



**2024
Annual Conference**

Leading
International
Education
at a Crossroads

The Convergence of Litigation, Policy, and Standards: Informed Education Abroad Risk Management

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Chatham House Rules

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Legal Disclaimer

This session includes two licensed attorneys acting as subject matter experts in international education, this session **is not** and **does not intend** to constitute legal advice.



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Objectives

- Understand how legal decisions, industry standards, and programming form the framework for an education abroad risk mitigation strategy
- Navigating education abroad risk as an SIO
- Legal primer – key terms and education abroad litigation outcomes
- Understand duty of care
- Connecting the work to Standards



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Scenario

An undergraduate student on an exchange program in Spain calls the study abroad office and shares that a fellow student, Bee (using they/them/their), has been detained by police at a train station.

Bee appears to have suffered some kind of mental health breakdown. They acted irrationally by yelling incoherently, running without direction, and did not respond to instructions by police. Bee possibly acted violently by flailing their arms and fighting police detainment. They were taken by police in a police car. The reporting student does not know where Bee was taken and did not know whether their belongings were with them.

The student is a DACA student, Citizen of Mexico.



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Torts: Negligence Liability

General Disclaimer: Tort law and interpretation varies state by state and by Federal District Courts

For a student (plaintiff) to prevail on a negligence claim requires:

- 1) establishing that the educational institution owed the student the duty of care.
- 2) that the breach of its duty of care was reasonable and foreseeable.
- 3) that the breach was the proximate cause of the student's injury, **and**
- 4) student suffered injury or damages.



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Torts: Negligence Liability

Bloss v. Univ. of Minnesota Board of Regents, 590 N.W.2d 661 (Minn Ct. App. 1999)

“the university had demonstrated that it was “entitled to statutory immunity in the exercise of its discretionary decision to create a cultural immersion program that placed students in host homes, relied on available public transportation, and provided a variety of student warnings and information.”



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Torts: Negligence Liability

The Hand Formula: (United States v. Carroll Towing Co., 159 F.2n 169,173 (2dCir.1947))

If the probability of the loss (P) and the gravity of the loss (L) are greater than the burden of taking precautions (B) or $B < PL$, then the university will have a degree of liability.



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Duty of Care

Wight v. Ohio State University, 750 N.E.2d 659 (Ohio Misc. 2001)

Based on the expert testimony and the evidence, Dr. Thompson performed his duties as a leader of the expedition in a reasonable manner. Accordingly, the court found that the plaintiffs had failed to prove that the defendant breached a duty owed to Wight.

-McNeil vs. Wagner College 246 A.D.2d 516;667 N.Y.S. 2d 397 (NY App Div. 1998)

The university had no obligation to supervise the medical treatment received by the student.



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Duty of Care

Special relationship and the liability for 3rd Party Actors

1) Section 315 of the Restatement (Second) of Torts(1965) provides: There is no duty to control the conduct of a third person so as to prevent him from causing physical harm to another unless A **special relationship**

2) Nero v. Kan. State Univ., 861 P.2d 768, 778 (Kan. 1993). Those courts that have found a **special relationship** exists have determined that at the time of the student's injury.

3) Fay v Thiel College 55 Pa. D. & C.4th 353 (2001), a Pennsylvania Court found a **special relationship** existed for negligent liability of Theil College due to a signed emergency medical consent form even though a third party caused the breach.

4) Regents University of California v. Superior Court of Los Angeles (4 Cal. 5th 607, 413 P. 3d 656, 2018).



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Breach of Duty of Care

Boisson v. Ariz. Bd. of Regents (343 P. 3d 931, 236 Ariz. 619 - Ariz: Court of Appeals, 1st Div., 2015)

“Determining whether a duty of care exists is an issue of law for the court to decide, not experts per the Court’s decision.”

When an off-campus activity is a curricular activity, criteria from *Boisson*

- 1) the purpose of the activity, *Collette*, 203 Ariz. at 363 ¶ 16, 54 P.3d at 832;
- 2) whether the activity was part of the course curriculum, *Delbridge*, 182 Ariz. at 59,893 P.2d at 59;
- 3) whether the school had supervisory authority and responsibility during the activity, *id.*; *Monroe*, 234 Ariz. at 161 ¶ 18, 318 P.3d at 877; and
- 4) whether the risk students were exposed to during the activity was independent of the school involvement, *Collette*, 203 Ariz. at 365 ¶ 23, 54 P.3d at 834.



