

**From Barcelona to Buenos Aires:
Application of the ADA to Study
Abroad Programs**

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Presentation Overview

- I. Introduction/Background
- II. The Law – Murky as it May Be
- III. Know Your Institution
- IV. Know Your People
- V. Know Your Disabilities
- VI. Case Studies/Discussion

Introduction

It all started with an email . . .

Dear Christine,

Hi, it's Richard. I wanted to let you know that I will be studying abroad this summer in Barcelona. I will also spend the fall semester in Buenos Aires. My friend, who is an interpreter, is happy to come with me. You can call her any time . . .

Introduction

- WU had provided accommodations abroad to SWDs in the past, but enormity of the task with Richard caused a more thorough analysis of our responsibilities
- Involved Disability Resources, General Counsel, and Vice Chancellor of Finance Offices
- Resulted in both effective and ineffective approaches to executing accommodations

First Things First: The Law

- Extraterritorial Application of the ADA: Does the ADA apply to American students studying outside the United States?
- As with most legal answers, it depends!

Extraterritoriality in General

- Longstanding principle of American law that federal statutes only apply within the territorial jurisdiction of the US.
- US Supreme Court in 1991 Aramco case held that federal statutes (specifically a civil rights law) are not to be applied abroad “unless contrary intent appears” in the law.

- Following Aramco, courts began to carve out exceptions to the rule.
 1. Is there affirmative intention of Congress to apply abroad?
 2. Would the failure to extend the law abroad result in adverse effects within the US?
 3. Is the conduct regulated actually occurring in the US?By 1993, SCt moved from requiring a "clear statement" to requiring "clear evidence" of intent

Extraterritoriality in General

- Quickly after Aramco, Congress enacted 1991 Civil Rights Act Amendments (CRAA) specifically to overturn the decision
- The Act extends Title VII of the Civil Rights Act of 1964 and Title I of the ADA to conduct overseas
- American workers employed by American companies or their subsidiaries located in foreign countries were protected under Title I of the ADA
- 1991 CRAA did not apply to Section 504 or ADA Titles II or III

So Where Does that Leave Us?

Oregon

- Bird v. Lewis and Clark College (2000), Oregon federal district court held that ADA applied abroad to American student using wheelchair.
- Australia trip was L&C's program taught by college's faculty.
- On appeal, 9th Circuit ruled for student on breach of contract claim and did not rule on issue of extraterritoriality of the ADA

So, Where Does that Leave Us?

Arizona

- 2000 OCR Letter to Arizona State University upheld ASU's decision to deny interpreter services to student who sought to study abroad at Irish university.
- OCR ruled that ADA and Section 504 do not apply extraterritorially
- OCR cited Aramco, but did not conduct an inquiry regarding the relationship between the foreign program and ASU

So, Where Does that Leave Us?

Missouri

- OCR upheld St. Louis University's decision to deny a student's request for a Mac computer instead of IBM on a study abroad program in Spain
- OCR conceded extraterritorial effect of 504, instead finding that IBM instead of Mac was an effective accommodation
- OCR did not actually get to issue of whether ADA applied, but rather determined that SLU had not violated it
- SLU in Spain

So, Where Does that Leave Us?

Minnesota

- Third OCR office in Minnesota held that St. Scholastica was obligated to provide interpreter for program in Ireland.
- OCR held that 504 requires the provision of services
- First case in which OCR explicitly recognized extraterritorial application of 504
- Lack discussion of whether school "owned" the program

So, Where Does that Leave Us?

- Difficult to pull the cases together to come up with a simple rule. Still some ambiguity.
- Our role is to protect the institution and make education accessible for students with disabilities
- As applied at WU, when we “own” the program we own the accommodation
- When it’s another school’s program, or a for-profit study abroad opportunity, we do not provide accommodations

One Approach

- Consistent with all accommodations at WU, study abroad or not
- Also consistent with our obligation to modify our programs/policies to accommodate students with disabilities
- Consistent with the post-Aramco question, “Is the conduct regulated actually occurring in the US?”

Factors Influencing WU Approach

- WU is wealthy, private university
- Attitude of VC for Students is to “do what’s right for the student.”
- Disability Resources has easy access to General Counsel’s Office to review policies and obtain advisory opinions
- Budget process is prepared for unexpected costs
- Role of study abroad programs in undergraduate education

Know Your Institution

- What's the role of study abroad at your institution?
- What's your authority? How far can you go to formulate institutional policy?
- How strong are your relationships with other units?
- What is the institution's "stomach" for budgetary surprises?
- How are study abroad programs organized? Who organizes, teaches, collects funds, and grants credits for them?

Know Your Institution

- Begin to have these conversations now, before you get a "Dear Christine" email
- Workload for granting/executing accommodations can take months, so best to have initial question of "will we?" answered before question of "how?" is asked.

Know Your People: Students

- Set expectations clearly from beginning – what will be expected of student?
- Plan, plan, plan with student before they leave
- Before program starts, make student responsible for setting schedule and organizing day to day needs
- Once program begins, set clear boundaries and flows of communication
- Make sure student sees you as advocate in case things are not going well

Know Your People: Faculty

- Different Types: The Mother Hen and When in Rome (or Latin America)
- Meet with faculty member leading trip as soon as possible
- Use "Love & Logic" approach
- Include General Counsel, if possible, and Department Chair
- Stress that obligation to provide accommodations belongs to faculty member
- Try to have communication flow between faculty and student, not you

Know Your People: Professionals

- Contract with company vs. hire professional yourself
- Include faculty member on meeting once professional is hired
- Try to have firm contract, but beware of "too firm"
- Establish professional, but very congenial relationship early on
- Flexibility and resourcefulness are as important as cost

Consider Your Students' Needs

- Different disabilities require different needs and approaches
- Different programs will have practical considerations that may make accommodations easy or impossible
- Consider the laws of the country where student will be studying
- Consider whether disability issues should be included in study abroad info sessions

Chronic Health Conditions

Start with the student and how they want to disclose to professor.
Clear communication with faculty and student about program requirements, preferably written
Do you communicate with parents?
Consider whether sealed statement of medical condition in multiple languages is appropriate.
Can/should you help guide student to identify medical experts in foreign country?
Be very clear with faculty about boundaries

Vision Impairments

- Determining that student is qualified for program
- Again, very practical communication with faculty and student about expectations/program requirements
- Turn responsibility for developing solutions to student
- Faculty must be aware that all program materials must be accessible before leaving
- Because there will be problems, determine how to make materials accessible once abroad.

ADHD/LD/Psych

- What are the laws in the country? Are there already systems in place?
- At WU, professor bears responsibility for finding notetakers and executing extended time arrangements
- Discuss with student need to manage medication, along with general health issues
- With student's permission, consider engaging psychologist in conversation, where appropriate
- LD/ADHD have been easiest diagnosis to accommodate

Hearing Impairments

- Most costly of accommodations abroad
- Start early and plan, plan, and plan
- Very important to place onus on student and faculty member to develop schedule
- Can look to American Consulate or Embassy to find interpreter
- Benefits of contracting with agency and not hiring interpreter
- Do you hire multiple interpreters? Probably not feasible for either party
- What expenses do you cover?

Case Studies

Questions?
