

Rights and Responsibilities

A GUIDE TO NATIONAL AND INTERNATIONAL DISABILITY-
RELATED LAWS FOR INTERNATIONAL EXCHANGE
ORGANIZATIONS AND PARTICIPANTS



Edited by
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INTRODUCTION

By Susan Sygall, Executive Director, Mobility International USA

I remember the advertisement in the University of California, Berkeley student newspaper as clearly as if I had seen it yesterday. It said, “Be an ambassador of goodwill – do a semester abroad – all expenses paid. For graduate or undergraduate students.” I contacted my local Rotary Club to get more information about what seemed like an incredible opportunity. This was 1975 and I was delighted that the information booklet I received said, “Persons with disabilities are encouraged to apply.” Just knowing I would not be turned down merely because I use a wheelchair was all the encouragement I needed. I applied, received a full scholarship and had one of the best years of my life studying in Australia at the University of Queensland.

Upon my return, I conducted a survey of numerous university and non-affiliated exchange programs. I learned that very few people with disabilities had participated in any type of international exchange. I knew that this must change – in order for people with all types of disabilities to gain a global perspective, become future leaders and be successful in whatever careers we choose, we need to have access to the same array of international educational activities that nondisabled people have.

My experience and convictions gave birth to an idea, which later became an organization. With the assistance of many friends and colleagues, we established Mobility International USA (MIUSA) in 1981. Since then, MIUSA has coordinated more than 150 youth, young adult and professional exchanges involving people with and without disabilities. Outbound exchanges have taken place in countries as diverse as Azerbaijan, Bulgaria, China, Mexico and Japan. Inbound exchanges have involved people with disabilities from all over the world. While offering these exchanges, MIUSA has worked throughout our 23-year history to increase the number of people with disabilities participating in all types of international exchange programs.

The Americans with Disabilities Act (ADA), a landmark civil rights law, has opened many doors for people with disabilities and continues to have a positive impact on the international exchange field. The passage of the ADA in 1990 bolstered our message that a person cannot be denied access to an educational opportunity based solely on his or her disability. This publication explores different insights on the interpretation of the ADA and its impact on international educational exchange policy.

In 1995, MIUSA began the National Clearinghouse on Disability and Exchange. This project, sponsored by the Bureau of Educational and Cultural Affairs (ECA) of the United States Department of State, works to increase the inclusion of people with disabilities in the broad range of international educational exchange, volunteer abroad and research opportunities available worldwide.

The Clearinghouse provides training, publications, referral to international and disability resources and one-to-one advising to ensure that:

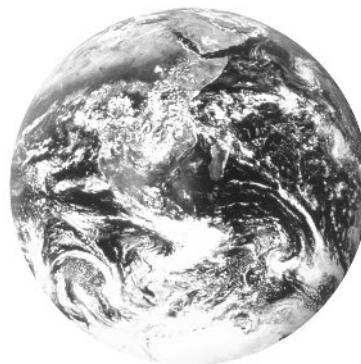
- a) Individuals with disabilities learn about any exchange for which they are qualified, and
- b) International exchange organizations and educational institutions have the information needed to include people with disabilities in their programs.

We have been encouraged year by year by the disability community's growing awareness of exchange opportunities and by the increasing number of people with disabilities participating in exchanges.

I know the powerful impact an international exchange experience can have on an individual, a community and, yes, I would even say, the world. I look forward to seeing the Clearinghouse project and publications such as this one dramatically change the face of the international exchange world—where people with and without disabilities participate equally side by side through volunteering, studying, working or researching abroad—taking advantage of all that the world has to offer.

RIGHTS AND RESPONSIBILITIES

A GUIDE TO NATIONAL AND INTERNATIONAL DISABILITY-RELATED LAWS FOR INTERNATIONAL EXCHANGE ORGANIZATIONS AND PARTICIPANTS



Published by the National Clearinghouse on Disability and Exchange (NCDE), a project funded by the Bureau of Educational and Cultural Affairs of the United States Department of State and managed by Mobility International USA.

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All information in *Rights and Responsibilities: A Guide to National and International Disability-related Laws for International Exchange Organizations and Participants* is subject to change without notice. To the best of its ability, Mobility International USA (MIUSA)/ National Clearinghouse on Disability and Exchange (NCDE) verified the accuracy of the information prior to publication. Although efforts have been made to ensure accuracy, MIUSA/NCDE does not guarantee the accuracy of the book. MIUSA/NCDE cannot be held liable for inaccuracy, misinterpretation or complaints arising from this book. Any listing of an organization, company, service or resource should not be construed as an endorsement.

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THE AMERICANS WITH DISABILITIES ACT: WHAT INTERNATIONAL PROGRAM COORDINATORS NEED TO KNOW



THE AMERICANS WITH DISABILITIES ACT: WHAT INTERNATIONAL PROGRAM COORDINATORS NEED TO KNOW

International exchange allows participants to explore different cultures, meet diverse people and enjoy new places, and the Americans with Disabilities Act (ADA) upholds the right of people with disabilities to participate in these important and life-changing opportunities. As growing numbers of people with disabilities are applying to and participating in exchange programs alongside their nondisabled peers, some exchange professionals may wonder what their responsibilities are as they prepare to include participants, whether those participants are blind, Deaf, have mobility impairments or hidden disabilities. The ADA requires U.S. exchange organizations to make appropriate accommodations for people with disabilities. (In addition, programs may be subject to Section 504 of Rehabilitation Act if they receive federal funds.) That may mean building a ramp at the U.S. headquarters, hiring an American Sign Language (ASL) interpreter or persuading an affiliate program that accommodating a blind student is both possible and valuable to the program. With flexibility and planning in advance, creating an accessible program can be a rewarding experience for everyone involved.

THE APPLICATION PROCESS

During the application process for international exchange programs, applicants must be considered solely on the basis of their qualifications, regardless of disability. Once an applicant has been accepted, the process of facilitating appropriate accommodations can begin. Exchange organizations should ask all participants, regardless of whether they have a disability, about what they need to have a successful exchange experience.

Program staff should review policies to be sure requirements have not been established that would exclude applicants based on disability. Program policies can be changed in minor ways to accommodate participants with disabilities. For example, while an exchange program may require all delegates to carry their own luggage, this requirement might be waived for someone who has difficulty with balance or carrying heavy

University of California (UC), Berkeley Application and Accommodation Forms
The UC Berkeley Programs for Study Abroad office has an outstanding record and excellent process for including people with disabilities in international programs. Its documents, from publicity flyers to application forms, reflect a clear nondiscrimination policy.

Students who identify themselves as having a disability are given a timeline and informed what they need to do to expedite the accommodation process. This collaborative approach involves students, advisors, disability services and student health service personnel. These professionals are involved early in the process and are able to provide encouragement and support for students with disabilities.

Other exchange organizations should note that the UC Berkeley forms:

- Encourage students with disabilities to apply to UC Berkeley Study Abroad programs
- Are provided for everyone who applies to a study abroad program, whether or not the applicant has a disability
- Make clear that all participants have an equal chance and that everyone is welcome to apply to a UC Berkeley study abroad program
- State that accommodations will be provided for people with disabilities as appropriate.

loads. This individual might instead be asked to attend to his or her luggage and make sure that, with someone's assistance, it arrives at its final destination.

What happens if someone applies for a site that seems inaccessible? Each person needs to self assess what challenges and compromises he or she is willing to accept in order to have a successful international experience. A site that works well for one person may not work as well for another, even if their disability is the same. An asset that people with disabilities bring to an international experience is that they are generally accustomed to being flexible in dealing with everyday needs and can often make adjustments to handle unexpected challenges. The exchange professionals' role during the application process is to provide objective information about a program site to the applicant so that person can make an informed decision about whether the site will suit his or her desires and abilities. While it is fair for the exchange professional to gather information for and discuss access issues with an applicant who expresses concerns about accessibility, the time for discussion of what accommodations will allow a participant with a disability to succeed in a program is after the application has been accepted. Whatever the situation, communication between exchange professionals and the person with a disability is key to success.

ACCESSIBILITY ABROAD

Although accessibility varies outside the United States, organizations can still plan for inclusive programs. A U.S. organization that is actively involved in setting up and running an exchange program in another country may be expected to select sites and partners and provide services in a way that is as accessible as possible. In some settings, countries and programs, full accessibility by U.S. standards will not be possible, but organizations can offer creative accommodations and assistance to improve program access. This can be done as needed, when establishing new partnerships or renewing overseas agreements.

Exchange organizations should make clear to their foreign affiliates and contracting partners the expectation that people with disabilities should be able to participate equally. While this may be a new concept in some countries, U.S. organizations can help educate foreign affiliates about methods for including people with disabilities.

To make a good-faith effort to comply with the ADA, exchange programs should pull together a team to assess general program accessibility and research necessary background information at each overseas site. This team should include people with disabilities from local disability organizations, which can serve as an added resource. With this information, program advisors can present applicants with a realistic picture of what they can expect from their experience in terms of accessibility. Having clear and accurate information about the exchange site and host community, the participant can make informed decisions about how to approach the situation. The participant and exchange coordinator can then figure out how to make adaptations to deal with inaccessibility. Fostering open communication and collaboration between people with disabilities interested in exchange programs and program coordinators is a formula for success.

SUGGESTIONS FOR EXCHANGE PROGRAMS

Work to improve diversity by increasing the number of people with disabilities involved in programs. Raising the participation of people with disabilities by 50% over the next two years is a good initial goal.

- Work with the college or university disabled students services office or local independent living center for ideas about how to recruit and accommodate people with disabilities. This office or center can suggest ideas for publicizing popular programs within the disability community and can assist with the accommodation process.
- Make sure to create an accessible program office. Purchase a TTY, a telephone device with a keyboard enabling Deaf, hard of hearing and speech-impaired people to communicate by telephone to inquire about exchange programs.
- Ensure that the office is wheelchair accessible. Have publicity brochures, newsletters and applications available in large print, Braille, on audiotape and/or computer disk for people who are blind or visually impaired. Ensure that online forms are accessible.
- Highlight a statement that appropriate accommodations will be made for people with disabilities in all advertisements and brochures.
- Make sure the materials are presented in a way that makes it clear that people with disabilities are welcome in programs. Include

Any qualified family can be a homestay for a person with a disability. Organizations can use simple checklists to determine the accessibility features of a home when the family signs up to host exchange participants. This objective information will be on hand and can be referred to in matching a prospective participant with the homestay family. Contact the National Clearinghouse on Disability and Exchange for sample homestay assessment forms.

Specifically recruit families with disabled members as a regular part of your homestay family pool. Participants with and without disabilities can be placed with these families as they reflect an important aspect of diversity in any community and country.

For more detailed information on recruiting and preparing homestay families for hosting disabled participants, see *Building Bridges: Including People with Disabilities in International Exchange Programs*, available through the National Clearinghouse on Disability and Exchange.

The information in this chapter is for the purpose of working together for the inclusion of people with disabilities in programs abroad, but recognizes these efforts may not be always fully covered legally outside the United States according to some interpretations of the Americans with Disabilities Act (ADA). These interpretations state that the ADA has limitations in that it legally lacks jurisdiction over extraterritorial conditions, meaning it does not necessarily include coverage as is provided in the United States for U.S. citizens with disabilities when they are not physically on U.S. soil. However, whether organizations run their own programs overseas or contract with local partners to run their programs in another country, exchange organizations are covered by the ADA as it relates to the employment provisions of the ADA, and have a responsibility under the law to serve people with disabilities to the extent that it does not conflict with the host country's laws. Another interpretation that challenges the view of extraterritorial restrictions and concludes that the ADA is applicable overseas is presented in a later chapter of this book.

images of people with disabilities in outreach materials and use language like: "People with disabilities are encouraged to apply."

- Recruit people with disabilities as a part of regular recruiting strategies. Find homestay families in each program that have people with disabilities in their households.
- Make sure that facilities used for program orientations and activities are accessible.
- Expand organizational resources to include disability-related books and contacts. Create a listing of people with disabilities who can provide support and information.
- Recruit volunteers and job applicants with disabilities. Have a person with a disability on an advisory board or board of directors.

INTERNATIONAL PARTICIPANTS WITH DISABILITIES IN THE UNITED STATES

The ADA prohibits discrimination against all people with disabilities in the United States. Therefore, all exchange participants from other countries involved in programs in the United States are protected against discrimination by the ADA. Since the ADA is a unique law, international visitors will need to become familiar with its protections and with community resources available to them as a result of the ADA. Local disability groups can help with this education and orientation process.

FOR MORE INFORMATION

Local resources for learning more about the ADA include independent living centers, rehabilitation centers, hearing and speech centers, state vocational rehabilitation offices, special education departments within school districts, local disability advocacy groups, state commissions serving blind people and university disabled students services offices.

THE RIGHTS AND RESPONSIBILITIES OF PROGRAM PARTICIPANTS



THE RIGHTS AND RESPONSIBILITIES OF PROGRAM PARTICIPANTS

People with disabilities have the right to participate in the international exchange program of their choice whether that be a small private exchange program in South America or a program run by a large university in Europe. Participants with disabilities need to be flexible and prepare for life overseas, as accessibility and attitudes abroad are different than in the United States. By working closely with the staff of exchange organizations, the individual will have the best opportunity for successful participation.

Below are some general guidelines for people with disabilities interested in participating in international exchange.

Self-identification. Participants with disabilities can choose whether to identify themselves as people with disabilities. Those who do not choose to self-identify should be aware that programs may not be required to accommodate anyone who has not made his or her needs known in a timely manner.

Document the disability. Participants with disabilities who self-identify and request accommodations may be required to provide documentation that includes a professional assessment of their disability and necessary accommodations. Documentation should be current; some colleges and universities require it to be no more than three years old. The cost of testing and documentation is usually borne by the participant. Disabled student services offices on campuses can be helpful in documenting a disability and pinpointing accommodation options for students.

Qualifications. A person with a disability must meet all general program qualifications in order to be accepted to an international exchange program. Academic, age and experience-related qualifications must be satisfied as they would be for any applicant. A program cannot create requirements that, by nature, measure whether a person has a disability or that cause a “disparate impact” on people with disabilities.

Modification of policy. A participant can ask that requirements or policies be modified to accommodate a disability. Modification of policy is a reasonable request if the changes do not fundamentally alter the nature of the program itself. For example, a program that requires students to speak the language of the host country could modify that policy for a participant who isn't able to speak because of a speech or hearing disability. The participant, however, would be required to show proficiency in communicating in the host language through written, signed or other means of communication.

Flexibility. Participants with disabilities who collaborate with advisors and program administrators are most likely to be successful in making an international experience accessible. Participants should be clear about their needs and what they can do in order to make the situation workable. Access abroad will not be the same as in the United States, but with planning, programs can meet participant needs at an overseas site.

Advance preparation. Advance planning is the key to having a successful international experience as a person with a disability. Some types of accommodations might take months to arrange. Program staff should be given enough lead time to make the necessary accommodations. The process may be lengthy, depending on what accommodations each individual might need.

Providing accommodations. Organizations must make reasonable and affordable accommodations requested by participants with disabilities. However, organizations are not required to make accommodations that place an undue financial burden on the organization or fundamentally alter rudimentary elements of the program. The overall size of an organization or institution is taken into account when determining if an accommodation will pose an "undue burden." Participants, other than employees, are not generally covered by U.S. civil rights laws once they are outside of the United States, but the application, preparatory activities, and planning that occur in the United States are covered.

As a participant is presented with descriptive information about the program site, program activities and host country, he or she will be thinking about what kinds of accommodations will make the situation workable. An exchange organization should establish a process in which the participant works with the international advisor and overseas staff to determine which accommodations are *necessary* in

order to have a successful exchange experience and which are *desirable* but not essential.

These guidelines are important considerations when staff and participants work together to arrange for accommodations and services in all aspects of an international program. Please see the chapter titled “Study Abroad Experiences Offer Unique Opportunities and Challenges for Students with Disabilities” and the stories that follow it in this publication for examples of how programs and individuals have worked together to arrange for successful exchange experiences.

For further questions about participant rights, contact the National Clearinghouse on Disability and Exchange and/or the Disability Rights Education and Defense Fund. Contact information can be found in the Resources section of this publication. Also see the next chapter, titled, “The Civil Rights of Travelers with Disabilities: The Impact of the Americans with Disabilities Act and Other Disability Civil Rights Laws.”

THE CIVIL RIGHTS OF TRAVELERS
WITH DISABILITIES:
THE IMPACT OF THE AMERICANS
WITH DISABILITIES ACT AND
OTHER DISABILITY CIVIL
RIGHTS LAWS



THE CIVIL RIGHTS OF TRAVELERS WITH DISABILITIES: THE IMPACT OF THE AMERICANS WITH DISABILITIES ACT AND OTHER DISABILITY CIVIL RIGHTS LAWS

by Marilyn Golden, Disability Rights Education and Defense Fund (DREDF)

Editor's Note: The information featured in the following chapter will be useful for both individuals and organizations planning travel arrangements related to international exchange programs.

