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INTRODUCTION

MANAGING LIABILITY AND OVERSEAS PROGRAMS

This series of essays is designed to educate and inform overseas study administrators, supervisors, counselors, and staff about the legal implications of decisions they make. Knowing the law and adopting preventive measures is the best way to cope with the law, prevent legal challenges, and reduce exposure.

Overseas program administrators often make or participate in decisions that can lead to litigation. For example, administrators who work with study abroad students develop working relationships with overseas and foreign institutions; counsel and advise students and parents; apply rules of conduct and enforce disciplinary standards; employ risk reducing strategies by using releases and waivers; and may be called upon to interface with the media in the unfortunate event of a crisis overseas. In sum, administrators significantly affect the effectiveness and exposure of the overseas study program.

In all of these roles—advisor, spokesperson, cheerleader, developer, and planner—study abroad administrators make critical decisions that can generate litigation. Accordingly, it is in the interest of the college that these administrators understand the law and take appropriate preventive actions.

In their capacity as overseas program administrators, various responsibilities involving the safety and well being of participants, preventing exposure of the institution to liability, and monitoring all aspects of the program and its personnel on a domestic and international front are critical functions to ensure a good overseas experience.

This manual on managing liability and overseas programs focuses on:

- **The Expanding Scope of International Programs**
- **Organizational Relationships and Legal Exposure**

- **Students and Off-Campus Misconduct**
- **Extraterritorial Application of Federal Statutes**
- **Sources of Liability**
- **Orientation and Program Assessment**
- **Risk Reducing Strategies**
- **Duty of Advisors**
- **Crisis Management and Media Relations**
- **Releases and Participation Agreements**

Of particular note are the many recent lawsuits being filed by state institutions challenging the applicability of federal statutes, such as the Fair Labor Standards Act and other employment statutes. This litigation is based on a 1996 Supreme Court decision, *Seminole Tribe of Florida v. Florida*, which calls into question the congressional intent of specifically applying certain federal statutes to public institutions. It should also be noted that in *Board of Trustees of the University of Alabama v. Garrett*, (2001), the U.S. Supreme Court ruled that employees of state governments cannot bring suit against their employer under the Americans with Disabilities Act (ADA). The impact of this decision and similar ones, if any, on the rights of complainants to sue public colleges and universities under ADA is evolving.

Each of these essays is presented with a common format: Overview, Application, and Preventive Planning. A Selected Bibliography follows each topic.

Specific comments on this manual are welcome. For further information or additional copies, please write to College Legal Information, Inc., P.O. Box 150541, Nashville, Tennessee 37215-0541. Copies can be obtained by sending payment to College Legal Information, Inc., P.O. Box 150541, Nashville, Tennessee 37215-0541 or by calling 615-383-3332. Copies are \$60.00 each or \$55.00 each for 2 or more.

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 IS REQUIRED, THE SERVICES OF A COMPETENT
 PROFESSIONAL SHOULD BE SOUGHT.

THE AUTHOR

Kent M. Weeks, a practicing attorney with the law firm of Weeks & Anderson of Nashville, Tennessee has a distinguished professional career as a teacher, administrator, lawyer, and author. A Fulbright Scholar, Weeks earned degrees from The College of Wooster, University of New Zealand, Duke University, and a Ph.D. from Case Western Reserve University. He edited two volumes for the Center for Constitutional Studies that have had singular impact on the independent sector: *A Legal Inventory for Independent Colleges and Universities* and *A Legal Deskbook for Administrators of Independent Colleges and Universities (2nd Edition)*.

He served as a Professor of the Practice of Education at Vanderbilt University for many years and has been invited by many colleges and their associations to present seminars on higher education and the law. He has written several books and more than 43 articles and papers for scholarly journals, and he currently edits *Lex Collegii*, a legal newsletter for independent colleges and universities. In addition to this publication, Weeks has written or coauthored other books addressing particular topics relevant to college personnel: *Student Affairs Decisions and the Law*; *Managing Admissions, Records, and the Law*; *Complying with Federal Law*; *Faculty Decision Making and the Law*; *Faculty Evaluation and the Law*; *Managing Departments: Chairpersons and the Law*; *Record Retention and Disposal*; *Student Handbook Policies*; *Staff Handbook Policies*; *Faculty Handbook Policies*; *Strategic Legal Planning: The College and University Legal Audit*; *Managing Liability and Overseas Programs*; *Managing Campus Conflict*; *Implementing Student Policies*; *Managing Student Disability Compliance*; *Managing Campus Cyberspace and the Law*; and *Institutional Advancement and the Law*.

Weeks has consulted with colleges throughout the United States and serves as legal counsel to several colleges and national and international educational associations. He has participated in and directed more than 150 seminars and workshops for college administrators, faculty and trustees and has addressed many higher education organizations, associations, and legal groups. Weeks is a member of the National Association of Independent Colleges and Universities Legal Services Panel.

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This manual is a product of many years of thought and reflection on issues and laws facing administrators who work with study abroad students and make significant institutional decisions. It reflects numerous contacts with both study abroad program administrators and professionals who advise institutions on the legal terrain in which these programs operate.

Many people contributed to the publication of this manual. I would particularly like to thank Richard C. Kast, and Nicholas Trott Long, attorneys closely associated with study abroad programs, who contributed material.

Kast is associate general counsel at the University of Virginia and has addressed legal issues related to study abroad programs. Long serves as counsel to the Cooperative Center for Study Abroad, a consortium of 22 public and private colleges that conducts study abroad programs. Both Kast and Long worked patiently with me in developing and conceptualizing this publication. Kast's orientation assessment and administrator checklist also appear in the appendices.

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Acknowledgment must be given to my many clients and students who throughout the years have caused me to think about the issues and how to identify preventive ways to reduce or eliminate legal exposure. Some of the material in this manual is adapted from articles in *Lex Collegii*, a quarterly publication I edit, the copyright of which is held by the Board of Higher Education and Ministry in Nashville, Tennessee.

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