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Breach of Duty of Care

Boisson v. Ariz. Bd. of Regents (343 P. 3d 931, 236 Ariz. 619 - Ariz: Court of Appeals, 1st Div., 2015)

Additionally, the Boisson Court listed additional factors considered by Courts in other jurisdictions, including:

- 5) whether the activity was voluntary or was a required school activity;
- 6) whether a school employee was present at or participated in the activity or was expected to do so; and
- 7) whether the activity involved a dangerous project initiated at school but built off campus.



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Reasonable Care and Foreseeability of Harm

*Mattingly v. the University of Louisville, No. 3:05CV-H, 2006 WL 2178032, at*5 (W.D. Ky. July 28, 2006)*

The University had no control over the alleged harasser or the context in which the harassment occurred.

Munn v. Hotchkiss School (795 F. 3d 324 (2nd Cir., 2015)

Found that the school had a duty to warn about or protect against the risk of a serious insect-borne disease in organizing a trip abroad, giving precedent to the notion that institutions have a duty to their travelers to warn about known risks and to take reasonable action to mitigate these risks.

Jane Doe v. Rhode Island School of Design (RISD) 432 F.Supp.3d 35 (2019)

It is reasonable for her to expect RISD to exercise due care in agreeing to provide the housing for the Ireland Program.



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Proximate Cause

Wight v. Ohio State University, 750 N.E.2d 659 (Ohio Misc. 2001)

The court found that the death certificate does not support the plaintiffs' theory regarding the proximate cause of Wight's death and, in some respects, conflicts with that theory. Accordingly, the court concludes that plaintiffs have failed to prove that the defendant's alleged negligence proximately caused Wight's death.



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Assumption of Risk

Thackurdeen v. Duke University, 1:16CV1108 (M.D.N.C. 2018)

The waiver was upheld based on the plain language of its content in consideration of the circumstances under which it was intended to apply.

Downes et al. v. Oglethorpe University Inc., No. A17A0246 (Ga. Ct. App. 06/30/17)

Universities are not liable for negligence if an individual freely chooses a course of action with full knowledge of its danger.



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How to prepare. How to plan.

How to *facilitate* International travel and education abroad *by students* for “*university purposes*” while minimizing risks to the traveler and the institution?

- Facilitate: Distinguish between support for, promotion of, and organization of international opportunities.
- Define a “university purpose”
- Is there a difference between promoting, organizing, or coordinating a program or opportunity? Who is responsible for *defining these terms*? What units on campus need to be involved in the drafting and the implementation of the policies?
- How to evaluate the comprehensiveness of your plan?



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Opportunities and Responsibility

Do you know the universe of international education options available to your students and where they are housed?

- Faculty member A has a friend who runs a scuba operation in Greece with opportunities to learn about marine life. Faculty member encourages her biology students to write to her friend to inquire about internship possibilities;
- Department chair is asked to sign materials from a Semester at Sea advisor and provide a letter of support for two students to directly enroll in a program over the summer.
- 8 students from a sorority on campus have enrolled in a program that was listed on the study abroad website as a “partnership” with CIEE and through which the students can earn university academic credits.
- All students in Art History 1100 are invited/encouraged to sign up for the 3-week faculty led program in Florence during May term.



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Key Campus Partners

Policy Making → Policy Compliance

- Senior International Officer
- Vice Chancellor/Provost/Dean
- Insurance & Risk Management
- General Counsel
- Education abroad staff
- Faculty engaged in EA
- Travel Services
- Faculty Senate
- Communications Office
- Information Technology
- Graduate School

- Counseling Office
- Student Health
- Office of Student Conduct
- Registration & Records
- Office of Scholarships & Financial Aid
- Academic Department Heads and/or Coordinators for Advising



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Building Blocks

Determine how to provide access to critical services and resources to all students traveling internationally (regardless of purpose):

- Develop a policy that is comprehensive without being overly restrictive.
- Identify who is traveling and where.
- Provide each traveler with critical services and resources prior to departure; require orientation where appropriate.
- Develop a travel registry, ability to communicate in an emergency
- Student release and waiver document
- Mandatory online health and safety orientation; conduct table top exercises to test the depth and breadth of your response; talk with your peers.



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Assessing Risk

Destination locations: Where will students be, what will they be doing?
Assign one university officer whose role it is to determine whether the destination/activity is beyond what the university will sanction.

- U.S. State Department travel advisories (travel.state.gov). What is the institution's position with respect to countries with Level 3 and Level 4 advisories? Is there an appeal process?
- CDC Travel Health Notices
- World Health Organization
- Non U.S.-government authorities (embassies, consulates)
- Insurance partners
- Travel security vendor



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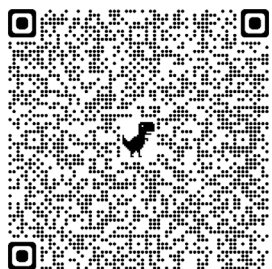
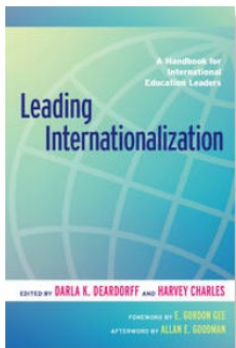
AIEA: Standards of Professional Practice

Standard Three

Has an appreciation for the risks associated with global engagement for the institution and its faculty, staff and students, and works closely with relevant others to minimize risk.