Travelers with disabilities face many barriers. Whether it's an explicit refusal ("I'm sorry, but we can't accommodate the handicapped") or an implicit one (like steps or narrow doors), the travel destination is the last place anyone wants to run into obstacles.

Fortunately, laws protect people with disabilities in some of these situations. Inside the United States, and occasionally, outside it, travelers with disabilities enjoy a variety of legal protections from discrimination and exclusion, thanks to a network of U.S. federal civil rights laws, some state laws and laws in other countries. Of course, a law does not automatically guarantee that everything will be free of barriers or discrimination. But barriers have begun to come down, and when there is legal protection, if illegal discrimination does occur, the traveler has recourse—there's something that can be done about it.

This chapter discusses some of the most important ways disability rights laws affect travel. Be aware that there may be many more particulars that address any specific travel situation but which are beyond the scope of this chapter. Consult the resources listed at the end of this section for further details.

IN PUBLIC PLACES AND PROGRAMS

For many years, disabled travelers had to travel with caution. Going to scenic areas, historic sites, theaters, restaurants, hotels and stores in new cities was a gamble—maybe you could get in, and maybe you couldn't.

AIRPORT SECURITY

Steps Taken to Ensure that New Security Requirements Preserve and Respect the Civil Rights of People with Disabilities

The Air Carrier Access Act (ACAA) and the Department of Transportation's implementing rules prohibit discriminatory treatment of persons with disabilities in air transportation. Since the terrorist hijackings and tragic events of September 11, the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA) have issued directives to strengthen security measures at airline checkpoints and passenger screening locations. In securing our national air transportation system, where much of FAA's and TSA's efforts have been directed to date, steps were also taken to ensure that the new security procedures preserve and respect the civil rights of passengers with disabilities. [The following] provides information about the accessibility requirements in air travel in light of strengthened security measures by providing a few examples of the types of accommodations and services that must be provided to passengers with disabilities. The examples listed below are not all-inclusive and are simply meant to provide answers to frequently asked questions since September 11 concerning the air travel of people with disabilities.

CHECK-IN

- Air carriers must provide enplaning and deplaning assistance requested by passengers with disabilities, including assistance beyond the screener checkpoints, but have discretion in how this assistance is provided. Individuals who wish to assist passengers with disabilities beyond the screener checkpoint may be required to present themselves at the airlines' check-in desk and receive a pass allowing them to go through the screener checkpoint without a ticket.

But in the United States, barriers, while still prevalent, have begun to disappear. The Americans with Disabilities Act (ADA) and other laws require all newly constructed, privately funded buildings to be accessible, with elevator exemptions for only the smallest buildings. The same laws require that in many, if not most cases, when non-residential buildings are altered, the altered area must be made accessible and a path of travel to the altered area must be provided. In publicly funded facilities, such as museums and historic sites maintained by local, state or federal governments, the rules are very similar, but even the smallest buildings are not exempt from the requirement for elevators.

Perhaps most important, in existing, privately funded buildings that are not otherwise being altered, like existing hotels, theaters, restaurants and stores, barriers must be removed if the removal is readily achievable. "Readily achievable" is defined as easily accomplishable and able to be carried out without much difficulty or expense. The readily achievable standard is a flexible one. Larger facilities with more resources, like stadiums and airports, are expected to remove more barriers than small, individually owned stores.

Barrier removal may include the following:

- providing a ramp
- adding grab bars in a restroom
- rearranging toilet partitions to increase maneuvering space
- lowering a telephone
- installing a paper cup dispenser at an existing inaccessible water fountain
- removing high-pile, low-density carpeting
- adding Braille and raised letter markings on elevators
- adding flashing alarm lights
- creating designated accessible parking spaces
- rearranging display racks, furniture, equipment, tables or desks to enlarge passageways
- lowering shelves

Even if barriers are difficult to remove, facilities are still required to provide their goods and services to people with disabilities through alternative methods such as curbside service, if the alternative methods are readily achievable. Alternative methods can include such measures as having a staff person bring goods to an individual who cannot climb a store's steps because of a mobility impairment or who cannot tolerate the scented products in a store because of chemical sensitivity.

In existing government-run facilities that are not otherwise being altered, such as museums and historic sites, the rules are even stronger. Structural barriers must be removed or the program must be changed in a way that provides accessibility for people with disabilities, unless the government in charge can show that the changes would pose an undue burden (defined as a significant difficulty or expense) or a fundamental alteration of the program. Even if such difficulty, expense, or fundamental alteration can be demonstrated, the government in charge must still remove whatever barriers would not pose the undue difficulty or fundamental alteration.

If a site is officially designated as historic and accessibility improvements would threaten or damage its historic character, access is still required, although it may be provided in somewhat less stringent ways (such as a steeper ramp or a separate entrance). In the few cases where even this would be historically damaging, facilities may be allowed to provide displays or other ways for people with disabilities to participate in the program.

Of course, many people with disabilities face barriers which are not structural in nature. People with communication impairments face the absence of sign language interpreters and TTYs (telephone devices with keyboards enabling Deaf, hard or hearing and speech-impaired people to communicate by telephone). A lack of written materials in Braille, in large print, on a computer disk or on tape for people with visual impairments is also a barrier. The law requires that auxiliary aids and services of this type be provided unless it would be an undue burden (defined as a significant difficulty or expense) or a fundamental alteration. Even if such a difficulty exists, an alternative auxiliary aid that removes the communication barrier, which is not an undue burden or fundamental alteration, must be provided if one exists.

Not only must a facility's structural and communication barriers be removed, but the programs and services held inside must also remove obstacles and change policies that limit participation by people with disabilities. It is important to remember that these rules affect not only *locations*, like restaurants, hotels, theaters and stores, but also *programs*, including travel agencies, car rental agencies, exchange programs and financial aid programs.

Goods and services must be provided to an individual with a disability in the most integrated setting appropriate to the needs of the individual. For example, a blind person may refuse to participate in a spe-

SCREENER CHECKPOINTS

- Ticketed passengers with their own oxygen for use on the ground are allowed beyond the screener checkpoints with their oxygen canisters once the canisters have been thoroughly inspected. If there is a request for oxygen at the gate for a qualified passenger with a disability, commercial oxygen providers are allowed beyond the screener checkpoints with oxygen canisters once the canisters have been thoroughly inspected. Commercial oxygen providers may be required to present themselves at the airlines' check-in desk to obtain passes allowing them to go through the screener checkpoint without tickets.
- The limit of one carry-on bag and one personal bag (e.g., purse or briefcase) for each traveler does not apply to medical supplies and/or assistive devices (including service animals and their equipment). Passengers with disabilities generally may carry medical equipment, medications, and assistive devices on board the aircraft.
- All persons allowed beyond the screener checkpoints may be searched. This usually will be done through the use of a hand-held metal detector, when possible. Passengers may also be patted down during security screenings, and this is even more likely if the passenger uses a wheelchair and is unable to stand up. Private screenings remain an option for persons in wheelchairs.

SCREENER CHECKPOINTS

- Passenger flow through the screener checkpoints should be controlled to allow a passenger to maintain visual contact with his/her personal property while he/she is being screened.
- Service animals, once inspected to ensure prohibited items are not concealed, are permitted on board an aircraft. Any equipment (including, but not limited to, harness, backpack, leash or collar) that is carried on the animal will be manually inspected. If necessary, remind the security screeners that the service animal's belongings should not be removed during the manual inspection.
- Assistive devices such as walking canes, once inspected to ensure prohibited items are not concealed, are permitted in the passenger cabin. Assistive devices such as augmentative communication devices and Braille note takers will go through the same sort of security screening process as that used for personal computers. However, passengers that have special equipment that cannot go through the x-ray machine should notify the screeners and request a physical/visual inspection of the equipment. A slate and stylus are permitted on board the aircraft after inspection; however, it may be necessary to advise the security screener of the purpose of the slate and stylus and that it facilitates the passenger's communications.

cial museum tour that allows people to touch sculptures if he or she prefers to tour the museum at his or her own pace with the museum's recorded tour.

It is illegal to apply eligibility standards that screen out people with disabilities unless they are necessary for the provision of goods and services. For example, a cruise ship generally cannot require a wheelchair user to bring a traveling companion. This requirement may have great impact on travel programs. For example, if a travel program excludes a disabled individual because he or she lacks a particular physical skill, illegal discrimination has occurred, unless the program can show that the physical skill that was the basis for the exclusion is *necessary in order to conduct the program*. For example, there may be an organized backpacking trip during which participants hike eight miles a day for five days. If one person who wants to join the group can hike only two miles a day, excluding this person may be legitimately necessary for the operation of the program, and would not be illegal. On the other hand, the same program may wish to exclude a visually impaired hiker because the program's administrators fear that this hiker cannot keep up or would create too great a supervision problem for the trip guide. Programs must make decisions based on an individualized analysis of *this particular hiker*, including his or her abilities and the accommodations he or she generally uses in hiking, not based on speculation or generalizations. If the program cannot show that the exclusion is necessary, such decision would constitute illegal discrimination.

A program may exclude someone with a disability based on legitimate safety requirements only if it can show that these requirements are based on actual risks and on facts about particular individuals, not on stereotypes or generalizations about individuals with disabilities. For example, a scuba diving program can require that all participants demonstrate a certain level of swimming ability, if it can demonstrate that there are actual risks to conducting the program with someone who cannot meet that level of swimming ability.

Programs must make reasonable modifications in policies, practices and procedures when necessary to afford goods and services to people with disabilities, unless the program can show that the modification would fundamentally alter the nature of the goods and services being offered. For example, if a hotel's reservation system is such that the hotel cannot guarantee the availability of an accessible room, then if a person with a disability who needs an accessible room tries to reserve such a room in advance, the hotel must modify its reservation system to ensure the

availability of the accessible room. Also, people with disabilities who use service animals such as guide dogs and service dogs must be served and/or allowed to participate like all other patrons or tourists. It is illegal to impose a surcharge on a disabled person to cover the cost of measures taken to comply with the ADA. For example, a hotel which charges a \$25 deposit on the rental of a VCR cannot charge a \$300 deposit for a TTY. It is also illegal for a program to refuse participation by a disabled person because of insurance company requirements.

Programs and facilities are not required to provide customers or participants with personal devices, such as wheelchairs or hearing aids. Nor are they required to offer services of a personal nature, including feeding, toileting and dressing, *unless* these services are customarily provided to clients without disabilities, such as in a hospital where all patients are assisted in dressing.

IN TRANSPORTATION

Laws like the ADA and the Air Carrier Access Act have greatly improved travel conditions in the United States for people with disabilities.

AIR TRAVEL

Air travel, for example, has changed markedly. U.S. airlines and their contractors may not discriminate against individuals with disabilities. Non-U.S. air carriers are also covered by U.S. law if they stop in the United States, although detailed regulations for foreign carriers have not been issued by the U.S. Department of Transportation at the time of this writing. Airplanes themselves have become somewhat more accessible, including some movable armrests and cabin storage space for folding wheelchairs on many airplanes. On most flights, on-board wheelchairs are available for reaching the restroom, although their use generally requires assistance. Airline personnel on aircraft without a level-entry jetway are required to assist passengers with disabilities to board using lifts.

The law also requires the removal of communication barriers. For example, airlines must make TTYs available during the same hours telephone service is available to the general public. On-board safety briefings must be accessible to people with hearing impairments by means of captioned or signed video presentations, where videos are present. The procedures for flying have also become more amenable to travelers with disabilities. For example:

SCREENER CHECKPOINTS

- Syringes are permitted on board an aircraft once it is determined that the person has a documented medical need for the syringe. To show a documented medical need, a passenger must have in his or her possession medication that requires the use of a needle or syringe. The medication must have a professionally printed label identifying the medication or a manufacturer's name or a pharmaceutical label.
- Personal wheelchairs and battery-powered scooters may still be used to reach departure gates after they are inspected to ensure that they do not present a security risk. Any backpack, sidepack or other item that is carried on or under the wheelchair should be placed on the x-ray belt for inspection.
- Personal wheelchairs that are folding, collapsible, or breakdown will still be allowed to be stowed on board an aircraft, i.e. in the passenger cabin of aircraft that have closets or other facilities capable of such stowage, except where this practice would be inconsistent with Department of Transportation regulations governing carry-on items and/or the transportation of hazardous materials.

SCREENER CHECKPOINTS

- Air carriers must return wheelchairs and other assistive devices to passengers with disabilities as close as possible to the door of the aircraft upon request. Passengers with disabilities can assist by checking-in their assistive devices and/or wheelchairs at the gate rather than at the ticket counter. If an assistive device or wheelchair is checked-in at the gate, it would have already cleared security and can be brought directly to the aircraft. If an assistive device or wheelchair is checked-in at the ticket counter, it would need to be screened before it can be brought to the passenger at the arrival gate.
- Air carriers must ensure that qualified individuals with a disability, including those with vision or hearing disabilities, have timely access to information (such as new security measures) that the carriers provide to other passengers. For example, on flights to Reagan Washington National Airport, persons are verbally warned to use the restrooms more than half an hour before arrival since after that point in time passengers are required to remain in their seats. This can be accomplished through use of carrier personnel or alternative formats, such as visual messaging.

- While airlines may offer people with disabilities an early opportunity to board the aircraft, they may not require that they do so.
- Airlines may not limit the number of people with disabilities on any one flight.
- Airlines must permit a service animal to accompany a passenger on a flight and must accept credible verbal assurances of the passenger that the animal is a service animal.
- Airlines may not refuse transportation to, require medical certificates of, or impose restrictions on a passenger on the basis of a communicable disease or infection unless the disease or infection has been determined by a federal public health authority to be transmissible during the normal course of air travel (AIDS and HIV infection have not been determined to be transmissible under the normal course of air travel).
- Airlines may not leave a passenger unattended on the ground or in a boarding wheelchair for more than 30 minutes.

Airlines may not require people with disabilities to provide advance notice of their disability-related needs except in the following situations, in which cases airlines may require 48 hours advance notice and one hour advance check-in:

- Transportation for a motorized wheelchair on an aircraft with fewer than 60 seats
- Provision by the airline of hazardous materials packaging for a wheelchair battery
- Special dietary needs
- Special situations such as oxygen or respirator hook-up
- Accommodation for a group of ten or more people with disabilities traveling as a group, such as a sports team.

There have also been improvements in airplane storage and treatment of personal equipment. For example:

- Wheelchairs and other assistive devices will be checked and returned as close as possible to the door of their aircraft, unless inconsistent with transportation of hazardous materials.
- Wheelchair users must have access to their own mobility equipment at airports where they change airplanes. People who use mobility equipment cannot be required to check their wheelchairs, crutches, etc. through to the final destination of the flight. Battery-powered wheelchairs shall be accepted as baggage where compartment size permits.
- Motorized wheelchairs may require check-in one hour early, and must be secured in an upright position where possible. Carriers shall provide battery packaging upon request, and shall not drain batteries. Passengers may provide written directions concerning assembly and disassembly of wheelchairs.
- People with disabilities cannot be required to sign a waiver for damage or loss for wheelchairs or other assistive devices.
- Mobility equipment such as a wheelchair is not counted as baggage and cannot trigger a surcharge.
- Ventilators, respirators and non-spill batteries must be allowed on aircraft.

One limitation is that people with certain types of disabilities may not be seated in exit rows, the rows of seats on airplanes that are directly beside emergency evacuation exits.

Intercity Bus Travel

Air travel is not the only form of transportation affected by the ADA and other disability civil rights laws. These laws have also had an effect on transportation in the United States by bus, train and boat.

For example, intercity buses may not deny service to a person with a disability and must provide an accessible vehicle if given 48 hours advance notice. Providers may not require advance notice for assistance in loading mobility equipment. Moreover, bus drivers must stop at accessible stations and/or rest stops to allow people with disabilities to use the restroom.

HOW TO FILE A COMPLAINT

Members of the public who feel they have been the subject of discriminatory actions or treatment by air carriers may file a complaint by sending an email, a letter, or a completed complaint form to the Aviation Consumer Protection Division (ACPD) of the Department of Transportation. ACPD's e-mail address is airconsumer@ost.dot.gov mailing address is: Aviation Consumer Protection Division, U.S. Department of Transportation, Room 4107, C-75, Washington, DC 20590. Complaint forms that consumers may download and/or print are available at <http://airconsumer.ost.dot.gov/problems.htm>.

Above airport security information issued on 10/29/01 and revised on 12/06/01 and 06/27/02 by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and its Aviation Consumer Protection Division (<http://airconsumer.ost.dot.gov/rules20011029.htm>).

AIRLINE ACCESS HOTLINE

A toll free hotline was established in 2003 to provide assistance on the spot or for upcoming trips in resolving disability-related air travel problems. The purpose of the seven days a week real-time assistance is to facilitate airline compliance with Department of Transportation's rules by suggesting to the passenger and the airline involved alternative solutions to the problem. For example, there have been a number of incidents in which hotline duty officers have contacted air carriers and convinced them to accept service animals and electric wheelchairs on board flights, to stow folding wheelchairs in the cabin, and to provide requested wheelchair assistance. The hotline operators also respond to requests for printed consumer information about air travel rights for people with disabilities under the Air Carrier Access Act and the Department's implementing regulations 14 CFR Part 382.

