



Association of International  
Education Administrators

# 2020 ANNUAL CONFERENCE

*Rethinking Comprehensive  
Internationalization for a  
Global Generation*

## **BUILDING PARTNERSHIPS AND DEVELOPING AGREEMENTS WITH FOREIGN INSTITUTIONS**

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# INTRODUCTION TO INTERNATIONAL PARTNERSHIPS

- Growing emphasis in institutional strategic plans
- Student, Faculty, Staff mobility still dominate
- Research cooperation, teaching collaborations (including via technology) and Joint/Dual Degrees on the rise

# TRENDS

- More focus on institutional commitment and alignment with strategic goals
- Fewer, deeper partnerships
- Recognition that investment in appropriate enabling environment (support staff, professional expertise, technology, etc.) required

# CURRENT LANDSCAPE

Student, Faculty, Staff Exchanges

Visiting Researchers

Traditional Study Abroad

Short-Term Study Abroad

Joint Research/Technology Transfer

Student Transfer/Articulation

Joint/Dual Degrees

Distance Education

Customized Programs (including Executive Ed)

Branch Campuses/Strategic Hubs

International Student Recruitment

Technical Assist./Capacity Building Engagements (CBE)

# Unlocking the Power of Study Abroad and Student Exchange Agreements



# Programmatic trends in study abroad



Interest in non-traditional locations outside the U.S.



Increasing reliance on third party providers



Foreign schools likely unfamiliar with U.S. accreditation, financial aid, and regulatory limitations



Interest in extracurricular activities beyond traditional classroom experience



Office of General Counsel increasingly embedded in program structure and contract dynamics



As popularity grows, so does scrutiny

# What is a study abroad agreement trying to achieve?

## Some possibilities:

- Program structure.
- Relationship building.
- Reciprocity.
- Cultural awareness.
- Student success.
- Opportunity.

## Our focus:

- **Regulatory compliance.**
- **Risk management.**
- **Legal sufficiency.**

# U.S. Department of Education - terminology

- U.S. Department of Education (ED) Federal Student Aid Handbook includes a section on written arrangements and study abroad programs:
  - “**Consortium agreement**—a written agreement between two or more [Title IV] eligible schools.”
  - “**Contractual agreement**—a written agreement between an [Title IV] eligible school and an ineligible school.”



# U.S. Department of Education - terminology

- “An eligible U.S. school may have a written arrangement with a foreign school or organization that is acting on behalf of a foreign school, but such an arrangement is always considered to be one between an eligible domestic school where the student enrolls and an ineligible foreign school, even if the latter is otherwise Title IV-eligible.” (Emphasis added)
- Therefore, these arrangements are considered contractual agreements that must follow the rules that apply to such.

# Study Abroad and Student Exchange Terms

**Regulatory compliance & risk management**

# Student Status and Admissions

- Student status
  - U.S. students must remain enrolled in their home institution and remain subject to applicable home institutional policies.

Examples: attendance, absence, withdrawal, refunds, student conduct, discipline, student grievances.

- Which host institution policies apply?  
What if there are conflicts?

Student  
status

Student  
admissions

- Student admissions
  - What will be the qualifications for the individuals to participate?
  - Proficiency in a foreign language required?
  - Minimum number of credits or maintain a particular GPA?

# Curriculum and Language

- Curriculum/instruction
  - Host institution must administer and deliver all academic curricula.
    - No subcontracting?
  - Employment of qualified faculty; credentials available to home institution.
  - Online course delivery in study abroad where a student is enrolled in a program offered by Title IV-eligible foreign school:
    - “[a] program offered by a foreign school through any use of a telecommunications course, correspondence course, or direct assessment program is not an eligible program.” Nevertheless, “telecommunications technologies may be used to supplement and support instruction that is offered in a classroom located in a foreign country where the students and instructor are physically present.” 34 C.F.R. 600.51(d).
- Language: Agreement should identify the languages that will be used in instruction.

# Evaluation and Course Credit

- Evaluation:

- Each party maintains discretion over student progress and performance.
- Host institution must document performance and provide a transcript.
- Accreditors hold accredited institutions responsible for evaluating student outcomes.