Standard Four

Has an awareness and understanding of the laws that impact significant aspects of internationalization, such as student and faculty mobility, and works with legal counsel to ensure compliance with these laws in a manner consistent with the interest of the institution and its stakeholders.



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Forum on Education Abroad

Since 2004, the Standards Development Organization for U.S. education abroad

- (1) To develop and present voluntary consensus standards for education abroad programs, for domestic colleges and universities and entities in other nations that provide or partner in providing education abroad programs for students from U.S. colleges and universities
- (2) To present standards and methods for assessing performance against the standards that can be used by the smallest and simplest organizations interested in self-improvement, through to the largest and most complex organizations in the education abroad field.

Student Risk Pilot Report, 2023

- Identified Standards Involved
- Categorized and Defined
- Report Data for Benchmarking
- Consistency
- Evidence-based Practice



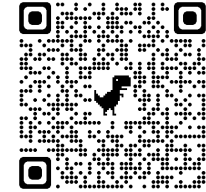
Using Standards

ISO31030, Pub 2021



1. Understanding the Organization and its Context
2. Managing Travel Risk
3. Travel Risk Assessment
4. Travel Risk Treatment
5. Communication & Consultation
6. Program Monitoring and Review
7. Program Recording and Reporting.

NSPM 33 Guidelines



Implementation Guidance

1. **Requirements for research security programs**

NSPM-33 requires a certification from research organizations awarded in excess of \$50 million per year in total Federal research funding that they have implemented a research security program that includes the four elements highlighted in NSPM-33:

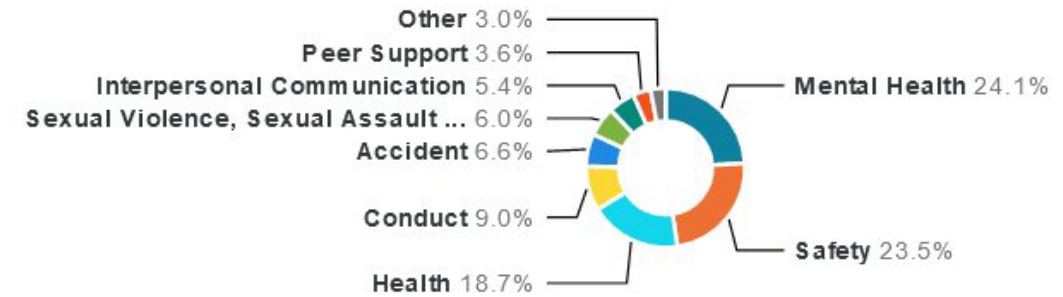
- (1) Cybersecurity (see Subsection 6 below)
- (2) Foreign travel security. Agencies should require that research organizations maintain international travel policies for faculty and staff traveling for organization business, teaching, conference attendance, research purposes, or any offers of sponsored travel that would put a person at risk. Such policies should include an organizational record of covered international travel by faculty and staff and, as appropriate, a disclosure and authorization requirement in advance of international travel, security briefings, assistance with electronic device security (smartphones, laptops, etc.), and pre-registration requirements.

Incident Analysis

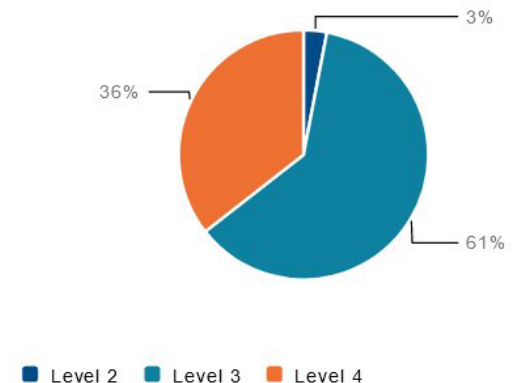
Incident Policy and Documentation Process

Level 3, serious incidents requiring coordination between the study center, UCEAP Systemwide office staff and non-UCEAP personnel to achieve resolution. Examples include an injury or illness requiring an overnight hospital stay, broken bones, accidents involving a motor vehicle, mental health issues requiring intervention arrests, robbery, assault, civil unrest, and conduct violations warranting disciplinary probation.