Call the Toll Free Hotline 7 a.m. to 11 p.m. EST
1-800-778-4838 (Voice)
1-800-455-9880 (TTY)

Air travelers who want the Department of Transportation to investigate a complaint about a disability-related issue still must submit their complaint to the Aviation Consumer Protection Division in writing via e-mail at airconsumer@ost.dot.gov.

Amtrak

The ADA has also made travel by Amtrak train more accessible to people with disabilities. The ADA provided a timetable by which Amtrak must include more wheelchair-accessible cars with wheelchair-accessible restrooms on each train. Improvements are also required at Amtrak stations.

Tour Buses and Charter Buses

More tour and charter buses are now accessible as well, thanks to the ADA. Tour and charter bus companies are generally required to ensure that their newly purchased buses are accessible. Companies that have not bought new buses since the ADA's requirements went into effect in 1990 are generally not required to have accessible vehicles. As time goes on, more and more have purchased vehicles and now are subject to the requirement for accessible vehicles.

Local Transportation by Bus

The accessibility of surface transportation within cities in the United States may be one of the areas most affected by disability civil rights laws.

Newly purchased buses since 1990 must be equipped with lifts or ramps. A large percentage of buses in the United States are now lift- or ramp-equipped. Transit agencies are also subject to a number of other nondiscrimination requirements. For example, they must maintain lifts and ramps in good repair. They may not require a disabled individual to transfer out of his or her wheelchair to a bus seat. They must allow people with mobility impairments who do not use wheelchairs (such as people with walkers and crutches, and people with other limitations in their ability to walk) to use the lift or ramp to board a bus. They may not rule particular bus stops off limits to people with disabilities. They must call out stops on the bus frequently to allow people with visual impairments to orient themselves and know when to disembark.

In addition, transit agencies must provide transportation to individuals with disabilities who cannot use the regular fixed route bus or train systems called paratransit. This usually takes the form of calling a centralized number in order to arrange for a vehicle to make a pick up. Visitors to a city who are eligible for this service because they cannot use the regular bus or train systems must be provided with service for up to 21 days every year, without going through lengthy eligibility determinations, as long as they can demonstrate that they are not residents and that they have a disability. After 21 days, visitors may be required to have a formal eligibility determination made by the transit agency. Those who are visiting a

city and wish to use public transportation, and will be visiting longer than 21 days, should apply for resident eligibility upon arrival.

The ADA has many other transit requirements. Consult the Resources chapter of this publication for further details.

Local Transportation by Rail

The ADA has also affected local rail transit such as subway systems, commuter rail, and light rail systems like streetcars. These systems were required to have one car per train accessible by 1995. New cars and stations must all be accessible. This requirement is being phased into existing stations in key locations over a period of years. For people who, due to their disabilities, cannot use the regular train system, paratransit is required (see above).

Taxi Cabs

Taxi companies are not required by law to provide wheelchair accessible vehicles, such as vans with lifts. But in some cities, accessible taxis are available nevertheless. Whether taxis are wheelchair accessible or not, taxi cabs and the companies that operate them are subject to the non-discrimination requirements of the ADA. Therefore, they cannot discriminate by refusing to give a ride to an individual with a disability, to stow the wheelchair in the car's trunk, or to accept a passenger because the passenger has a service animal such as a guide dog or service dog.

OUTSIDE THE UNITED STATES

The laws discussed so far in this chapter are U.S. laws, which primarily affect conditions inside the United States. There are many countries outside the United States which also have disability non-discrimination laws, some of which may assist travelers with disabilities and/or make conditions more accessible to them. It behooves disabled travelers to investigate what legal protections they may have abroad. See the chapter on International Law and Policy for more details.

U.S. disability civil rights laws have limited impact outside the United States, but there are a few circumstances in which they come into play. The strongest function of the ADA outside the United States is in its employment protections for U.S. citizens who work for American companies, their subsidiaries or firms controlled by Americans outside the United States. However, the ADA provides an exemption from coverage for any action that would violate the law of the foreign country in which the workplace is located.

HOW TO REPORT DISCRIMINATION

It is important to remember that despite the effect these laws have had, a law is only a piece of paper unless it is implemented. No law can instantly change nationwide discriminatory practices, but it provides an incentive, because with a law in place, a disabled individual who is the victim of discrimination has a tool in his or her hands to bring about enforcement.

While many businesses and other entities covered by the requirements of these laws have complied with them in good faith, others have not. Like other constituencies covered by civil rights laws, such as people of color and women, people with disabilities will continue to experience discrimination at times, even though nondiscrimination laws are in place. In order to change the discriminatory conditions they face, people with disabilities will need to exercise their right to advocate for themselves and/or to use the enforcement provisions that these laws include.

Therefore, it is important that people with disabilities be well-informed about their rights. Those who experience discrimination have a number of recourses available to address the discriminatory situation.

Many people feel that the only tool at their disposal will be a lawsuit, and they may be concerned about the time, expense or knowledge necessary to carry this out. However, there are many ways to pursue rights, including ways that are cheaper and faster than lawsuits, and in which you can receive assistance in bringing about enforcement. Below is some basic information about enforcement. Please see the Resources chapter for further assistance.

Another form of pursuing rights, in addition to the methods described below, is to seek some form of alternative dispute resolution such as mediation. Many people with disabilities are increasingly turning to mediation. Some mediators have become more knowledgeable about the ADA and other disability civil rights laws. It is important to be sure that the mediator is someone who is knowledgeable about the rights guaranteed by disability civil rights laws.

The Air Carrier Access Act

Those who feel they have been discriminated against under the Air Carrier Access Act have a number of choices as to how to address the situation. First of all, at each airport, every airline must designate one or more complaints resolution officials (CROs) to be available for receiving complaints of discrimination. A CRO must provide a written statement

in response to a complaint of discrimination at the airport within 10 days of that complaint. This response must inform the individual who made the complaint of the right to pursue further enforcement action with the Department of Transportation.

Each airline must establish a procedure for resolving written complaints. A written complaint to an airline should include whether a CRO was contacted, the date of the contact and the CRO's response. A carrier must respond, within 30 days, to written complaints postmarked within 45 days of the alleged violation.

Any person seeking information or who believes that an airline has violated the law may contact the following office for assistance:

Aviation Consumer Protection Division
 U.S. Department of Transportation
 400 7th Street, SW
 Room 4107, C-75
 Washington, DC 20590
 Disability hotline: (800) 778-4838 (voice)
 or (800) 455-9880 (TTY), 7 a.m. to 11 p.m. Eastern time, 7 days a week
 E-mail: airconsumer@ost.dot.gov
 Web: <http://airconsumer.ost.dot.gov>

The Americans with Disabilities Act (ADA)

Complaints Against State or Local Government

Anyone who feels he or she has been discriminated against under the ADA by a state or local government may file a complaint under Title II of the ADA. (See below for ADA complaints against private entities.) Title II complaints may be filed either:

- With the state or local government entity which is believed to have discriminated, if it has more than 50 employees,
- With a federal agency enforcing the ADA in the particular area of discrimination, or with the Department of Justice, if one is unsure of what agency to file with, or
- As a lawsuit in federal district court.

A complaint must be filed within 180 days of the incident of discrimination, unless the time for filing has been extended by a federal agency for good cause.

Complaints Against Federally Funded Programs

If the agency believed to be responsible for the discrimination is an agency of the federal government, or an agency receiving federal funding, a complaint may be filed under Section 504 of the Rehabilitation Act of 1973.

To obtain a copy of the “Title II of the ADA / Section 504 of the Rehabilitation Act Discrimination Complaint Form,” or to find out more about enforcement, contact the ADA regional Disability and Business Technical Assistance Centers at (800) 949-4232, (voice/TTY) or the U.S. Department of Justice ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

Complaints Against Private Programs or Businesses

People who feel they have been discriminated against under the ADA by a business or other private entity, rather than a government entity, may file a complaint under Title III of the ADA. Complaints may be filed either:

- As private lawsuits in federal district court, or
- As written complaints to the Department of Justice.

To obtain a copy of the form “How to File a Title III Complaint,” or to get more information about enforcement, contact the ADA regional Disability and Business Technical Assistance Centers at (800) 949-4232 (voice/TTY) or the U.S. Department of Justice ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

Amtrak

If the discrimination occurred with Amtrak, one might first wish to contact Amtrak’s Customer Satisfaction Office at (202) 906-2121 to discuss the complaint. Complaints against Amtrak may be filed with:

Federal Railroad Administration
ROA-10
Office of Civil Rights
1120 Vermont Avenue, NW
Washington, DC 20590
(202) 493-6010 (voice)
Web: www.dot.gov/citizen_services/disability/complaints.html

INTERNATIONAL LAW AND POLICY



INTERNATIONAL LAW AND POLICY

By Mary Lou Breslin and Silvia Yee, Disability Rights Education and Defense Fund (DREDF)

International and country-based disability anti-discrimination laws, standards and instruments: Can they help individuals with disabilities working, studying and traveling abroad, and the international exchange professionals working to place these participants?

During the past two decades people with disabilities have achieved various country-based and international anti-discrimination and human rights reforms. Travelers should acquaint themselves with any laws that exist in the countries they will be visiting, and learn how to use them strategically and effectively to ensure fair and equal treatment during their period of work, study and other opportunities abroad. The purpose of this chapter is to:

- Provide a brief introduction to the state of disability and human rights law internationally;
- Discuss how various laws and instruments operate;
- Suggest ways the laws can be used both formally and informally to resolve problems or issues;
- Illustrate, using questions and answers, how travelers could use the laws in a few countries to obtain accommodations or resolve disputes; and
- Provide a partial list of country-based anti-discrimination laws.

INTRODUCTION

Throughout the past two decades disability-related anti-discrimination and human rights law and policy reform has taken place along parallel paths: at the international level primarily through the United Nations, and at the country level where the United States has played a leadership role.

In 1993 the United Nations adopted *the Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, which set forth voluntary steps countries should take to fulfill the promise of equality established in the *World Programme of Action* created during the period leading up to the United Nations Decade of Disabled Persons (1982-1993).

Responding to increasing pressure from the international disability community, in 2001 the UN General Assembly created an Ad Hoc Committee to consider creating a comprehensive international convention to protect and promote the rights of people with disabilities. Any convention ultimately proposed by the Committee must be ratified by UN members before it can come into effect. Existing UN treaties on such issues as human rights and the rights of women and children recently have been interpreted to recognize disability, thus offering new tools to advance broad social reforms for individuals with disabilities. At the regional level, the Organization of American States (OAS) was the first intergovernmental organization to adopt a binding human rights treaty that defined disability-based discrimination—the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities of 1999.

Since the enactment of the landmark Americans with Disabilities Act (ADA) in 1990, which showed that disability anti-discrimination laws were not only possible but practicable, over 45 countries have enacted or adopted some form of disability rights law or instrument.

Taken together, these advances represent a shift in the way people with disabilities are perceived and treated by societies around the world. This shift from disability programs and policies grounded in medical or charity models to a social model that integrates people with disabilities into mainstream society.

HOW DO LAWS, STANDARDS AND OTHER INSTRUMENTS OPERATE?

Laws, standards and other instruments set forth specific provisions outlining the government's intentions concerning implementation and enforcement within the constitutional framework of a country or in relation to other regional or international guidelines. They also specify who and what is covered, what actions are required and prohibited, and whether or not enforcement mechanisms and remedies exist. There are various ways for disability rights to be incorporated within domestic and international laws.

In some instances countries have set forth specific rights for individuals with disabilities, or explicitly incorporated disability within a broad non-discrimination guarantee, in a newly drafted or amended

constitution. South Africa, for example, included disability rights when the new constitution was drafted after the fall of apartheid. By recognizing disability in the constitution, a nation establishes the highest possible legal basis for ensuring that individual rights are guaranteed in the broadest circumstances. While incorporating disability into the constitution represents a fundamental advance, meaningful implementation of the intent of the constitution is challenging without additional legal guidance, standards and interpretations. It is difficult, therefore, to obtain a resolution to an individual claim of discrimination in countries where the sole legal basis calling for non-discrimination resides in the constitution. Recognizing the importance of an enforcement component, in 2002 South Africa began enforcing the intent of the constitution with respect to the employment rights of people with disabilities through its Human Rights Commission.

In other countries, existing laws have been amended to establish certain rights for individuals with disabilities in such areas as employment or education, or calling for barrier removal under certain circumstances. Country laws can sometimes be tools for resolving problems. Where the laws have been in place for a period of time, it is likely that schools, colleges, employers and others required to comply are aware of their legal obligations and, therefore, more willing to be cooperative when the need for an accommodation or other issue arises. However, provisions can and do vary widely from country to country.

UN and regional standards, instruments and conventions may apply across countries, but in general, will not be useful tools for individuals who require relatively speedy solutions to problems they might encounter on international exchanges. The standards and conventions, however, play a role in reforming discriminatory institutional practices and policies, and in shifting the public's understanding of disability. They are integral tools of the international law reform movement; therefore, exchange participants with disabilities and those working with them should be aware of them.

INTERNATIONAL STANDARDS AND INSTRUMENTS

The United Nations *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* provide detailed guidance on steps UN member states should take to ensure equality of opportunity and treatment for people with disabilities. Because it is non-binding, member states are not formally required to comply with its directives. Furthermore, it does not provide for individually enforceable rights. Therefore, the *Stan-*

Standard Rules, though a statement of rights for people with disabilities, are only enforceable in countries that have adopted it at the country level, and only in accordance with whatever mechanisms that country has elected to apply to it. In general, the *Standard Rules* are not a tool to quickly secure a resolution to an individual incident of discrimination. Other UN human rights treaties have been interpreted to recognize disability, but their means of enforcement requires a lengthy and complex process that also is not appropriate for resolving issues quickly. Similarly, the OAS Treaty does not provide any mechanism for individuals to seek a resolution to a discrimination claim.

COUNTRY-BASED LAWS

Disability laws enacted at the country level also vary widely with respect to who is protected from discrimination, what entities are required to comply, what actions such entities must take to avoid discrimination, enforcement procedures, and required remedies. The ADA contains strong enforcement mechanisms and, therefore, provides a basis for comparison with other laws. For instance, the ADA allows individuals to file an administrative complaint or go to court themselves. It also requires that designated federal agencies investigate most complaints. If they find that an individual has been discriminated against, the business, school, employer or other entity must remedy the problem. The ADA has limited coverage in certain situations, as other countries' laws do. For example, the ADA applies to most social institutions but limits coverage of religious institutions and does not cover employees working for companies with 14 or fewer people.

LEARNING THE RIGHTS OF PEOPLE WITH DISABILITIES

Successfully resolving issues and disputes that arise before or during short term work, study and other visits abroad depends on three factors:

- Knowing the rights people with disabilities have;
- Contacts with disability interest groups in the host community; and
- A willingness by people with disabilities to negotiate on their own behalf.

Individuals who are considering embarking on a program of study, work or other visits abroad and offices sponsoring programs abroad should attempt to learn the basics about host countries' various anti-discrimination laws. While they might never pursue a formal complaint, if such recourse is even available, becoming familiar with the various provisions

of laws could provide them with an advantage in any future negotiation with a host sponsor. When conducting basic research, it is important to remember that a variety of documents comprise “the law.” These can include the law itself, its regulations and guidance issued by executive branches of government or related commissions or governing bodies. In some countries, including the United States, the United Kingdom, Canada and most Commonwealth countries, judicial interpretations of written law can also be used in determining the extent of a country’s legal protections. In some instances provisions covering people with disabilities will be included in broad human rights, employment or other laws. Here are a few basic questions to answer and areas of coverage to look for in a host country’s law(s):

- What types of entities does the law cover? Employers, schools, places of business?
- Are people with all disabilities entitled to use the law or only people with certain disabilities?
- Are foreign visitors covered by the law?
- Does the law allow an individual to file a complaint?
- If an individual can file a complaint, where is it filed and what is the timeline for investigation?
- Does an enforcement agency exist that can help a traveler resolve a problem covered by the law?
- What steps, if any, are covered entities required to take to ensure that discrimination does not occur? Examples could include barrier removal, provision of accommodations, modification of policies or provision of aides and services.

Not all country laws have a provision that allows an individual to file a complaint or seek a remedy to their individual problem. For example, Germany passed an anti-discrimination law in 2002 but it does not include a provision for individuals to seek remedies to discrimination. Conversely, the United Kingdom’s 1995 Disability Discrimination Act (DDA) does provide for such a right, much as the ADA does. Some countries have laws that only cover public employers while others cover only medium-sized, private employers. The DDA, for example, exempts employers with 14 or fewer employees from coverage. Therefore, if an individual is planning a paid internship with an employer in the United Kingdom who has 10 employees, the DDA would not apply to that individual. Some laws, like the ADA, specify steps an institution such as a school or college must take to provide accommodation to students who require it, though typically some restrictions exist as well. For example, New Zealand’s 1993 Human Rights Act states that students with disabilities can be refused admission if they require special services or facili-

ties that in the circumstances cannot reasonably be made available. It appears that the burden of proving the reasonableness of needed services or facilities rests on the student.