- Course credit:

- Home institution must approve the study abroad program for academic credit before it can award federal student financial aid to its students in the program.
- Host institution must provide information sufficient to enable the home institution to evaluate courses for academic credit.
- Home institution ultimately decides on whether and how to award or accept credit.

# Quality control

- Accreditation standards hold U.S. institutions responsible for the quality of educational programs and courses offered through consortium relationships or contractual agreements.
  - Reserve the right to use reasonable mechanisms to monitor administrative and academic aspects of the program.
- Host institution should commit to provide the home institution access to the programs, including all courses, activities, and program sites, for evaluation and inspection.



# Privacy and Student Records



- Protect personal data in accordance with applicable law and accreditation standards and policies, including FERPA.
- Responsibility for providing notice or obtaining consent to permit disclosure of personal data to the other party.
- Retain customary academic records, such as records of student performance.
- Institutions must be able to document student academic standing and progress for Title IV purposes.

# Licensure and Accreditation

- Study abroad agreement does not imply or extend accreditation to the other party.
- The U.S. institution's accreditation covers the U.S. institution only and does not extend to foreign institutions entering into a collaborative agreement with the U.S. institution.
- Some accreditors specifically require such language in the agreement.





# Ethics in Marketing / Misrepresentation Rule



- U.S. Department of Education's Misrepresentation Rule and applicable accreditation standards and policies:
  - Education institutions may not use informational, advertising, or promotional material that is false or otherwise misrepresents the program.
  - Prohibits institutions, **their reps, and others acting for them**, from making a substantial misrepresentation about the nature of its educational program, financial charges, employability of graduates, or its relationship with the Department of Education.

# Basic Title IV Representations

- Neither party has had its eligibility to participate in federal student financial aid programs (Title IV) terminated;
- Neither party has voluntarily withdrawn from participation in Title IV Programs;
- Neither party has had its certification to participate in Title IV Programs revoked;
- Neither party has had its application for re-certification to participate in Title IV Programs denied;
- Neither party has had its application for certification to participate in Title IV Programs denied.

# Title IX and Nondiscrimination

- Title IX
  - Host institution or provider agrees to provide prompt reports and related information to the U.S. institution regarding actual or alleged sexual misconduct, sexual assault, sexual harassment, or intimate partner violence involving any student as a victim or alleged perpetrator.
- Nondiscrimination
  - Potential extraterritorial reach of U.S. nondiscrimination laws.
    - Title VI, Title VII, Title IX, Section 504, and the ADA.
  - Agreement should address accommodation of student disabilities or special needs in accordance with applicable law.
  - Host country nondiscrimination laws may apply to the study abroad program.

# Student Accommodation Assurances

- Clean, safe, and secure premises.
  - Working smoke detectors
  - Fire extinguisher
  - Locks on doors
- Host family accommodations (often unregulated and under-monitored)
  - Due diligence
  - Background checks
  - Respectful environment
  - Continually monitored

# Other important terms

- Financial terms.
- Use of name.
- Intellectual property.
- Assignment and subcontracting.
- Orientations.
- Management of mental and physical health.
- Policies on substance abuse.
- Liability and indemnification.
- Anti-bribery.



# Capacity Building Engagements (CBE) Outside the United States

## Legal Counsel Assistance at the Development Stage



# Definition of CBE Used in This Presentation

- The transfer of knowledge and training by a University to another entity to assist the entity in developing the ability to do more for itself (*e.g.*, establishing a new school, revising a curriculum, developing a library) → in exchange for funds → sent by the entity to the University. The entity receiving assistance is often another University but can also include a government entity or a private party.
- Does not include sponsored funded activity.

## CBE Activities (a partial list)

- Trips to the foreign location to conduct needs assessments
- Research, including surveys in the foreign country
- A report with recommendations
- The provision of protocols or standard operating procedures
- Ongoing advice
- Management or governance guidance
- Assistance with recruiting senior staff and faculty



## CBE Activities (a partial list)

- Assistance with establishing governance
- Direct assistance in implementation from the United States
- University personnel onsite in the foreign country to provide ongoing advice or assist with implementation
- Training in the foreign country or on the University campus in the United States
- Intellectual Property, most commonly copyrighted materials
- Indirect use of the University name or marks (“in partnership with”)
- Branded use of the University name or marks.

