important that the college or university be named as an “additional insured” on the tour company’s policy. This ensures that when all parties are named in a lawsuit, the insurance company for the transportation service whose driver had the accident will actually defend and indemnify the sponsoring college or university. Finally, the sponsoring school representatives should make on-site inspections and do background reference checking to make sure that the vendors are, in fact, meeting safety standards.
- Promulgating for all staff and students a clear statement of all standards of safety and behavior that will be expected of

them. If home institution policies are going to be applied to the foreign locale this should be made explicit. Additional and/or different policies should be carefully discussed and uniformly disseminated.

The well managed study abroad program requires that additional steps be taken. These include :

- A review of applicable law regarding enforcement of contracts, particularly those clauses dealing with choice of law and choice of venue. Choice of law refers to the law that will be applied by a court when considering a legal question. Different countries have different laws and the decision of which country's law to apply to a case often will determine its outcome. Venue refers to the location and court where the lawsuit will be heard. If a contract requires that any controversy arising under the contract must be decided in the courts of Thailand and the would-be plaintiff resides in Pennsylvania, it will be far more difficult to maintain a lawsuit in Bangkok than in Philadelphia. While venue and choice of law are related, they are not identical. A court in New York may well be called upon to interpret and enforce the laws of France if the parties have a contract with such a requirement.
- A review of applicable tort laws. Some jurisdictions limit the ability of parties to "contract away" what otherwise would be their legal responsibilities. See Chapter X for a discussion of risk transferral strategies. A common example in the United States are "contractual waivers" that purport to absolve one side of all responsibility, regardless of cause. Generally speaking, parties may contract away liability for negligence but not for intentional torts or wrongs. Such contracts are deemed to be against "public

I. Sponsoring Study Abroad Programs

policy” or principles of contract law and courts will not enforce them. Many risks may be insured against but they first need to be identified.

- A review of local social and political standards and the development of an orientation program that alerts students and staff to them.
- A review of local public health conditions that might impact staff and students.
- A review of local climactic conditions that might impact staff and students.

In sum, the responsibilities for conducting a successful study abroad program are not unlike those obtaining on the home campus. The specifics of these issues are addressed in subsequent chapters.

TYPES OF PROGRAMS

Study abroad programs range from those where a single student engages in independent study in a foreign locale and gets academic credit upon returning home to one where the American college or university maintains a physical campus in the foreign country and employs professional and administrative staff on-site on a full-time basis. Each type of program has its advantages and disadvantages.

The On-Site Campus Model

Some American colleges and universities operate branch campuses abroad. Under this scenario, the American institution owns or leases on a long term, the real estate on which the campus is located. The American school also hires local staff, pays local payroll and other taxes and is subject to local employment rules. It is also subject to local

building code and health and safety requirements. The faculty may be locally hired, may be sent from the American campus or both. This model provides the home institution with a great deal of control and allows for an environment where American students can be “gently” immersed into a foreign culture while having an American “home” to which they can retreat. Worries about the acceptability of credits, academic major requirements, and other academic administrative issues don’t exist any more than they would on the home campus. With the added control, however, comes added responsibility and the likely student expectation that the foreign branch campus will have all of the standards and services available at home.

Temporary Campus Abroad Model

The temporary on-site campus where the American institution rents a facility for a short term and provides instructors from the home campus shares many of the pluses and minuses of the permanent foreign campus model but avoids, in many instances, the need for concern with foreign labor laws which can be very cumbersome. Because there is no long term capital investment, schools are more easily able to start up and discontinue programs as demand warrants. The use of home-campus faculty makes staffing easier but as a practical matter the American school without a permanent campus will require the aid of local contractors and it is therefore incumbent on the institution to engage in a thorough vetting process. Similarly, the foreign venues may not live up to American health and safety standards and an American court may not excuse that failing, particularly in the absence of a clear warning to students, in the event of a disaster.

Independent Study Abroad Model

While many students attending foreign universities do so under special programs for foreign students, some will simply enroll in the normal curriculum and be given credit for the effort at their home institution. Some American institutions will simply give a semester's credit for a semester's work while others will transfer the course grades and combine them with the student's cumulative grade point average. The obvious advantage of this model is that the student truly experiences living abroad and in a non-English-speaking environment the opportunity to learn the local language is greatly enhanced. The downside is that the support service to which many American students have become accustomed are likely to be absent in the foreign locale. Getting help when dealing with a crisis is even more problematical. The going it alone model changes the home institution's level of responsibility and the direct burden on the American campus for health and safety is lessened. However, the American student, and an American court, is likely to expect that the home institution that has approved the foreign university course of study is an "expert" in these matters and that many, if not all, problems unforeseen by the student should have been foreseen by the home institution. The importance of risk reducing strategies is discussed in Chapters VI and X. In addition to the health and safety concerns, however, study abroad in foreign institutions can raise accreditation issues for the home campus. Most accreditation organizations have detailed requirements regarding what courses may be taken for credit, what courses make up an academic major and the background of the faculty teaching the courses. The strictness varies, of course, so that a nursing

curriculum, both at home and abroad, might be somewhat more detailed than comparative literature.