How Can Exchange Participants and Those Working with Them Use the Law Formally and Informally to Resolve their Problem or Issue?

It is especially important to determine if the law establishes an official body or organization charged with providing enforcement information and assistance. For example, the United Kingdom's DDA is enforced through the U.K. Disability Rights Commission, which answers questions, attempts to resolve disputes, investigates complaints and provides some direct representation. Such organizations can be a good resource for travelers if they experience a problem related to their disability.

Similarly, it is important to identify any disability advocacy groups located in or near the locations of the study or work program. Local groups will be familiar with the practical application of the country law, and the most effective mechanisms for resolving a problem, e.g., polite inquiry, appeal to a particular individual or board, or forceful negotiation that invokes the law. Furthermore, local disability leaders will have personal relationships within the community that can prove most valuable. In situations where no law exists and a problem or conflict arises, it is even more important to have local advocacy support readily available since the outcome will rely on the good auspices of the host and the established effectiveness and reputation of the local group or organization. In any situation, knowledge of the law provides an advantage even though a resolution to the problem might be reached without direct reference to it.

HYPOTHETICAL CASE EXAMPLES

If an Australian university hosts an American exchange student, is that student afforded any protections by the Australian Disability Discrimination Act (ADDA)? Would she or he be entitled to accommodations?

The rights of people with disabilities are protected in Australia by the ADDA. All Australian universities have student service units, generally referred to as A&E Units, which facilitate the inclusion of people with disabilities in university life. The university services are available to any student attending the university—whether local or international, including exchange students. Students with disabilities should be in contact with the unit when they apply for an exchange program, both in order to clarify what support is needed and available, and to forestall any con-

cern that the university might have about the ability of the student to participate in the program. Should discrimination take place, e.g., the student's needs were not accommodated, she or he could file a complaint that invoked the ADDA.

If a university in the United Kingdom hosts an American exchange student, is that student afforded any protections by the Disability Discrimination Act (DDA)? Would she or he be entitled to accommodations?

Since September 2002 students with disabilities, including exchange students over the age of sixteen, have been covered by the DDA. Discrimination is prohibited in postsecondary education admissions, enrollment, related services and in any services specifically for students. This includes not only teaching and learning but also opportunities and facilities such as student outings, leisure facilities and canteens, libraries and learning centers, work experience and student accommodation. Accommodations, referred to as *adjustments*, involving "auxiliary aids and services" (that is, additional aids or services, such as additional software for a partially sighted student or extra tutoring for a student with dyslexia) are required as of September 2003. Adjustments involving changes in physical features are required after September 2005. If a dispute arises, the U.K. Disability Rights Commission can facilitate a resolution, or the visitor can file a formal complaint, though the length of time required to resolve a formal complaint might be longer than the individual's planned stay. However, this could still be useful for programs planning to send other students in that it could set a precedent and help smooth the way for future participants with disabilities.

Is an individual with a disability who has completed a study abroad program and plans to travel in Ireland protected from discrimination by businesses such as restaurants and shopping facilities?

Ireland's 2000 Equal Status Act prohibits disability discrimination in the supply of goods, services and facilities. There are some exemptions, however. Business owners and providers are exempted from paying more than nominal costs in all circumstances related to the provision of a service or facility to a person with a disability. Nevertheless, it may be discriminatory not to take all other reasonable measures to accommodate the needs of a person with a disability. In light of this restriction, travelers should not expect to find significant architectural accessibility to businesses offering goods and services. Should prohibited discrimination take place, such as a physically accessible restaurant denying service to a wheelchair user, the person who has experienced discrimination can seek assistance from Ireland's Office of Equality Investigations,

which will assist with and investigate complaints. In light of the length of time it might take to resolve a complaint, travelers who experience such discrimination may choose to advocate with the restaurant owner directly by explaining the requirements of the law.

What should a high school student with a disability planning a three-month course of study in Costa Rica know about his or her legal rights in that country?

Igualdad de Oportunidades Para las Personas con Discapacidad—Ley 7600, the Equal Opportunities Law For Persons With Disabilities—Law 7600, enacted in Costa Rica in 1996 prohibits all forms of discrimination against people with disabilities. In all education programs, the law requires that no student with a disability be excluded from any activities, that evaluations be conducted and that adapted education curriculum be provided if needed. It also requires accessibility and necessary support services. If a student encounters a disability-related problem in a secondary education program that cannot be resolved informally, she or he should contact Costa Rica’s Ministry of Public Education, which is in charge of enforcing the law in the area of education. Through advocacy and negotiation most problems can be resolved. As with most short-term problems, the student should also contact the local disability advocacy group for advice and assistance.

PARTIAL LIST OF DISABILITY ANTI-DISCRIMINATION LAWS

The following list is published at www.dredf.org where either the text of the law, a summary or an abstract is available in English. Many of the laws are also presented in their original language.

Argentina: Ley 22.431, y decreto reglamentario 498/83

Australia: Disability Discrimination Act 1992

Bolivia: Ley no. 1678 (1995)

Brazil: Constitution (1988)

Canada: Constitution-Charter of Rights & Freedoms (1982); the Canadian Human Rights Act; and the Employment Equity Act

Chile: Ley no. 19.284 (1994)

China: Law of the People’s Republic of China on the Protection of Disabled Persons

Colombia: Ley 361 DE 1997

Costa Rica: Ley no. 7600 (May 29, 1996)

Ecuador: Ley Sobre Discapacidades no. 180 (1992)

Ethiopia: The Rights of Disabled Persons to Employment Proclamation, no. 101/1994; and Labour Proclamation, no. 42 of 1993

Fiji: Constitution (1988)

Finland: Constitution (2000)

France: Code Penal; Code de Travail; Loi no. 91-663 (July 13, 1991); Decree no. 98-543; Decree no. 99-756; Decree no. 99-757; and the Accords de Branch (25 March 1993)

Gambia: Constitution (1996 Draft)

Germany: Constitution (1949, amendments to 1998); and the Severely Handicapped Persons Act (1986)

Ghana: Constitution (1992); and The Disabled Persons Act 1993

Guatemala: Law of Attention to Persons with Disabilities, 135-1996

Hong Kong: Ordinance on Disability, c. 478 (1990)

Hungary: Constitution (1949, amendments to 1997); and the Equalization Opportunity Law (Act no. XXVI of 1998)

India: Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 (no. 1 of 1996)

Ireland: Employment Equality Act (no. 21 of 1998); Equal Status Act, 2000; and the National Disability Authority Act, 1999

Israel: Equal Rights for People with Disabilities Law, 5758-1998

Japan: Human Resources Development Promotion Law

Jordan: Law for the Welfare of Disabled Persons, no. 12 of 1993

Korea: Welfare Law for Persons with Disabilities (no. 4179, Dec. 30, 1989); Act Relating to Employment Promotion, etc. of the Handicapped (no. 4129, Jan. 15, 1990); and The Special Education Promotion law (amended on Jan. 7, 1994)

Luxembourg: Loi Sur les Travailleurs Handicapes (Nov. 12 1991); and Code Penal (ss. 444 & 453-58) (1997)

Madagascar: Loi no. 97-044 Sur les Personnes Handicapees; and Code de Travail (1994)

Malawi: Constitution (1994); and Law no. 48 of 1971

Mauritius: Training and Employment of Disabled Persons Act, 1996

Namibia: Labour Act 1992; and the National Vocational Training Act, no. 18, 1994

New Zealand: Human Rights Act, 1993

Nicaragua: Ley no. 202 (1995)

Nigeria: Nigerians with Disability Decree 1993

Panama:Codigo de la Familia, Ley no. 3, May 17, 1994

Paraguay: Labour Code of 1961; and the Political Constitution of 1992

Philippines: Magna Carta for the Disabled

South Africa: Constitution-Bill of Rights (1996); and the Employment Equity Bill (B60-98)

Spain: Act No. 8, To Promulgate a Worker's Charter

Sri Lanka: 1996 Protection of Persons with Disabilities Law
Sweden: Act Concerning Support & Service for Persons with Certain
Functional Impairments, SFS 1993: 387; and the Law on a Ban
Against Discrimination Disabled Persons in Working Life, 1999- 132
Switzerland: Constitution (2000)
Thailand: 1991 Rehabilitation of Disabled Persons Act
Uganda: Constitution (1995)
United Kingdom: Disability Discrimination Act 1995; Disability Rights
Act 1999; and Northern Ireland, Disability Discrimination
Regulations 1996
Venezuela: Ley para la Integracion de las Personas Incapacitadas
(Aug. 15, 1993)
Zambia: The Persons with Disabilities Act 1996
Zimbabwe: Disabled Persons Act 1992

THE RIGHT OF STUDENTS WITH
DISABILITIES TO EQUAL
PARTICIPATION IN STUDY
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THE RIGHT OF STUDENTS WITH DISABILITIES TO EQUAL PARTICIPATION IN STUDY ABROAD PROGRAMS*

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The number of students with disabilities attending postsecondary institutions has increased in recent years, now totaling approximately 9% of all college freshmen.¹ Students with disabilities, as well as students without disabilities, have the right to be treated equally by their schools from the admissions process through graduation.

Two federal laws, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) prohibit colleges and universities from discriminating against students with disabilities and require them to provide reasonable accommodations to eligible students. But how far does this anti-discrimination mandate extend? Does it extend to schools and programs beyond the borders of the United States? Must a college accept a student with a disability into a semester abroad program if that student would require accommodations to participate? Is a college required to pay for a sign language interpreter to accompany a student participating in a program overseas? Must the classrooms and facilities on the campus of U.S. universities overseas be accessible to students with disabilities? The purpose of this article is to answer these and other questions related to the rights of students with disabilities to participate in educational programs overseas.²

WHICH STUDENTS ARE COVERED?

Section 504 of the Rehabilitation Act prohibits discrimination against qualified students with disabilities by programs or activities that receive federal financial assistance. Most colleges and universities now receive federal aid, often in the form of student loans, and those colleges and universities are bound by Section 504's prohibition against discrimination. Under Section 504, a qualified student with a disability is one who meets the academic and technical standards required for admission to, or participation in, the college's educational program or activity.³ Further, public colleges and universities are prohibited from discriminating against students with disabilities under Title II of the ADA, which pro-

hibits discrimination by states and state entities.⁴ Title III of the ADA requires that all places of public accommodations, including facilities operated by private colleges and universities, must comply with the requirements of Title III's accessibility mandate.

Section 504 and the ADA include essentially the same threshold definition of an "individual with a disability." Individuals entitled to protection under these laws are individuals whose mental or physical impairments substantially limit one or more of their major life activities, individuals with a record of such impairments, and individuals who are regarded as having such impairments.⁵ "Major life activities" include "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."⁶ In light of recent Supreme Court cases, however, the scope of coverage of the ADA and even Section 504 may be narrowed. The determination as to whether an individual's impairment substantially impacts a major life activity should be made in light of any mitigating measures the individual may employ.⁷

Moreover, neither Section 504 nor the ADA protects individuals with disabilities who pose a direct threat to others⁸ or those who currently use illegal drugs.⁹ But both the ADA and Section 504 apply to Americans employed overseas.¹⁰ Several federal courts have found that the Rehabilitation Act generally applies to federal employment, even when such employment frequently takes the employee overseas, such as in the U.S. Foreign Service.¹¹

Although postsecondary educational institutions have no legal obligation to identify students with disabilities, schools are required to inform applicants for admission of the availability of auxiliary aids, services and academic adjustments, and the name of the person designated to coordinate the college's efforts to carry out the requirements of Section 504.¹² After admission, in order to receive accommodations, the student must make his or her disability known and request accommodations in a timely manner.¹³ After a student requests an accommodation, the college or university may inquire about the student's disability for the purpose of determining whether certain academic adjustments or auxiliary aids or services may be needed.

A student who requests academic adjustments or auxiliary aids because of a disability may also be required to provide documentation of the disability and the need for the services or accommodations

requested to the school's disability office. The documentation may include the results of medical or psychological diagnostic tests or other professional evaluations to verify the need for academic adjustments or auxiliary aids.

Once a student satisfies the statutory requirements for coverage under Section 504 or Title II or Title III of the ADA, the university or college must provide the requested accommodations unless they would "result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens."¹⁴ Other chapters in this publication provide additional details on the requirements of these laws. In recent years, however, a pattern of inconsistent approaches by administrative agencies and at least one federal court has emerged with respect to the requirement of accommodating students with disabilities seeking to participate in study abroad programs.

STUDY ABROAD PROGRAMS AND STUDENTS WITH DISABILITIES

Study abroad programs have become increasingly popular. In recent years, the number of students participating in study abroad programs has more than doubled, from 71,154 in 1991-92, to 154,168 in 2000-01, or an increase of 116%.¹⁵ In fact, some would say study abroad programs have become an integral part of undergraduate education, and a popular recruiting tool. In the field of higher education today, study abroad programs have expanded to provide students the opportunity to gain skills and new insights, cross-cultural awareness and potential employment advantages in the global economy.¹⁶

Until recently, there was little guidance provided to students with disabilities about whether or not they have the same rights to accommodations overseas as they do on campuses within the United States. Even now, with three decisions by different district offices of the Office of Civil Rights (OCR) of the United States Department of Education and one federal court decision, the issue remains unresolved.

The first federal court to decide the extent of a student with a disability's right to receive accommodations by her college in its study abroad program is *Bird v. Lewis and Clark College*. In the spring of 1996, an American student at Lewis and Clark College was accepted into the college's program in Australia. The student uses a wheelchair, and once she arrived in Australia, she alleged that she was not provided with the accommodations she had requested.¹⁷ Although she was permitted to

attend the program, she was not permitted to participate in all of the activities and was carried, rather than provided with alternate means of transportation and accessibility.¹⁸

The district court in *Bird* concluded that Section 504 clearly applies to the school's overseas program, recognizing that once a university accepts federal funds, it is obligated to ensure that the university does not discriminate against its students with disabilities. As the district court wrote, "[t]he ongoing requirement of adherence to the Rehab[ilitation] Act and the ADA did not evaporate when Lewis and Clark College faculty accompanied Lewis and Clark College students on a Lewis and Clark college sponsored program overseas."¹⁹ The district court reasoned that although the requested accommodations were to be provided outside of the United States, the plaintiff was an American student who attended an American university's overseas program, taught by American faculty, who were employed by an American college, which is incorporated within the United States, and was doing business in the United States. Accordingly, the court concluded that the student was entitled to protections under Section 504 and the ADA.²⁰ Rejecting the college's argument that neither Section 504 nor the ADA apply to conduct or persons overseas, the court held that if Section 504 and the ADA were not applied extraterritorially, "students on overseas programs would become the proverbial 'floating sanctuaries from authority' not unlike stateless vessels on the high seas."²¹ And even stateless vessels, the court continued, "may be subject to United States jurisdiction where defendants are all citizens or resident aliens of the United States."²² On appeal, the court of appeals found no need to reach the issue of extraterritoriality in its decision affirming the lower court's decision.²³

In addition to *Bird v. Lewis and Clark*, the U.S. Department of Education (ED) has decided three cases, each from a different regional ED Office of Civil Rights (OCR), and each reaching a different conclusion, based on different reasoning. A case in 2001 involved a request by a deaf student at Arizona State University (ASU) for sign language interpreter services in order to attend an overseas program in Ireland. OCR upheld the school's decision to deny interpreter services to the student, concluding that Section 504 of the Rehabilitation Act and Title II of the ADA may not be applied extraterritorially, or beyond the borders of the United States.²⁴ OCR wrote that neither the ADA nor Section 504 "prohibit discrimination on the basis of disability in overseas programs."²⁵ Accordingly, the OCR held that ASU was not required to provide auxiliary aids or services, including notetakers and interpreters, to an ASU student during his year of study in Ireland, notwithstanding the fact that

the student was eligible to receive such services and did in fact receive them as a student at ASU.²⁶ In this case, the OCR seemed to find persuasive the fact that unlike the college in *Bird*, ASU was not itself operating the program in Ireland. Thus, while it may be true that a student attending an overseas program that is not part of an American university may not be entitled to protection under American laws, the OCR in this case should have at least conducted an inquiry regarding the relationship between the foreign program and the American university, as did the federal district court in *Bird*.²⁷

In a second case, decided in 1990 by a different OCR regional office, the OCR upheld another university's decision to deny accommodations to a student overseas, but for different reasons than in the ASU case. In this case, the OCR upheld St. Louis University's decision to deny a student request for a Macintosh computer as an auxiliary aid to accommodate his learning disability while he was a student at the university's program in Spain.²⁸ But in this case, unlike in the ASU case, the OCR conceded that Section 504 may apply to students participating in study abroad programs when it reached the merits of the case, and upheld the university's denial of the student's request for the computer. The OCR did not uphold the university's decision solely on the basis that the requested accommodations would be provided overseas, but instead concluded that the student's request for access to a Macintosh computer (instead of access to the IBM computer that was made available to him) did not amount to a violation of Section 504.²⁹ According to the OCR, "[p]rovision of an IBM computer was an effective auxiliary aid to accommodate the injured party's difficulties with punctuation and spelling. Further, the University offered the [student] use of a Macintosh computer almost six weeks after school started."³⁰ Therefore, because this case was decided on the specific facts involving the student's request for a particular type of accommodation, it should not provide a precedent for other schools to deny accommodations to students studying abroad.