Level 4, severe incidents involve the immediate well-being of students and/or demand significant UC resources. Examples include an injury or illness requiring hospitalization or medical evacuation, student death, suicide attempt, fire in student housing, physical assault, sexual violence, student disappearance, health or mental health conditions resulting in withdrawal, and conduct violations resulting in program dismissal.



What is the level of severity? 166



Crisis Management Muscles Must be Trained

Balancing Act

Incident Type

Most severe

Most common

Least common

Staff confidence

Institutional Risk Tolerance

Leadership Risk Tolerance



Table Top Elements

Contributing factors

Complex scenarios

Escalating

Communication & PR

Privacy Laws

Local Context (laws, culture)

Using Resources

Unknown Unknowns

Training Resources

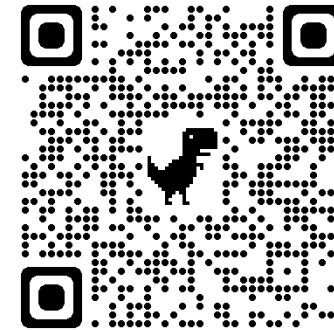
- OSAC Academia Sector Committee
- Forum on Education Abroad's Health, Safety, Security, and Risk Management Institute
- URMIA
- Pulse Positions
- Travel Security Vendors



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Google Drive of
Table-Top Exercises



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Discussion Questions

1. What are successful components of an international travel policy? What is your institutional approach to risk and compliance and what offices are your key partners in this process?
2. In the absence of a global risk manager, is the SIO the de facto owner of global risk resulting from international mobility? How can you successfully navigate this space? How does delegated authority function at your institution? What are the points of oversight you need to exercise in a crisis or a determination?
3. How do you prepare for the worst? How do you train staff to prepare for the known unknowns? How do you develop recognition of unknown unknowns (for example, identity factors in high context-evolving risk landscapes)?



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Building a Travel Policy

Sample chapter from forthcoming The Forum on Education Abroad publication on education abroad risk management.

Written by Patrick Morgan, University of Michigan,
and Shaun Jamieson, University of Iowa.



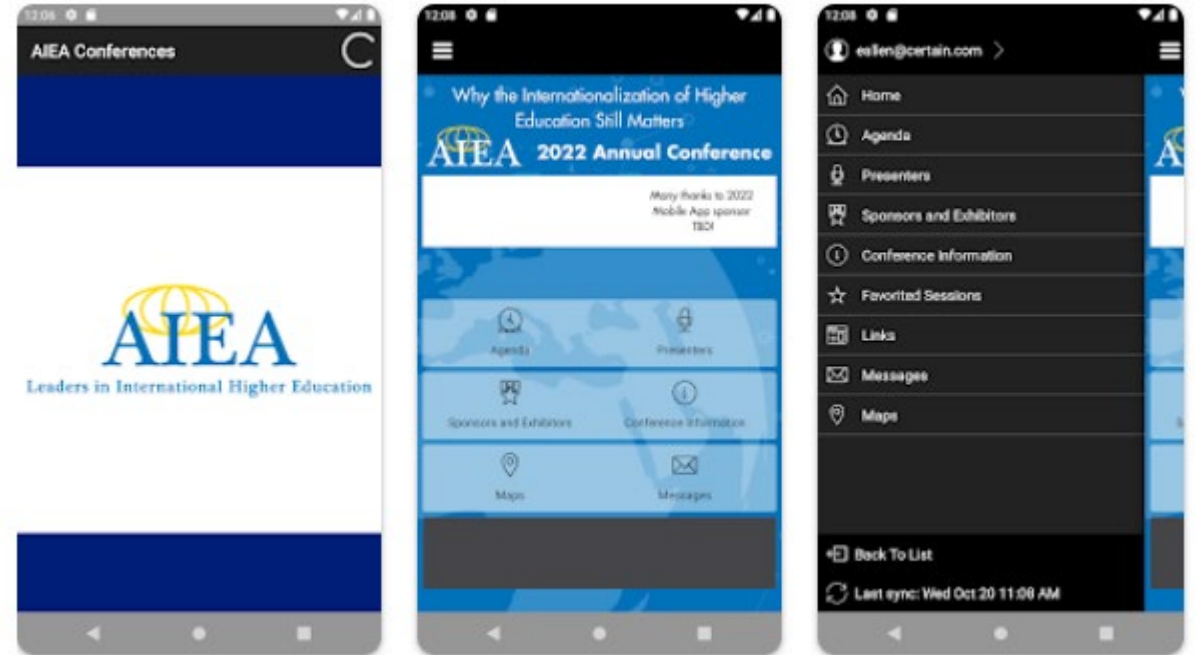
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