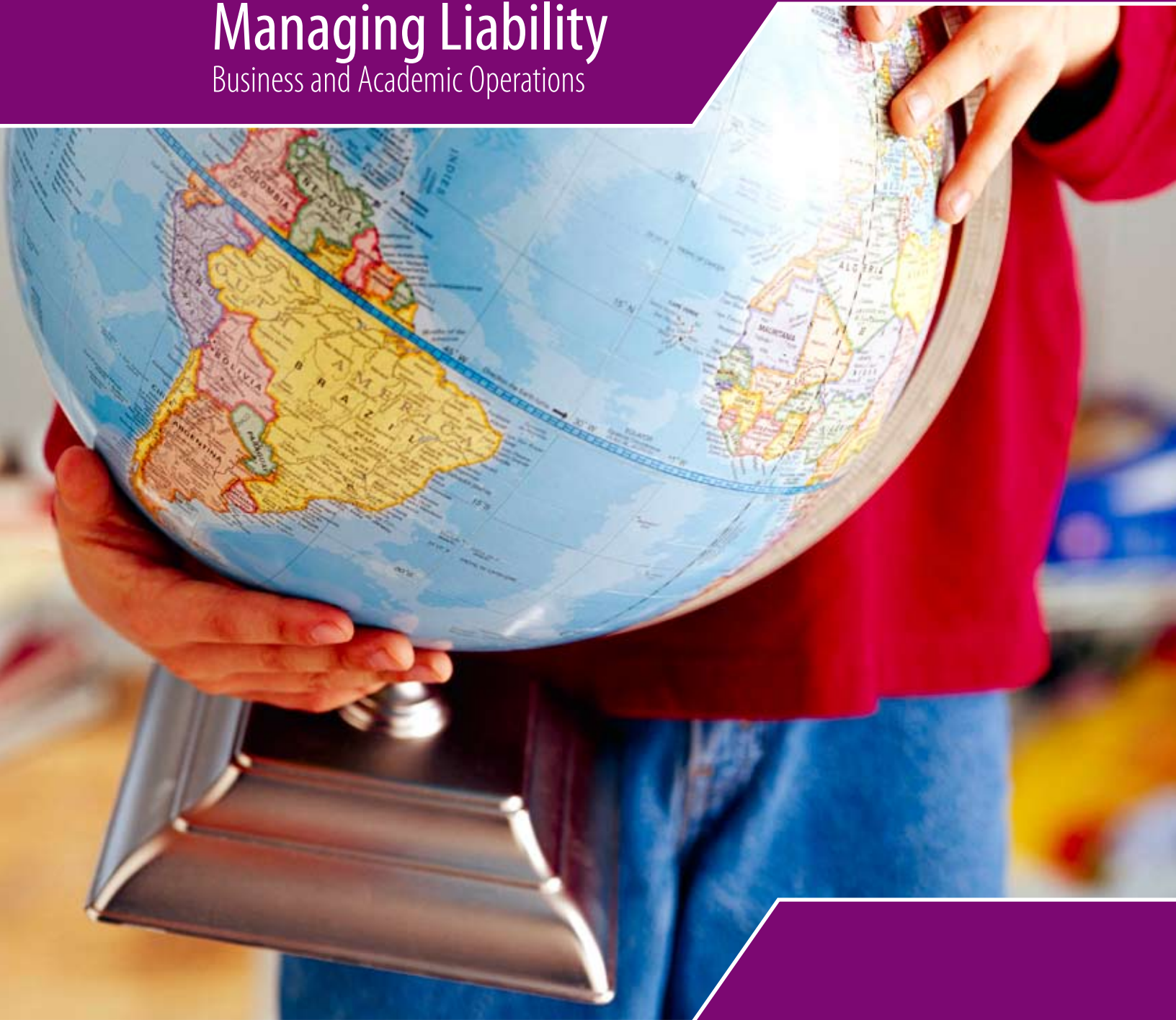




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Managing Liability

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Understanding and Managing the Risks of Short-Term International Programs

Author

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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.

United Educators

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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

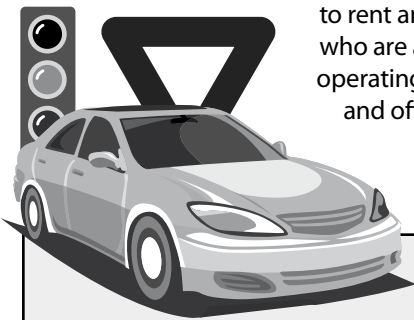
While motor vehicle accidents will never be entirely preventable, there are steps program providers can take to help manage and reduce the risk. First, it is a good idea to maintain a list of approved charter bus and transportation companies for field trips, excursions, and other events and activities 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>

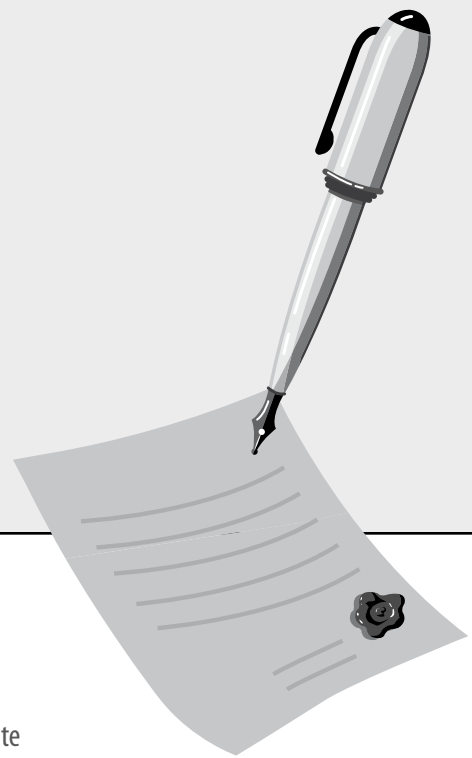
Other Resources

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>



About the Author

William P. Hoyer is executive vice president and chief operating officer at the Institute for the International Education of Students. He has served as associate vice president and deputy general counsel and an associate professor of law at the University of Notre Dame. While there, Hoyer developed and implemented a comprehensive risk assessment program for university-sponsored international programs. He has written and lectured extensively on risk and legal issues associated with international programs, including the United Educators' monograph *Managing Liability: Legal and Risk Management Issues Involving Student Foreign Travel*, published in 1999. He is an officer and director of the Forum on Education Abroad.



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