In a third case, decided in 1992, between the time of the decisions in the St. Louis University and the ASU cases, the OCR of a third regional office reached an entirely different result than in these other cases. In this case, the OCR held that St. Scholastica College, a private college in Minnesota, was obligated under Section 504 to pay for interpreter services to accompany a deaf student on her study abroad program in Ireland.³¹ Indeed, the OCR could have dismissed the case based on the issue of extraterritoriality alone, but it did not. The student had received interpreter services for classes at the Minnesota campus and sought to receive the same sort of services at the school's study abroad program in

Ireland.³² The OCR found no provision in Section 504 giving the college the right to deny a qualified student with a disability an educational opportunity in an overseas program.³³ Thus the OCR held not only that Section 504 applies in this situation, but also that Section 504 specifically requires the provision of interpreter services to the student studying abroad. As such, this decision, together with the district court's decision in *Bird*, affirms the principle that as recipients of federal financial assistance, colleges and universities are obligated to comply with the anti-discrimination mandates of the ADA and Section 504 in all of their programs, including those operating overseas.

DISCUSSION

The court's decision in *Bird*, as well as the decisions of the regional offices of the OCR in *St. Scholastica* and *St. Louis University*, recognizes that the federal laws prohibiting discrimination against students with disabilities do not require individuals protected by these laws to be physically present in the United States in order to receive the laws' protections.³⁴ To assume that a student who has a disability and is protected by the anti-discrimination provisions of the ADA or Section 504 must lose all protections once the student leaves the borders of the United States would violate the intent and frustrate the purpose of the ADA to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals."³⁵

Further, the application of the mandates of Section 504 and the ADA to overseas programs is consistent with policies and programs of the federal government itself. The federal government encourages foreign study programs and recognizes the value of international educational opportunities. For example, the Department of Education makes grants specifically for higher education programs outside of the United States.³⁶ Further, the application of the selection criteria for grantees seeking funding for Foreign Language and Area Fellowships administered by the Department of Education provides specifically for its application to foreign programs, and further requires that the program "provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as ... persons with disabilities."³⁷ The Department of Defense and the Department of State also provide that their foreign programs comply with the disability discrimination mandate of Section 504.³⁸

In fact, the State Department not only sponsors its own foreign exchange programs (e.g. Fulbright programs) but funds the National Clearinghouse

on Disability and Exchange, which seeks to increase the participation of people with disabilities in the full range of international exchange programs and to provide colleges and universities with practical advice on how to become proactive in the inclusion of people with disabilities.³⁹

The right to accommodations for students studying abroad is not absolute, however. Both the ADA and Section 504 provide postsecondary educational institutions with a defense when the excessive costs of accommodations would place an “undue financial or administrative burden” on the educational institution or if the requested accommodations would cause a “fundamental alteration in the nature of the program or activity.”⁴⁰ Yet this burden is difficult to meet. Further, university funds or funds from the Social Security Administration or Vocational Rehabilitation may be available to assist students with disabilities and their universities with the cost of providing accommodations to students who qualify for services.⁴¹

In addition to costs, another potential limitation on a student’s right to obtain accommodations overseas is based on the longstanding presumption against the enforceability of American laws overseas. This “presumption against extraterritoriality,” as it is known, embodies the longstanding principle of American jurisprudence that laws enacted by Congress are meant to apply only within the territorial jurisdiction of the United States.⁴² For more than a century, the Supreme Court has recognized this nation’s sovereignty by applying the presumption against extraterritoriality to a variety of federal laws.⁴³ But recently, the Supreme Court’s own application of the presumption against extraterritoriality appears inconsistent, and Congress as well as legal commentators have called into question the continued legitimacy of the presumption against extraterritoriality in light of the developing global economy.⁴⁴

With regard to students with disabilities, in particular, the presumption against the extraterritorial application of American disability laws should not preclude the enforcement of their right to accommodations in study abroad programs.⁴⁵ When an American university operates a program overseas, in which eligible American students receive accommodations at their home institutions, apply for, are accepted into and attend such programs that are run by or under contract with an American university, in which the students pay to receive academic credit toward an American degree from an American university, then the presumption of extraterritoriality should not provide an excuse for American universities to not meet their obligations to provide accommodations for their students with disabilities.

CONCLUSION

Congress's overriding purpose in enacting the Rehabilitation Act and the ADA was to provide equal opportunities for people with disabilities, including students attending institutions of higher education. Based on recent developments in the law, Section 504 of the Rehabilitation Act and the ADA should now be read to protect the rights of students with disabilities to accommodations when they participate in study abroad programs operated or sponsored by American universities.⁴⁶ To not do so—by limiting the application of the Rehabilitation Act and the ADA to programs that operate on American soil—only frustrates the purpose and intent of these laws.⁴⁷

* This article is based on a longer article written by the author and published in the *Stanford Journal of Legislation and Policy*, entitled, *The Presumption Against Extraterritoriality as Applied to Disability Discrimination Laws: Where Does it Leave Students with Disabilities Studying Abroad?* 14 *STANFORD LEG. AND POL. REV.* (2003). The author wishes to thank the editors of that journal for permission to the author to excerpt sections of that article in this article for MIUSA.

¹2001 College Freshmen with Disabilities "A Biennial Statistical Profile, Heath Resource Center," available at www.heath.gwu.edu/pdfs/collegefreshmen.pdf

²For a comprehensive discussion of this topic, see Arlene S. Kanter, "The Presumption Against Extraterritoriality As Applied to Disability Discrimination Laws: Where Does it Leave Students with Disabilities Studying Abroad?" 14 *STANFORD LEG. AND POL. REV.* (April 2003).

³Rehabilitation Act of 1973, §504, Pub. L. No. 93-112, 87 Stat 355 (1973); 34 C.F.R. § 104.44 (2000).

⁴Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat 327 (1990).

⁵29 U.S.C. § 705(2)(B) (2000); 42 U.S.C. § 12102(2) (1995). For a discussion of the Supreme Court's recent review of the definition of "disability" under these laws, see generally *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999); *Murphy v. United Parcel Service*, 527 U.S. 516 (1999); *Sutton v. United Air Lines*, 527 U.S. 471 (1999); *Bragdon v. Abbott*, 524 U.S. 624, 624 (1998). The three part definition of the ADA dates back to 1974 when Congress passed the original version of the Rehabilitation Act, which defined the term "handicapped" to apply to "any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to Titles I and II of this Act." Rehabilitation Act of 1973, Pub. L. No. 93-112 § 7(6), 87 Stat. 355, 361 (1973). When the Act was amended in 1974, Congress included the three part definition that now appears in the current version of Section 504 as well as in the ADA, with the exception of the substitution of the word "disability" for "handicap."

⁶34 C.F.R. § 104.3(j)(2)(ii).

⁷See, *Albertson's*, 527 U.S. 555; *Murphy*, 527 U.S. 516; *Sutton*, 527 U.S. 471; and *Bragdon*, 524 U.S. 624.

⁸Section 504 includes language of direct threat to self and others. 29 U.S.C. § 794 (2000). Title I includes only threat to others. 42 U.S.C. § 12111(3) (1995). However, in June 2002, the Supreme Court held in *Chevron USA, Inc. v. Echazabal*, 536 U.S. 73 (2002), that it is not a violation of Title I for an employer to refuse to allow a worker to resume duties if to do so would pose a threat to the worker himself. 42 U.S.C. §§ 12112(b)(4), 12113(d)(2) and 29 U.S.C. §§ 705(20)(D), 20(c)(i); see also *Bragdon*, 524 U.S. 624 (reasoning that plaintiff with HIV infection had a disability under the ADA because of limitations on procreation); *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 289 (1987) (finding that teacher with tuberculosis had a handicap under the Rehabilitation Act and remanding the case for a determination as to whether she was "otherwise qualified" to perform her job as a schoolteacher).

⁹42 U.S.C. § 12114(c) (1995).

¹⁰The Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat 1071 (1991).

¹¹Courts have held specifically that the Rehabilitation Act applies to Americans overseas. See e.g. *Barth v. Gelb*, in which the court held that the State Department's Foreign Service is subject to the requirements of the Rehabilitation Act, in a case involving an insulin-dependent Foreign Service

specialist who had alleged he was denied a reasonable accommodation in the form of flexibility in assignments. Although the court found for the defendant, *Voice of America*, the court specifically recognized the applicability of the Rehab Act to foreign service workers. *Barth v. Gelb* 761 F. Supp. 830 (D. C. Cir. 1991). See also Local 1812 American Fed of *Government Employees v. U.S. Department of State* 662 F. Supp. 50 (D.C.Cir. 1987) (court recognized that the Foreign Service Act is made subject to the Rehab Act in 22 USC 3905(e)(4)); *Guerriero v. Schultz*, 557 F. Supp. 511 (D.D.C. 1983) (foreign service worker covered by the Rehabilitation Act); *Mendez v. Gearan*, 956 F. Supp. 1520 N.D. Ca. 1997) (Peace Corp worker covered by Rehabilitation Act) *Barrera v. Dalton*, 1997 U. S. App. Lexis 17611 (4th Cir. 1997) (Navy employee covered by Rehabilitation Act).

¹²See, Rehabilitation Act of 1973, §504 and Americans with Disabilities Act of 1990.

¹³*Id.*

¹⁴28 C.F.R. § 35.150(a)(3).

¹⁵See, INSTITUTE OF INTERNATIONAL EDUCATION, OPEN DOORS: STATISTICS ON INTERNATIONAL STUDENT MOBILITY (2002) (the annual report on international education published by the Institute of International Education (IIE)).

¹⁶See Charlotte Thomas, "But I Can't Study Abroad and Other Myths," at www.petersons.com/stdyabrd2.html (last visited Sept. 6, 2002). Many colleges and universities also discuss the importance and advantages of study abroad on their Web sites. See e.g., Office of Int'l Educ., Univ. of Colo., *Why Study Abroad*, available at www.colorado.edu/OIE/StudyAbroad/brochures/Why.html (last visited Sept. 6, 2002); Ctr. for Int'l Educ., Univ. of Wis. Milwaukee, *Is Study Abroad for Me*, available at www.uwm.edu/Dept/CIE/OPP/for-me.html (last visited Sept. 6, 2002).

¹⁷*Bird*, 104 F. Supp. at 1273; see also *EMU*, No. 00-60466 (E.D. Mich. 2002).

¹⁸Order Ruling on Extraterritoriality, 2 (D. Or. Oct. 13, 1999) (on file with author).

¹⁹*Id.* at 7-8.

²⁰*Id.* at 9.

²¹*Id.* at 9.

²²*Id.*, citing *United States v. Juda*, 46 F.3d 961, 967 (9th Cir. 1995).

²³See *Bird v. Lewis & Clark*, 104 F. Supp.2d 1271 (D. Or. 2000), *aff'd*, 2002 U.S. App. LEXIS 10842 (9th Cir. 2002). During oral argument before the United States Court of Appeals for the Ninth Circuit on July 8, 2002, one of the appellate judges peppered Lewis and Clark's attorney with questions regarding how he could argue that the ADA and Section 504 should not apply since the case involves an American student participating in a program run by an American university. Telephone Interview with Elizabeth Carl, Attorney for Plaintiff (July 25, 2002). Nonetheless, the Court of Appeals refused to rule explicitly on the extraterritoriality issue, notwithstanding its application of Section 504 and the ADA to the conduct at issue in this case. See also *Wolff v. South Colonie School District*, 534 F. Supp. 758 (N.D.N.Y. 1982), in which the court held that Section 504 applies to an overseas school program sponsored by a public school district. As the court wrote, "[t]he trip to Spain can be considered an activity or program receiving federal financial assistance within the meaning of the [Rehabilitation] Act since, although the students pay for a substantial portion of the expenses of the trip, regular salaried teachers will be attending as chaperones while school is in session, the School District has sponsored and planned the program, and student will be under the supervision of teacher and School District personnel during the trip." *Id.* at 761 (citing *Poole v. S. Plainfield Board of Education*, 490 F. Supp. 948 (D.N.J. 1980)). In fact, the Senate Report of the 1991 CRA Amendments, specifically cite *Wolff* as an example of the appropriately broad interpretation intended for Section 504. See SENATE REP. NO. 100-64, at 12 (1988).

²⁴Letter to Dr. Lattie Coor, President, Arizona State University, from L. Thomas Close, Supervisory Team Leader, OCR, United States Department of Education, Region VIII, Denver, CO (Nov. 29, 2001) (on file with author).

²⁵*Id.*

²⁶*Id.*

²⁷In the ASU case, the student sought to receive accommodations from ASU to enable him to attend a program run by an Irish University. *Id.*

²⁸*Saint Louis University*, 1 NAT'L DISABILITY L. REP. (Lab. Rel. Press) 259 (Dec. 12, 1990).

²⁹See, 34 C.F.R. §§ 104.44(d)(1), (2) and see, *Saint Louis University*, 259 (Dec. 12, 1990).

³⁰See, *Saint Louis University*, supra note 48.

³¹*College of St. Scholastica*, 3 NAT'L DISABILITY L. REP. (Lab. Rel. Press) 196 (Sept. 15, 1992).

³²*Id.*

³³*Id.*; 29 U.S.C. § 794(1) (2002); see also *EMU*, No. 00-60466 (E.D. Mich. 2002).

³⁴In *Bird v. Lewis & Clark*, attorney for the plaintiff noted that to relieve an American university or college of its obligations to provide accommodations under Section 504 and the ADA would: involve absurd and life threatening results. If protections of these laws were limited to the territorial boundaries of the United States, a person who uses a wheelchair would be provided with access to board the plane in the United States, but upon arrival in a foreign country could be refused access to leave the plane... Failing to apply these laws extraterritorially would mean residents of United States colleges and universities can enter agreements to travel overseas [while they are] in the

United States, based upon United States laws, and make payment in the United States, only to find that they can be excluded from services, denied their basic survival needs, or made to sit at the back of the bus the moment they are taken outside of the territorial boundaries of the country. Appellant's Brief at 33, *Bird v. Lewis & Clark*, 104 F. Supp.2d. 1271 (D. Or. 2000), *aff'd* 2002 U.S. App. LEXIS 18,042 (9th Cir. 2002).

³⁵42 U.S.C. § 12,101(8).

³⁶See 34 C.F.R. §§ 656.3, 658.11,661.10 (2002).

³⁷*Id.* §§ 657.21(c)(1), (h)(3).

³⁸See, e.g., 34 C.F.R. § 56.2; 22 C.F.R. § 142.2. In *McCraw v. Christopher*, 1995 EEO PUB LEXIS 4446 (1995), an administrative judge applied the Department of State's nondiscrimination mandate to require the Department of State to accommodate a Foreign Service Officer who is blind and otherwise qualified for the position.

³⁹A recent issue of the journal, *A World Awaits You (AWAY)*, includes several articles written by students who have traveled overseas and describes their experiences as well as the many accommodations provided to them. National Clearinghouse on Disability and Exchange, *A WORLD AWAITS YOU*, Mar. 2002.

⁴⁰See 28 C.F.R. § 35.150(a)(3).

⁴¹If the cost becomes prohibitive in relation to the university's budget, the university may need to seek outside funding to assist students with arrangements for their semester abroad. Indeed, such funds may be available through federal programs. See *College of St. Scholastica*, 3 NAT'L DISABILITY L. REP. (Lab. Rel. Press) 196 (Sept. 15, 1992). In addition, even if university funds may not be available to provide the full range of accommodations necessary to facilitate a student's study abroad, it is now possible that students who receive SSI may use their SSI benefits even while they are studying abroad. The Social Security Independence and Program Improvements Act, which became effective on January 1, 1995, provides that SSI benefits may continue for students so long as the students were eligible for SSI for the month preceding the first full month outside the United States. Funds from the Office of Vocational Rehabilitation also may be available to students wishing to travel overseas since no federal regulations prohibit the funding of an international program as part of an individual's vocational rehabilitation plan. See Mary Ann Higgins, "International Exchange: A Valuable Step Towards Employability; Mobility International USA International Exchange Program to Costa Rica," 26 AM. REHABILITATION, Spring-Summer 2001, No. 1, at 15.