The Exchange Student Model

A variant on independent study abroad are those programs where American students enroll in foreign universities as formal “exchange” students; programs where students take classes at a foreign university but have a home institution-sponsored living arrangement usually with a home institution on-site program director. Often the exchange program will involve a formal agreement between the foreign and the American university that will outline the nature of the courses to be taught, the allocation of tuition and fees and the articulation of credits that may be applied to the respective institutions’ academic majors. While the American student may study alongside foreign counterparts, the host institution recognizes the Americans as special students and may provide certain support services as part of its agreement with the American school. This model can provide the “best of both worlds” by offering a genuine “foreign” experience while at the same time ensuring that a safety net exists for the American student who is without the support of the family and friends network available at home. Because of the shared institution responsibility, there is an increased risk of a “dropped ball” with this model. This model makes it essential that each institution understands and meets its obligations and that the students fully understand the nature of the program. When Disaster Strikes

WHEN DISASTER STRIKES

Despite the best efforts of all concerned, the ever increasing number of students studying abroad virtually guarantees that the number of annual accidents will increase as well. When tragedy

I. Sponsoring Study Abroad Programs

strikes, the study abroad administrator and the home institution will avoid and limit liability primarily depending on whether they behaved “reasonably” under all the circumstances. This is the major legal standard by which liability is often determined. The standard of “reasonableness” is perforce a flexible one and the harsh backward-facing lens following a severe accident can be troubling. At a minimum, however, the college or university facing a lawsuit will be expected to have met the “standards of the industry” in the conduct of its programs. The “standards of the industry” are simply the practices maintained by similarly situated study abroad programs.

In 1998, the first study abroad safety guidelines were promulgated by the Inter-Organization Task Force on Safety and Responsibility in Study Abroad. These standards that were revised in 2002, appear in Appendix D, are a helpful starting point. One can find out about other practices by participating in the various study abroad organizations that are increasingly focusing on questions of safety and liability. These include the International Institute of Education and the National Association of Foreign Student Advisors’ Section on U.S. Students Abroad.

A recently developed Center for Global Education, focuses on collecting and distributing resources on the Internet to support health and safety issues in study abroad programs has been established at the University of Southern California’s School of Education. The project will support the development of a “SAFETI” Clearinghouse. SAFETI stands for Safety Abroad First Educational Travel Information. Funded by the US Department of Education through a FIPSE Comprehensive Program Grant for three years, the project is outlined at the internet address in the Selected Bibliography. In addition to the above-mentioned Safety Guidelines, these organizations publish such volumes as *Study Abroad: A Parent’s Guide*, *Basic Facts on Study Abroad*,

NAFSA's Guide to Education Abroad for Advisers and Administrators, and Financial Aid for Study Abroad: A Manual for Advisers and Administrators.

The United States State Department also maintains a Website and through this avenue one can get country profiles, traveler's advisories and other information that may be helpful in developing and managing a program.

Preventive Planning

An institution can not eliminate the risks of studying abroad any more than it can eliminate the risks of staying at home. Life is uncertain and tragedies happen all too frequently. But colleges and universities are not obliged to curtail or avoid programs that are inevitably dangerous.

Many of humanity's most important discoveries have come out of dangerous explorations. What an institution can and must do if it is to avoid or limit its liability is to make sure that it apprehends and communicates to students and their parents the risks that obtain with study abroad programs. It must also manage its programs in a way that minimizes, to all reasonable extent, the risk of accidents and other misfortunes.

SELECTED BIBLIOGRAPHY

Articles and Books

Inter-Organization Task Force on Safety and Responsibility in Study Abroad, Health and Safety Guidelines, Appendix D.

Bucks, C., *A World of Options: A Guide to International Exchange, Community Service and Travel for Persons with Disabilities*, Mobility International USA (1997).

Cooper, S., Cressey, W., and Stubbs, N., eds. *Financial Aid for Study Abroad: A Manual for Advisors and Administrators*, NAFSA Association of International Educators, 1999.

Hoffa, W., *Study Abroad: A Parent's Guide*, NAFSA Association of International Educators, 1998.

Hoye, W.P., Rypkema, P.J., and Zerr, R., *Audit Guide: Risk Assessment for Student Foreign Travel Programs*, United Educators Insurance Risk Retention Group, Inc., 1999.

Hoye, W.P., Rypkema, P.J., and Zerr, R., *Managing Liability: Legal & Risk Management Issues Involving Student Foreign Travel*, United Educators Insurance Risk Retention Group, Inc., 1999.

Peterson's Study Abroad: A Guide to Semester, Summer and Year Abroad Academic Programs, Peterson's Guides (1996).

Soneson, H., Lochner-Wright, C., and Navari, J., "Program Designs and Strategies," in *NAFSA's Guide to Education Abroad for Advisers and Administrators*, 2nd ed. NAFSA Association of International Educators, 1997.

Websites

Center for Global Education

<http://www.usc.edu/dept/overseas/fipse.html>

International Institute of Education

<http://www.iie.org>

National Association of Foreign Student Advisors:

<http://www.secussa.nafsa.org>

U. S. State Department Travel Warnings

http://travel.state.gov/travel_warnings.html