# CBE Issue Spotting (some, not all)

Statement of Effort (SOE)	Consider the proposed efforts and activities for the CBE, and write a detailed description of the potential engagement. Update the SOE to be more detailed and specific as the CBE becomes more likely to happen. It also serves as an underpinning for the legal agreement.
Mission	Assess how the proposed engagement aligns with the University's mission.
Reputation, Name, Marks, Materials	Assess how the proposed engagement and counter-party may impact the University's reputation. Consider defining and limiting the counter-party's use of the University's name, marks, and written materials.

# CBE Issue Spotting (some, not all)

Expertise and Resources	Assess available international expertise and resources. University expertise and resources are, generally, local/regional, and it is preferable to limit the University's activities to its expertise. If possible, the counter-party or a third party should fulfill other expertise and resource requirements.
Human Resources	Assess the CBE human resources requirements, international labor laws and practices, and the University's expertise and resources.
Procurement	Assess the CBE procurement requirements, materials and equipment, international commercial law, and the University's expertise and resources.

# CBE Issue Spotting (some, not all)

Financial Transactions	Assess the CBE financial transactions requirements, international finance laws, and the University's expertise and resources
Legal	Assess the CBE legal requirements (laws, regulations, permits, etc.) and the University legal team's expertise and resources.
Language Translation	If the counter-party's primary language is not English, the University should ensure a high-quality translation is provided for all agreements, reports, and other University supplied information.
Other	Assess whether the CBE will require other expertise or resources not included herein and the University's expertise and resources.

# CBE Issue Spotting (some, not all)

Counter-Party Expectations	Manage the counter-party's expectations and keep them realistic. Program development is complicated and runaway expectations will leave the counter-party disappointed.
Direct Foreign Country Taxes	Assess the University's efforts and activities in the CBE and throughout the country. Does it rise to Permanent Establishment? Consider the amount of tax and the costs/benefits of hiring an international tax expert. This may raise other considerations: (1) individual income tax for faculty or staff, (2) taxation on other activities, (3) need to create an in-country legal entity, and (4) other laws/regulations/rules.

# CBE Issue Spotting (some, not all)

Indirect Foreign Country Taxes	Assess transactional taxes (e.g. value added tax, sales tax, or business tax). Consult the University's finance and legal offices, the counter-party's finance office, and necessary experts early in the CBE development process.
Corporate Registration	Assess whether corporate registration will be required or beneficial: consider the scope of efforts and activities including hiring needs, procurement, buying insurance, renting space, sponsoring visas, access to courts, etc. If yes, consider the corporate registration process (complex, time consuming, expensive). Evaluate whether the efforts and activities can/should be amended to avoid corporate registration.

# CBE Issue Spotting (some, not all)

Government Counter-party	If a counter-party is a government agency or employee, be extra conscious of interactions. Consider laws such as Foreign Corrupt Practices Act and mandatory contract provisions such as Middle Eastern Israeli boycotts.
Privacy	Assess whether laws such as the General Data Protection Regulation or other data privacy laws will impact the CBE activities.
Technology	Assess what technologies will be used (telephone, internet, electric machinery, etc.), and determine whether the infrastructure exists to support those technologies.

# CBE Issue Spotting (some, not all)

Contracts	For contractual agreements, consider payment risks and termination.
Budgeting	When budgeting for the CBE, include the considerations herein in addition to the direct efforts and activities.
Other	This checklist does not contain all possible activities/considerations. All projects will be unique and have issues not on this list. Consider other possible inputs, risks, and requirements for your CBE.



# Challenges of Foreign University Partners

- Lack of understanding of legal (ex. Privacy) & non-legal terms (ex. academic freedom)
- Agreement terms may not be enforceable in host country
- Contradiction between laws of the 2 countries
- Economic conditions of the foreign partner
- Relationships and requirements of the host government

# Challenges of Foreign University Partners

- Language barriers
- Cultural differences
- Quality of faculty, staff, and students
- Lack of good governance
- Lack of control over financing
- Lack of trust among parties