⁴²*Equal Employment Opportunity Commission v. Arabian American Oil Company*, 499 U.S. 244, 248 (1991) [hereinafter *Aramco*]. See also *Foley Brothers v. Filardo*, 336 U.S. 281, 285 (1949) ("[L]egislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.") (citing *Blackmer v. United States*, 284 U.S. 421, 437 (1932)); *N.Y. Centennial R.R. v. Chisholm*, 268 U.S. 29, 31 (1925) ("Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction," quoted in *Sandberg v. McDonald*, 248 U.S. 185, 195 (1918)); *American Banana Company v. United Fruit Company*, 213 U.S. 347, 356-57 (1909) ("Law is a statement of the circumstances in which the public force will be brought to bear upon men through the courts. But the word commonly is confined to such prophecies or threats when addressed to persons living within the power of the courts.").

⁴³See Arlene S. Kanter, *supra* note 2.

⁴⁴*Id.* See also *Hartford Fire Insurance Company v. California*, 509 U.S. 764, 794-96 (1993) (applying Sherman Act to conduct abroad without referring to presumption against extraterritoriality). *But see id.* at 814 ("[I]f the question were not governed by precedent, it would be worth considering whether that presumption controls the outcome here.") (Scalia, J., dissenting); see also Gary B. Born, "A Reappraisal of Extraterritorial Reach of U.S. Law," 24 LAW & POL'Y INT'L BUS. 61-71 (1992); Curtis A. Bradley, "Territorial Intellectual Property Rights in an Age of Globalism," 37 VA. J. INT'L L. 505, 517-518 (1997); Larry Kramer, "Vestiges of Beale: Extraterritorial Application of American Law, 1991 SUP. CT. REV. 179, 201-03; Larry Kramer, Note, Extraterritorial Application of American Law After the Insurance Antitrust Case: A Reply to Professors Lowenfeld and Trimble," 89 AM. J. INT'L L. J. Jonathan Turley, "'When in Rome'": Multinational Misconduct and the Presumption Against Extraterritoriality," 84 NW. U. L. REV. 598, 663-64 (1990); James E. Ward, "Comment: Is That Your Final Answer? The Patchwork Jurisprudence Surrounding the Presumption Against Extraterritoriality," 70 U. CIN. L. REV. 715, 716 (2002); Mark P. Gibney, "The Extraterritorial Application of U.S. Law: The Perversion of Democratic Governance, the Reversal of Institutional Roles, and the Imperative of Establishing Normative Principles," 19 B.C. INT'L & COMP. L. REV. 297, 320 (1996).

⁴⁵Order Ruling on Extraterritoriality, at 6 (D. Or. Oct. 13, 1999).

⁴⁶Order Ruling on Extraterritoriality, at 6 (D. Or. Oct. 13, 1999).

⁴⁷See *Northeast Marine Terminal Company v. Caputo*, 432 U.S. 249, 258 (1977); *South Pacific Company v. Jensen*, 244 U.S. 205, 217-18 (1917) (holding that state workers' compensation systems could not operate seaward of the water's edge); *Kollias v. D & G Marine Maintenance*, 29 F.3d 67, at 74 (2d Cir. 1994); see also *Director. OWCP v. Perini North River Associates.*, 459 U.S. 297, 316-17 & n.26 (1983) (citing S. REP. No. 92-1125, at 13 (1972); H.R. REP. No. 92-1441, at 10-11 (1972), reprinted in 1972 U.S.C.C.A.N. 4698, 4708).

THE PRESUMPTION AGAINST EXTRATERRITORIALITY: CASE STUDIES



THE PRESUMPTION AGAINST EXTRATERRITORIALITY: CASE STUDIES

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INTRODUCTION

Signed into law on July 26, 1990, the Americans with Disabilities Act (ADA)¹ is a comprehensive law intended to eliminate discrimination against individuals with disabilities in all aspects of American public life.² From the viewpoint of students with disabilities, this sweeping goal logically and necessarily encompasses the opportunity to study overseas. The increased visibility of people with disabilities and greater public awareness of disability as a civil rights issue engendered by the enactment of the ADA likely has contributed to giving students with disabilities the confidence to apply for and participate in overseas programs, and also encouraged postsecondary institutions to accept students and provide accommodations.

Nonetheless, it is important to acknowledge at the very outset of this chapter that currently there is no definite legal right to receive accommodations in an overseas study program. While such a right may exist on a moral or equitable level, it has not been explicitly recognized in law by Congress, any higher federal court, any statute or the Department of Justice's (DOJ) Office of Civil Rights (OCR).³ Students with disabilities who want to participate in overseas programs should certainly advocate for themselves and argue for a right to accommodations working from the broad goals and principles of equality set out in the ADA. If the educational institution in question refuses to cooperate, however, and the student decides to make a complaint with the DOJ or to go to court, there is no way to guarantee an outcome favorable to the student. Litigation is inherently uncertain, and in addition to the usual risks of being among the first to claim a right on an unresolved issue,⁴ there are some significant legal questions specific to asserting a right to disability accommodations in an overseas program.

The Presumption Against Extraterritoriality: What it is and how it affects students with disabilities in exchange programs

One major barrier to claiming such a right is raised by a legal doctrine called the “presumption against extraterritoriality.” The United States Constitution states that Congress has the power “to regulate commerce with foreign nations,”⁵ but in interpreting this provision, courts have also acknowledged the “rule of nations” under which the laws of any country are not to extend beyond its own territory.⁶ The Supreme Court, combining the rule of nations with the presumption that Congress generally intends to legislate in accordance with international law so as to avoid conflict with the legitimate interests and laws of other sovereign nations, first enunciated the presumption against extraterritoriality almost 100 years ago.⁷ One of the most recent and clearest statements of the presumption against extraterritoriality was actually given by the Supreme Court in a 1993 civil rights case: “Legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.”⁸

By its own terms, the presumption against extraterritoriality can be overcome, though the *Aramco* decision seemed to set a very high bar for establishing the “contrary intent” required to rebut the presumption.⁹ Both the *Aramco* decision and the presumption against extraterritoriality itself have drawn considerable criticism,¹⁰ but at this point in time, the presumption stands. The Supreme Court has never expressly overturned or narrowed *Aramco*.¹¹

There is at least one undeniably clear way for Congress to demonstrate a “contrary intent” to rebut the presumption against extraterritoriality, and that is to enact legislation that explicitly extends the reach of a federal law to behavior outside of the country. Congress did exactly that when it enacted the Civil Rights Act of 1991.¹² Introduced and enacted soon after the *Aramco* decision, Congress openly states that its purpose is “to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.”¹³ Accordingly, the act extends Title VII of the Civil Rights Act of 1964 and Title I of the ADA to the overseas conduct of any corporation controlled by an American employer.¹⁴ Unfortunately, the very clarity with which the Civil Rights Act of 1991 extended Title I of the ADA to apply to foreign employers makes it difficult to

argue that Title III of the ADA should also be extended to apply to foreign public accommodations and commercial facilities, since Congress has never issued a similar explicit amendment regarding Title II or Title III.¹⁵

The presumption against extraterritoriality is a problem for students with disabilities asserting a legal right to accommodations in overseas programs, but even if the resulting situation is discouraging, there may be ways to deal with this issue. The presumption clearly threatens any right that involves the direct application of U.S. law to events, persons and activities that are of another sovereign nation. Just as clearly, the Rehabilitation Act and the ADA *do* cover certain entities and kinds of behavior within the United States. Covering the gap between these apparently irreconcilable extremes requires determined advocacy and a firm grasp on factual context. The following suggested approach for reconciling those gaps is flexible rather than legalistic because, for the reasons outlined above, students with disabilities cannot presume they have a legal right to accommodations once they are outside of U.S. borders.

Determining Rights Overseas: Step 1 – Know the Rights at Home

To begin with, know which entities the Rehabilitation Act and the ADA cover, and the extent to which the right to accommodation is protected. The Rehabilitation Act of 1973¹⁶ prohibits discrimination on the basis of disability by federal agencies, programs that enter a contract with the federal government and, most important for students with disabilities, recipients of federal financial assistance, as stated in Section 504. Most public, and even private, institutions of higher education receive enough federal financial assistance in the form of grants and individual financial student aid to be subject to Section 504.¹⁷ With regard to academic adjustments in particular, Section 504 requires colleges and universities that receive federal funds to “take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.”¹⁸

Title II of the ADA prohibits state and local governments, including state universities and colleges, from discriminating on the basis of disability.¹⁹ Public postsecondary institutions must ensure that qualified students with disabilities are not, by reason of their disabilities, excluded from participating in or receiving the benefits of the institution’s ser-

vices, programs or activities.²⁰ This mandate requires public schools and colleges to reasonably modify their rules, policies or practices, remove architectural, communication or transportation barriers and/or provide to students with disabilities a wide range of auxiliary aids and services.²¹ Regulations promulgated under Title II require state colleges and universities to provide accommodations unless they can demonstrate that doing so would “result in a *fundamental alteration* in the nature of a service, program, or activity or would result in *undue* financial and administrative *burdens*.”²²

Title III of the ADA extends the Rehabilitation Act’s disability nondiscrimination mandate to the private sector by covering places of public accommodation, which include “a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.”²³ Title III also covers commercial facilities and nonprofit organizations, that “offer examinations or courses related to licensing, certification, or credentials for secondary or postsecondary education, professional, or trade purposes.”²⁴ Private schools and colleges must ensure that discrimination on the basis of disability does not bar students with disabilities from “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”²⁵ As in Title II, Title III entities are not required to provide accommodations beyond the point of a fundamental alteration or an undue burden to themselves. In addition, Title III defines discrimination as “a failure to make *reasonable* modification in policies, practices, or procedures, when such modifications are necessary”²⁶ for access; the “reasonable” modifier here could be interpreted as an additional limitation on the degree to which Title III entities have to provide accommodations to students with disabilities.²⁷ Title III entities are also held to different standards of physical accessibility in existing facilities, so that private colleges and universities subject to Title III rather than Title II of the ADA are required to remove architectural and structural communication barriers only when doing so is “readily achievable.”²⁸

Determining Rights Overseas: Step 2 – Match Facts to Rights

Once a student knows his or her right to accommodation at a given U.S. postsecondary institution, the next step is to engage in a careful analysis of how these rights will interact with the particular circumstances of the student’s participation in the overseas program offered by the institution. Obviously the educational component of overseas programs takes

place outside the boundaries of U.S. territory. Students with disabilities cannot arrive at an overseas campus and request accommodations directly from the foreign institution as if it was subject to American law. However, an American university that establishes, funds and controls an overseas study opportunity that it offers in the United States, to its American students, for credit towards a degree/diploma that is granted by the university, is arguably creating a program under Title III, like any other, that must be made available to students with disabilities to the full extent required by law. The more a student with a disability can present his or her factual circumstances and program as a domestic situation akin to other Title III domestic scenarios, the more convincingly the student can assert an actual right and request overseas accommodation(s), regardless of the presumption against extraterritoriality. The closer we get to a situation where a U.S. university does not financially or contractually administer control over the overseas study program and/or the student is making requests directly of a foreign institution, the harder it is to make an argument for the ADA's application.

The critical factors in such an analysis would include:

- The location of the program, or at least the program aspect (e.g., recruitment, courses, living arrangements) that the student is having problems with;
- The location and identity of the entity that actually offers the overseas study program;
- The relationship between the home institution and the overseas institution;
- The degree of control (financial, administrative, contractual, study content, etc.) exercised by the U.S. institution over the overseas program;
- The type of accommodation requested;
- The overall difficulty (e.g., cost, additional administrative burden, incurring special contractual obligations, etc.) to the U.S. institution of providing the requested accommodation.

Students with disabilities must be aware that, even if they win agreement from their university, the institution will only be required to provide accommodations overseas to the extent required by American law. That is, the time, money and effort required from the U.S. college or university for providing accommodation *overseas* is what likely will be counted when considering whether the U.S. institution has reached the point of "undue hardship" or the limits of what is "readily achievable."²⁹ For example, if a U.S. college initiates, administers and financially sponsors an art history program in Europe, the program is arguably subject

to the requirements of the ADA and possibly Section 504. Nonetheless, it would likely be considered an undue burden for the college to make every site visited in the trip fully accessible in light of the multiple foreign property owners, laws and policies involved including historic preservation laws that may override accessibility requirements in certain circumstances, and the fact that the host country may not have accessibility laws that establish the same accessibility requirements. However, the university should review its site choices and at least make every reasonable effort to make the overall program as accessible as possible.³⁰

If the university does not contractually or financially exert control over the overseas program, it is more difficult to argue that the home university should be required to make accommodations overseas. For instance, if a home university merely maintains a loose affiliation with an overseas university, perhaps accepting applications on the foreign university's behalf, and making an initial screening but not the final admission decision or the actual program of study, then the presumption against extraterritoriality is raised directly since the foreign university appears to run the program. It may also be easier for the home university to factually establish that a requested modification is an undue burden or not reasonable when the U.S. university does not have legal and/or operational control over the foreign university's program.

There are a couple of additional factors for students with disabilities to keep in mind, even if the ADA or the Rehabilitation Act does apply to American entities that offer overseas educational programs. First, institutions, administrative tribunals and courts are likely to balk if a requested accommodation establishes an actual, or perhaps even potential, conflict with the laws of the foreign country.³¹ Such a conflict is not only a strong reminder of why the presumption against extraterritoriality exists (to avoid conflict between U.S. laws and the legitimate laws of other sovereign nations), it would be taken as an indication that providing the accommodation would factually be an undue burden on the U.S. institution (it would not be "reasonable" to require the U.S. university to break, or risk breaking, the laws of the host country). Second, even if a court finds that an American university's own actions in offering an overseas program without accommodations for students with disabilities violate rights protected by the ADA or Rehabilitation Act, that university will always have the option of simply canceling the program or the affiliation with the foreign university rather than alter the program to include students with disabilities. This possibility may be remote if the program is popular and helps the university or college to be competitive, but it should be recognized.

HYPOTHETICAL EXAMPLES

Examples of how the above analysis could be applied in different contexts follow. Please note that all of the case studies are written as if the presumption against extraterritoriality can be avoided, a legal conclusion that remains uncertain at best.

Case Study I: Providing accommodations abroad.

A Deaf student attends a four-year public university. Through his disability services office he currently receives academic support for sign language interpreters. During his sophomore year, he decides that he would like to take part in a study abroad program the following year. After considering his options and with the encouragement of his parents, he decides on a study abroad program to England sponsored by his home institution. After receiving acceptance into the program, the student approaches program administrators to discuss and provide documentation of accommodations he may need while abroad. After a number of meetings with his parents and the administrators, it is decided that he will need an American Sign Language (ASL) interpreter for the duration of his stay. The university agrees to provide the ASL interpreter but stipulates that it is the responsibility of the student to cover the complete costs of such an accommodation.

As described, the university here is subject to both the Rehabilitation Act and Title II of the ADA, and has been providing accommodations to the student. The critical issue here is how much the university's study abroad program can be characterized as a program entirely of the home university. If "sponsoring" the program includes such factors as determining admission criteria, charging and using additional fees or a portion of tuition from participating students for running the program, setting and/or financing elements of the program and granting credit for the overseas study program, then the program should be viewed as being offered by the university for which an effective interpreter is required, and the university should cover the cost as it always has.³²

At a further level of analysis, the university could defend itself by pointing out that sending an ASL interpreter to accompany the student or arranging for an ASL interpreter to work with the student overseas at the foreign institution will involve greater costs and additional administration than simply providing an interpreter through the university's established disabled student services program. This could well be true, but the university bears the burden of establishing that these additional factors make the provision of an ASL interpreter an "undue burden" on the university or would involve a "fundamental alteration" of the overseas course of study. Because England has its own disability discrimina-

tion laws, and the English university hosting the program may well have disabled students services or possible access to a local sign language service, it should not be especially burdensome for the home university to inquire about, find and contract for the services of a sign language interpreter for the student at the English university. However, if it turns out that, for whatever factual reason, ASL interpreters are especially costly or unavailable at the English site (perhaps because they use British Sign Language instead), the student could consider negotiating with a home university that has at least explored its options in good faith. That is, the student should consider asking the university to cover at least the costs of the interpreter overseas up to the amount that the home university would be spending on an interpreter for the student if he were studying for comparable time and credits at the home institution. The student could also consider the feasibility of working with a non-ASL interpreter, which could be more readily available in England.

Case Study II: Independence vs. liability.

A blind student has been accepted into an exchange program at the private college she attends. Students will travel to Central America for spring semester. An in-country resident director (RD) employed by the school will oversee the program. Because it will be the first time a student with a disability has taken part in their program, the RD has expressed concern about her participation and the lack of accommodations in the host country. The RD is particularly concerned about an optional student-led trip to explore ruins in a rugged, mountainous area. As a result, the study abroad office is now requiring the student to sign a conduct contract none of the other students are required to sign. Failure to sign or adhere to the rules in the contract could be grounds for dismissal from the program. The contract stipulates certain requirements that limit her freedom of movement on an individual basis (e.g., she will not walk on the street unaccompanied, she will not take public transportation, etc.). Moreover, she must be accompanied by an assistant while in public and pay the additional cost for this accommodation. This last accommodation was arranged by the exchange program and not at the request of the student.

Title III of the ADA, and likely the Rehabilitation Act (depending on the private college's receipt of federal monies), ordinarily applies to the university in this example. The further application of these laws to the university's exchange program depends on the relationship between the home college and the Central American college that will host the student. If the two colleges simply have an agreement whereby each college facilitates applications, study and residencies from the students of the other college, then it would be very difficult to assert that the

Central American college should be subject to U.S. non-discrimination law. If the Central American college places conduct requirements and/or restrictions on its own students with disabilities, then U.S. students with disabilities will likely have to comply with those requirements and restrictions as well.

On the other hand, the special conduct requirements placed on the student here do not seem to originate with the Central American college, but rather with the home college's study abroad office and RD. Moreover, the object of the conduct contract seems to be protecting the home university from liability. If this is the case, then U.S. non-discrimination laws could apply to the home college's own internally controlled application process, selection criteria and contract requirements. The U.S. college should not be able to impose an unrequested and/or unnecessary accommodation on a student with a disability as a condition for participating in the college's educational programs. The student also cannot be made to forego essential aspects of the program, but at the same time, the college need not make every single aspect of the program accessible to students with disabilities.³³

The home college's contractual attempts to control non-programmatic aspects of the student's time overseas such as walking on the street and traveling independently arguably amount to a denial of the student's "participation in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity,"³⁴ because all other participating students will have a chance to physically, socially and culturally explore the country without such restrictions. Once again, the critical legal issue here is how "goods, services, facilities, privileges, advantages, or accommodations of an entity" will be interpreted. If the overseas study program is characterized as a program of the U.S. college, then the U.S. college cannot impose restrictive contractual conditions on the basis of a student's disability.

Case Study III: Homestay.

A European student with a disability will take part in an intensive three-month English language course in the United States. She has a physical disability and relies on a wheelchair for mobility. She has requested to live with a host family because she feels this will give her more exposure to the language. However, the program has made arrangements for the student to stay in a dormitory for the duration of her stay. Throughout the recruitment process, a homestay was one of the options open to students when considering their living accommodations for the program.

The fact that the course itself takes place within U.S. borders means that the presumption against extraterritoriality is less likely to bar the normal application of U.S. disability non-discrimination law. However, the same reasoning that makes it possible to argue that a course offered, administered and funded by a U.S. university that operates outside of the country *is* a U.S. program and subject to U.S. law also makes it possible for the English language course in this example to *not* be an educational entity or “public accommodation” that is subject to U.S. law. If the student is simply enrolled in a purely private English course established and run by a commercial or educational entity in her home country, offered exclusively to students in that country or other overseas countries and taking place in the United States by virtue of contracts with homeowners and individual instructors who are not themselves subject to the ADA, then U.S. law may not be applicable.³⁵

If the course is offered through a U.S. college or university, then that U.S. educational entity’s programs are subject to the nondiscrimination mandate of the ADA, and likely the Rehabilitation Act. If the English language course is directly offered by the U.S. college or university, then the benefits of that program must be offered to all students, including students with disabilities. Furthermore, Title III of the ADA explicitly notes the requirement that “[g]oods, services, facilities, privileges, advantages, and accommodations shall be afforded . . . in the most integrated setting appropriate to the needs of the individual.”³⁶

The factual analysis does not simply end here, though. The Rehabilitation Act has been interpreted to require “meaningful access”³⁷ to a covered entity’s programs, while under Title III, “the central inquiry is whether the program, ‘when viewed in its entirety,’ is readily accessible to and usable by individuals with disabilities.”³⁸ One appeals court, in assessing the plaintiff’s participation in a field-based, biology overseas program, seemed to be impressed by “ample evidence” of the accommodations provided by the private college defendant, including the fact that “[a]lmost everywhere the class stayed, [the plaintiff] received alternative lodgings that were wheelchair-accessible.”³⁹ Similarly, the entity offering the English language course could maintain that “meaningful access” to the program means full and equal access to formal English instruction and providing the student with an accessible dormitory room makes the course, “when viewed in its entirety,” readily accessible to her. On the other hand, it can be strongly argued that a homestay is much more essential to an intensive overseas language study course than staying in the same lodgings as fellow students is to a field biology course. The opportunity to interact personally and informally for 24 hours

a day, seven days a week with a native-English speaking host family is not merely a peripheral benefit, especially if it was offered uniformly as a benefit that would be given to all students enrolled in the course.

If the course is not offered through a public or private secondary or postsecondary entity, but by a commercial or nonprofit facility that “offer[s] examinations or courses related to licensing, certification, or credentials for secondary or postsecondary education, professional, or trade purposes,”⁴⁰ it could still be subject to Title III of the ADA. The student needs to find out whether her factual circumstances fit within this Title III definition (e.g., the student is receiving educational credentials). The fact that the student herself is not a U.S. citizen or student does not alter the fact that the entity operating the course in the United States should not discriminate.

Case Study IV: Disability documentation.

A public university in the United States is currently hosting an exchange student for two semesters. He has been diagnosed with dyslexia and at his home institution in the United Kingdom he has received accommodations for this disability. The university hosting the student was aware of his disability and possible need for accommodation before his arrival. The student was instructed to bring all related documentation from his home university, which included the psychological evaluation used to determine accommodations at his home institution. Upon the student’s arrival, the disability service office would not fulfill his request for accommodation nor recognize him as officially disabled based on the documentation provided. The disability service office is requiring the student to be reevaluated according to federal requirements in order to receive accommodations. Cost of reevaluation would be borne by the student, a process that is time consuming and expensive. Meanwhile, the student continues to struggle with his class work.

As in the last case study, the fact that the exchange student here is studying within the United States means that the presumption against extraterritoriality should not apply. The student in this case study has the further advantage of being enrolled in a public university, which definitely falls under both the Rehabilitation Act and Title II of the ADA. Because the student is requesting an accommodation under federal law, the university is entitled to ask him to establish that he has a disability under that law (i.e., that he is an individual with a physical or mental impairment that substantially limits the major life activity of learning), but it is not entitled to refuse outright to honor the foreign student’s rights under the ADA or Rehabilitation Act. A categorical denial of all foreign documentation of disability would effectively constitute such a

refusal for students who are staying short periods of time and who have disabilities that may require longer and/or more complex evaluation periods. At the same time, the university is not *required* to accept the same documentation that the student's home educational institution accepted.

Neither the Rehabilitation Act nor the ADA set uniform documentation requirements for how colleges and universities can ascertain that students have a disability and a subsequent right to accommodation. U.S. educational institutions may therefore set their own criteria for the kind and extent of documentation required from students to establish a disability under federal law, though those criteria cannot be applied arbitrarily or kept secret. That is, the documentation criteria cannot operate as a colorable excuse for failing to provide accommodations as required under the ADA or the Rehabilitation Act.

The overseas student should communicate as much as possible with the U.S. institution beforehand to ascertain the type of documentation required. The student should also familiarize himself with how disability is defined under U.S. federal law⁴¹ (and the relevant state's disability anti-discrimination law if one exists), and communicate the specific requirements of the definition(s) to those persons and home institutions that will be supplying him with documentation about his disability. The more the student's official medical documentation specifically establishes the criteria of the statutory definition (e.g., that the student has a disability that interferes with the major life activity of learning),⁴² the stronger the student's case for accommodation. The student should make the case that he just wants to take courses like every other exchange participant, and that he needs accommodations to which he has a right as a person with a disability under U.S. law. The fact that he cannot produce the exact same documents or go through the same evaluation procedures that the U.S. institution asks of its domestic students should not affect this right.

At a minimum, the U.S. institution should bear some burden for checking out whether the student's documents establish that the student is a person with a disability under U.S. law, especially since they failed to indicate beforehand that he would need anything other than his existing documents. Such administrative or legal checking is hardly likely to constitute an undue burden on the university, and the more it accepts foreign students, the more knowledge it will acquire and the more common this procedure will become. If the foreign student's documentation really does fail to establish that he is a person with a disability under U.S. law, he may be required to get additional documentation and un-

dergo medical evaluations, which he may have to pay for if all other students have to pay for such evaluations. Again, if the university or college makes it almost impossible for foreign students with disabilities to establish their right to accommodations, it is failing to provide access to its programs for people with disabilities.

Pragmatically speaking, the particular student in the above case study is in a difficult situation because he is encountering difficulties when he is already here. Therefore, if he is unsuccessful in his personal negotiations with the U.S. institution, his options are to file a complaint with the OCR or bring a court action. Both actions are possible but results take time. Moreover, even though it seems like the student *could* establish that he is a person with a disability, a threshold requirement for bringing either of these actions, doing so could involve the same lengthy and expensive procedure that the school requires. Meanwhile, his standing to bring an injunction that would force the school to provide accommodation is slipping away as the semester ticks down.

Case Study V: Medication abroad.

A student has been accepted on a yearlong exchange program to a country in Western Europe. He has been diagnosed with Attention Deficit Disorder (ADD) and is currently prescribed Ritalin. Since Ritalin is a Schedule II drug, he is limited in how much he can obtain at one time and take abroad.

Questions about the amounts and kinds of medication that can be taken abroad cannot be answered solely by looking at disability non-discrimination law. For instance, there may be an appeal process for Schedule II restrictions that can be used regardless of whether the restriction should be lifted as an accommodation under federal disability law. If the student wants to pursue the accommodation route, the central issue would be whether the student's disability under federal law should change the amount of a Schedule II drug that he can take abroad. The initial question that must be asked is: What is the entity against which the student seeks to invoke the ADA or Rehabilitation Act? Even if this entity, be it the U.S. Congress that made the law establishing Schedule II and import restrictions, drug law enforcement agencies or U.S. Customs, is subject to the ADA, a whole further set of questions must be answered.

First, if there are restrictions on the amounts of Schedule II drugs that can be taken abroad, those restrictions are not necessarily discriminatory under federal disability law. Second, even if the restrictions are found to be discriminatory, there is a further question of whether altering the restrictions of people with disabilities would constitute an "undue bur-

den” on lawmakers and/or drug enforcement agencies or a “fundamental alteration” of the purposes behind the law. Third, it is difficult to establish why the ADA should have priority over federal customs or drug control restrictions in a matter of conflict between federal laws. Fourth, the Western European country may have its own laws governing the amounts of prescription drugs that can be taken by an individual into the country at one time, and there is no legal basis for arguing that U.S. laws must be given priority over the laws of the country being visited. Purely as a practical matter, before the student tackles such a minefield of potential conflict of laws, he should find out whether the Western European country in question accepts his U.S. doctor’s prescription and research the question of whether Ritalin (or any other prescription) is easy, and perhaps even less expensive, to obtain in Europe.

Case Study VI: Recruitment and application process.

An exchange organization offering volunteer opportunities abroad encourages people with disabilities to contact their office prior to submitting an application to discuss whether their programs fit their needs. They also require each of their applicants to state whether or not a disability could preclude them from participating in their program.

As always, the first crucial questions to ask are where are these events taking place and who is managing the exchange program. If the exchange organization is based and operated outside of the United States, it cannot be *made* to use certain kinds of language and recruiting procedures, even on posters and information cards sent to U.S. universities or student travel agencies for posting. Of course, students can ask the U.S. institutions to take down the posters and inform the overseas organization that it is the institution’s policy to consider all applicants with disabilities, denying no one the opportunity to apply solely because she or he has a disability. Similarly, students can contact the exchange organization directly with comments and complaints, but the foreign corporation is not automatically subject to U.S. law just because it invites American students generally to apply. (*Also see Case Study III*) If the exchange organization and program is a U.S. entity, but the above recruitment and screening are taking place in other countries and entirely directed at foreign students, there is also little basis for U.S. laws to apply.

If the recruitment process is taking place in the United States, the organization is a U.S. entity, and the exchange opportunity is offered generally to the public, then the applications and recruitment procedure cannot arbitrarily require unnecessary medical disclosures or information about disabilities. However, federal law recognizes that organizations

can require qualifications that are genuinely necessary for participation in a particular program, and ask for information relevant to maintaining the specific standard.⁴³ For example, if an organization was offering a special tour of Eastern European countries for study of and participation in special wrestling techniques perfected there, the organization could state that a certain level of physical condition is required of all applicants and legitimately inquire about medical conditions or disabilities that would preclude participation in the program.

The right to ask about qualifications necessary for program participation should not be taken as a blanket license to ask about all disabilities. For example, abilities involving reading or hearing presumably are not related to genuine qualifications for wrestling and the program applications should not simply require applicants to disclose all known disabilities, regardless of relevance to the program. Reading and hearing could be related to any program of study that incorporates lectures and/or text, but “reading unaided” or “hearing” are overly broad eligibility criteria to apply since these abilities are rarely “necessary” for most programs. Assistance such as readers, sign language interpreters and screen reading software can often fulfill such requirements. Applicants should not be required to broadly speculate and disclose information about any disability that could possibly affect their participation in a program.

The issue of whether an organization can ask about any disability for which accommodation may be requested hinges on the issue of what information could be considered necessary for operating the program. Organizations subject to U.S. law cannot exclude people with disabilities simply because they have a disability and it is discrimination to fail to provide any reasonable modification that will not “fundamentally alter” the program.⁴⁴ Arguably an organization can ask whether an applicant has a disability that will require accommodation in the program if it is related to some qualification that is necessary for the provision of the program, but this cannot be used as an excuse to secretly flag and screen out applicants with disabilities.

Even if the organization offering the program is subject to U.S. civil rights laws, it would not necessarily be a breach of those laws for a recruiting officer to candidly disclose to a student with a disability that certain elements of a program could be inaccessible overseas, and that those elements are beyond the U.S. organization’s control and likely outside of the reach of U.S. law. For example, if a history course overseas included a tour of an inaccessible historic castle, the recruiter or program officer could give his or her opinion that the castle’s overseas

owners would not necessarily have to make the castle accessible, but neither he or she nor the application can state that any applicant with a mobility disability need not apply.

Case Studies VII: Prior hospitalization.

A recent college graduate with a psychiatric disability has applied to volunteer for a year in an Eastern European country. He has completed the application in full, which includes release of his complete medical and mental health history and signing a legally binding release form. This form contains a clause stating that participants will advise the organization of all factors relating to medical and emotional health history and that the submission of inaccurate and/or incomplete information may result in dismissal from the program. It further states that the president and/or medical director of the organization reserves the right to deny or terminate participation if either of them feels that a medical and/or emotional health history or symptoms, either in the past or during participation in the program, may place the participant, staff or other participants in potential danger. The applicant, who was hospitalized for his disability four years before, was denied placement in the exchange program.

The starting point for this question remains: Is the volunteer organization based in the United States and subject to U.S. law? Since the way to approach these questions has been covered extensively in the above case studies, we will at this point assume for our analysis that the graduate here is dealing with a U.S. based volunteer organization that invites applications from the U.S. general public for service overseas. As such, it is likely to be covered by federal civil rights laws. The easiest way to establish that is to know whether, like organizations such as the Peace Corps, the organization receives federal funds. If so, it is subject to the requirements of the Rehabilitation Act.⁴⁵ Furthermore, the presumption against extraterritoriality is not necessarily raised in this case study because the graduate here is not necessarily asking for accommodation or anything else overseas. Rather, he is asking that the organization's domestic application process be applied without discrimination.

Without the link of federal funding for operation, the graduate can turn to the ADA. The employment provisions of Title I are not applicable by definition, because volunteers are not on the organization's payroll; this is unfortunate since Title I of the ADA *does* extend to overseas conduct.⁴⁶ Titles II and III both prohibit discrimination against qualified persons with disabilities in the services, programs or activities offered by a covered entity. The applicability of federal laws becomes more questionable if one is dealing, for example, with a religious volunteer organiza-

tion that only accepts applicants from members of their own denomination and receives no federal funds.

Assuming the applicability of U.S. law, the graduate needs to analyze how the volunteer organization establishes its volunteer criteria and runs its application process. As noted in Case Study VI, the organization can require qualifications that are genuinely necessary for participation in the overseas program. If overseas placements generally involve isolation, less-developed living conditions, and extensive cultural adaptation, the organization can make inquiries into an applicant's physical and mental health to ensure that the applicant is qualified to handle the physical, mental and emotional challenges presented by a lengthy placement overseas. However, a decision on this point must be made reasonably and soundly, free of stereotypes and unsupported biases about how people with disabilities are less capable or automatically present a "danger to oneself or others."⁴⁷

The organization's medical officers or staff cannot simply "feel" that the applicant's psychiatric disability may cause a problem. Placement decisions about a candidate with a disability must be supported by sound medical reasoning and factual information. At the same time, both courts and administrative tribunals tend to respect a well-known organization's years of placement experience and are traditionally deferential about the medical and other professional approvals that the organization may require as a condition for participation. As a result, an applicant who challenges *how* the organization considers the information it gathers probably has a stronger position than challenging *what* the organization considers. For example, it would be difficult to argue that the organization should not require or consider professional medical assessment of its applicants. On the other hand, it is entirely possible to argue that the organization's overemphasis on the mere fact of disability or hospitalization, without more details, and above *all* of an applicant's other relevant information—academic achievement, languages, life skills and travel experience—is unjustified, and therefore discriminatory.⁴⁸

SUMMARY

As will be evident by now, the overseas rights and responsibilities addressed in the above hypothetical examples are neither clearly defined nor easily enforced. Students with disabilities cannot point to an explicit statutory provision or Supreme Court case asserting that their universities or colleges must consider their applications for overseas exchange programs or provide them with accommodations overseas. Instead they

must weigh their options and argue persuasively: the more the exchange program can be characterized as an American program, the more likely the student has enforceable rights under Section 504 of the Rehabilitation Act and/or the ADA. The more a specific, requested accommodation is within the control of the home institution and is “readily achievable” for the university, the stronger the student’s case for getting such an accommodation.

Although many students with disabilities would view these facts as discouraging, they also reveal a situation ripe with potential. Thirty years ago, domestic disability rights were in a similar state of uncertain development. When the 1973 Rehabilitation Act was passed, most of the country was probably not even aware that a legal right had been created, and no one was quite sure how to pursue it. Relentless community advocacy and innumerable legal losses—as well as victories—brought the right effectively to life, and eventually led to the passage of the ADA seventeen years later. “The law,” usually viewed as an inflexible and rigid institution, is not only capable of being developed, it *must* be developed. The ADA was passed because Congress finally understood that “The Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.”⁴⁹ Bringing these goals to life in the context of overseas study and travel will not be easy, but the law is one potential tool that cannot be overlooked.

¹42 U.S.C.A. § 12101 *et seq.*

²John Wodatch, Chief of the Civil Rights Division of the U.S. Department of Justice in a presentation sponsored by the Pacific Disability and Business Technical Assistance Center in San Francisco, CA (September 22, 2000) (“A primary goal of the ADA is to open up everyday American life to persons with disabilities”); Jane West, *Introduction*, in *IMPLEMENTING THE AMERICANS WITH DISABILITIES ACT*, xiv, at xv (Jane West ed., Cambridge, M.A. & Oxford, U.K.: Blackwell Publishers and Millbank Memorial Fund, 1996) (“the ADA’s mandate is “broad and sweeping—to protect the civil rights of the nation’s 49 million people with disabilities in virtually all aspects of public life”).

³In a July 29, 1999 letter to an inquiry from an American traveling abroad, the DOJ advised that U.S. federal law “may not provide jurisdiction for the provision of accessible services in foreign countries.” See Letter re: Access Abroad, 17 Nat’l Disability L. Rep. (Lab. Rel. Press) 262 (1999). One regional office of the U.S. Department of Education’s Office of Civil Rights (OCR) has held that a student at a college subject to the Rehabilitation Act was discriminated against when the college refused to provide her with interpreter services in its overseas study in Ireland program. *College of St. Scholastica*, 3 Nat. Disability L. Rep. § 196 (1992). However, the case was decided without any explicit analysis concerning the extraterritorial application of the Rehabilitation Act, so it should not be seen as a positive affirmation of a right to accommodation in overseas study programs. More recently, another regional U.S. Department of Education OCR office upheld a university’s decision to turn down a similar request for interpreter services from a student with a disability who had applied to and been accepted into the “Study abroad Program at University College Cork in Ireland, stating “it is OCR’s position that neither Section 504 nor Title II requires the University to provide auxiliary aids and services in overseas programs. Nor does either statute otherwise prohibit discrimination on the basis of disability in overseas programs.” *Arizona State University*, 22 Nat. Disability L. Rep. § 239 (2001).

⁴An example of the kinds of difficulties inherent in litigation is found in *Bird v. Lewis & Clark College*, 303 F.3d 1015 (9th cir 2002), likely the first federal case to potentially raise the extraterritorial application of the ADA in the context of higher education overseas study programs. The plaintiff,

who used a wheelchair, alleged that the Defendant college's overseas program in Australia failed to accommodate her disability as required under Title III of the ADA. The plaintiff student's Rehabilitation Act and ADA claims achieved a highly positive Order Ruling on Extraterritoriality, 2 (D.Or. Oct. 13, 1999), and survived the defendant college's motion for summary judgment, 104 F.Supp.2d 1271 (D.Or. 2000), but the 9th Circuit on appeal found that the plaintiff did not have the proper standing to bring a Title III action. That is, she could not "demonstrate a real or immediate threat that the College will again subject her to discrimination." 303 F.3d 1015, 1020 (2002). Because the plaintiff had graduated and did not have plans to return or further participate in the overseas programs, the personal harm that she alleged would not be remedied by a declaration that the defendant had discriminated against her or an order to change the defendant's overseas program. However, the Plaintiff did have standing to seek an injunction preventing the college from releasing the poor semester grades given to the Plaintiff during her participation in the overseas program, since they could conceivably continue to harm her employment and graduate school opportunities. *Id.* at 1020. Ultimately, the 9th Circuit upheld the decision below, and expressly declined to address the issue of the Rehabilitation Act and Title III of the ADA's application extraterritorially. *Id.* at 1021, fn. 1.

⁵U.S. Const. Art 1, § 8, cl. 3.

⁶Joseph Story, *Commentaries on the Conflict of Laws* § 18, at 19-20 (1st ed., 1834) (It is "wholly incompatible with the equality and exclusiveness of the sovereignty of all nations, that any one nation should be at liberty to regulate either persons or things not within its own territory). See also *The Apollon*, 22 U.S. (9 Wheat.) 362, 370 (1824).

⁷*American Banana v. United Fruit Co.*, 213 U.S. 347, 356-57 (1909) (judicial interpretation of U.S. law should restrict the "operation and effect to the territorial limits over which the lawmaker has general and legitimate power").

⁸*EEOC v. Arabian American Oil Co. (Aramco)*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros. V. Filardo*, 336 U.S. 281, 285 (1949). (Naturalized American citizen working in Saudi Arabia for an American company brought action against his employer under Title VII of the Civil Rights Act, claiming discrimination on the basis of national origin and religion.)

⁹The Supreme Court cited earlier cases to state that "we look to see whether 'language in the [relevant Act] gives any indication of a congressional purpose to extend its coverage beyond places over which the United States has sovereignty or has some measure of legislative control. . . . Therefore, unless there is 'the affirmative intention of the Congress clearly expressed,' we must presume it 'is primarily concerned with domestic conditions.'" *Aramco*, 499 U.S. 244, 248 (1991).

¹⁰See, e.g., James E. Ward, *Comment: Is That Your Final Answer? The Patchwork Jurisprudence Surrounding the Presumption Against Extraterritoriality*, 70 U. CIN. L. REV. 715 (2002); Mark P. Gibney, *The Extraterritorial Application of U.S. Law: The Perversion of Democratic Governance, the Reversal of Institutional Roles, and the Imperative of Establishing Normative Principles*, 19 B.C. INT'L & COMP. L. REV. 297; James Mathieu, *The Supreme Court's Not So Clear Decision in Equal Employment Opportunity Commission v. Arabian American Oil Company*, 21 BROOK J. INT'L L. 939 (1996). Many commentators object to the *Aramco* decision in light of an increasingly interrelated world economy. Other authors speak directly to the application of the presumption in the context of U.S. civil rights law, see, e.g., Linda Maher, *Drawing Circles in the Sand: Extraterritoriality in Civil Rights Legislation after Aramco and the Civil Rights Act of 1991*, 9 CONN. J. INT'L L. 1 (1993); Arlene S. Kanter, *The Presumption Against Extraterritoriality As Applied to Disability Discrimination Laws: Where Does It Leave Students with Disabilities Studying Abroad?*, 14 STAN. L. & POL'Y REV. 291. There has also been judicial commentary on whether the presumption should apply equally in all circumstances and to all kinds of statutes, see, e.g., *Kolias v. D&G Marine Maint.*, 29 F.3d 67, 71 (2d Cir. 1994).

¹¹Although more recent Supreme Court decisions have applied U.S. laws to persons and events outside of the country, they have not done so in a way that casts doubt on the general validity or breadth of the presumption against extraterritoriality. In *Hartford Fire Insurance Company v. California*, 509 U.S. 764, 796 (1993), for example, the high court found that "it is well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States." Not only does the ruling on its face apply to a specific act, it also implies that the presumption is rebutted when the extraterritorial behavior is *intended* to produce effects in the United States; such an intent is rarely present and difficult to prove when there is a failure to provide accommodation to students with disabilities in overseas study programs.

¹²Pub. L. No. 102-166, § 109(b)(1), 105 Stat. 1071 (1991) (codified as amended at 42 U.S.C.A § 2000e-1).

¹³Pub. L. No. 102-166. *id.* at § 3(4).

¹⁴See 42 U.S.C.A § 2000e-1(c).

¹⁵This is also the position taken by the DOJ. See *Letter re: Access Abroad*, 17 Nat'l Disability L. Rep. (Lab. Rel. Press) ¶ 262 (1999).

¹⁶29 U.S.C.A. § 794.

¹⁷See Kanter, *The Presumption Against Extraterritoriality As Applied to Disability Discrimination Laws*,

supra note 10 at 302.

¹⁸34 C.F.C. § 104.44(d)(1). At the same time, the institutions “need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.” *Id.* at § 104.44(d)(2). Court decisions have interpreted Section 504’s requirements to mean that federally funded entities must make “reasonable,” but not substantial or fundamental, modifications to ensure that people with disabilities have “meaningful access” to programs. *See Alexander v. Choate*, 469 U.S. 287, 300 (1985).

¹⁹42 U.S.C. § 12131(1).

²⁰42 U.S.C. § 12132.

²¹*See* 28 C.F.R. §§ 35.104, 35.160(B), 35.164.

²²28 C.F.R. § 35.150(a)(3) (emphasis added).

²³42 U.S.C. § 12181(7)(j). The key to being an entity that falls under Title III as a public accommodation is being a privately owned entity that offers its programs, services or activities to the general public. Title III does exempt religious organizations, and certain private clubs with exclusive membership requirements, but factors such as nonprofit status do not affect coverage under Title III.

²⁴28 C.F.R. § 36.309(a).

²⁵42 U.S.C. § 12182(a). *See also* 28 C.F.R. § 36.202 *et seq.*

²⁶42 U.S.C. § 12182(b)(2)(A)(ii) (emphasis added).

²⁷In the context of Title I and employment, “reasonable” has been interpreted as a separate modifier that imports an additional limitation on an employer’s obligation to provide accommodations for employees with disabilities. *See U.S. Airways v. Barnett*, 535 U.S. 391, 122 S.Ct. 1516 (2002).

²⁸42 U.S.C. § 12182(b)(2)(a)(iv).

²⁹If the presumption against extraterritoriality does not apply, then the university should not be able to hold up the overseas location as an excuse for providing minimal or ineffective accommodations. U.S. laws require the university to at least conduct a full inquiry into what would constitute an effective accommodation for the student, a thorough investigation into what accommodations are available in the overseas location, and a proper analysis of how the home university could reasonably provide effective accommodations. *See College of St. Scholastica*, 3 NAT. DISABILITY L. REP. § 196.

³⁰In *Bird v. Lewis*, 303 F.3d 1015, 1021 (2002), the 9th Circuit did not have to reach the extraterritoriality question in part because of its finding that contrary to the Plaintiff’s assertion, she “does not prevail on the ADA or Rehab claim simply because the College failed to provide her with wheelchair access on a number of occasions. Compliance under the Acts does not depend on the number of locations that are wheelchair-accessible; the central inquiry is whether the program, ‘when viewed in its entirety,’ is readily accessible to and usable by individuals with disabilities.” (citation omitted) *See* 28 C.F.R. § 35.150(a).

³¹“Laws” of a foreign country could potentially be interpreted quite broadly, to encompass not only a country’s legislation and decided case law, but also legal provisions exemplified in administrative rulings or collective bargaining agreements. *See Mahoney v. RFE/RL, Inc.*, 47 F.3d 447 (DC Cir 1995), *cert. denied* 516 U.S. 866, 116 S.Ct. 181 (“foreign laws” exception to Age Discrimination in Employment Act applies where compliance with act required breaching collective bargaining agreement with foreign unions). The “conflict with a foreign law” exemption to enforcing the civil rights of Americans overseas is expressly stated in the *Civil Rights Amendment Act of 1991*, *supra* at note 14. This means that students with disabilities who are actually employed by the university (e.g., as a graduate student instructor leading an undergraduate exchange class), and therefore can avoid the presumption against extraterritoriality and have a right to “reasonable accommodations” under Title I, still cannot assume they have a right to accommodation in all aspects of the trip. The U.S. institution does not have to take any action that could come into conflict with the “law of the foreign country.”

³² An educational institution subject to Title II or Title III of the ADA cannot avoid its obligation to provide reasonable accommodations to its students simply by contracting with third-party organizations to act as a go-between in the exchange program. *See* 28 C.F.R. §§ 35.102, 36.202. The Title II or Title III entity remains responsible for ensuring that activities operated under the contracts that they have entered are in compliance with the ADA, though this does not mean that an American third-party itself is necessarily subject to the ADA. For example, if a state university contracts with a religious organization that by itself is not subject to the ADA, then only those activities that the religious organization operates under the contract need to be ADA compliant; any other programs or activities offered by the organization remain exempt. Of course, if the third-party organizations in question are foreign organizations, the presumption against extraterritoriality could apply so that they cannot be required to operate in compliance with U.S. law. However, a U.S. institution’s direct obligations under the ADA arguably should not be affected by the presumption’s application to foreign organizations. At least theoretically, American universities or colleges can contractually require all third parties, domestic or foreign, with which it contracts for overseas programs to provide students in the programs with accommodations in accordance with the ADA. If this contractual obligation is breached, the U.S. institution should then be required to legally pursue en-

forcement of the contractual provision up to the point that such legal action would constitute an undue burden or hardship.

³³See footnote 30 and accompanying discussion.

³⁴42 U.S.C.A. 12182(b)(1)(A).

³⁵In *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1242 (11th Cir 2000), a federal appeal court found that “a foreign-flag ship sailing in United States waters is not extraterritorial,” but the fact that the ship was on U.S. territory did not in itself prompt the court to find that the ship as a whole was subject to the ADA. The court decided that Title III of the ADA only applied to “those parts of a [foreign-flag] cruise ship which fall within the statutory enumeration of public accommodations.” *Id.* at 1241. That is, a restaurant, gym or theater that would be a public accommodation subject to the ADA on dry land, continues to be subject to the ADA if they are on a ship. By analogy, the English language course and/or the entity offering it in this example still have to fall within the defined statutory reach of the Rehabilitation Act or the ADA.

This decision is offset by a very recent case, *Spector v. Norwegian Cruise Line Ltd.*, 2004 WL 49707 (5th Cir 2004), in which a federal court at the same level as *Stevens* comes to the opposite conclusion, and labels the earlier court’s avoidance of the presumption of extraterritoriality “unpersuasive.” Instead, the *Spector* court stated that “[t]here is no indication, either in the statutory text or in the ADA’s extensive legislative history, that Congress intended Title III to apply to foreign flagged cruise ships.” The reasoning in *Spector* is discouraging in that it flatly elevates concerns about possible conflicts with foreign laws and procedures above the “broad reach” that Congress intended for Title III and the ADA. A court that applies the presumption of extraterritoriality in an action brought by American citizens who are paying customers in a cruise ship operating in U.S. waters, albeit under a foreign flag, is likely to apply the presumption in actions brought by students seeking accommodations in another country. On the other hand, the *Spector* court’s emphasis on possible conflicts with foreign laws was highlighted because the application of Title III would require changes in the ship’s crew responsibilities, evacuation procedures, and actual structure—things that would normally be governed by the laws of the country under whose flag the ship operated. This situation differs from at least some of the accommodations requested by American students overseas, which present little potential for conflict with a host country’s laws (e.g., a U.S. college’s provision of sign language interpreters or computers is unlikely to conflict with any country’s laws, though an accommodation of extra test time or structural changes could clash with a foreign institution’s academic rules or building codes). The one thing *Spector* clearly establishes is that the presumption against extraterritoriality can still be a bar to the wider application of the ADA.

³⁶42 U.S.C.A. 12182(b)(1)(B).

³⁷*Hunsaker v Contra Costa County*, 149 F.3d 1041, 1043 (9th Cir 1998).

³⁸See *Bird v. Lewis*, 303 F.3d 1015, 1021 (2002), discussed *supra* at note 30.

³⁹*Id.*

⁴⁰28 C.F.R. § 36.309(a).

⁴¹The definition of “disability” under the ADA (which essentially was taken verbatim from the Rehabilitation Act definition): “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” See 42 U.S.C. § 12102.

⁴²See 45 C.F.R. § 84.3(j)(2)(ii) (Rehabilitation Act) and 29 C.F.R. § 1613.702(c) (ADA regulation defining “major life activities.”)

⁴³People with disabilities must be “qualified” to participate in a program, service or activity, but the qualifications must be truly “necessary” for participation. This is true for Title III public accommodations (see 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301), and probably true, though less explicitly stated within the act, for organizations operated by a state or local government (i.e., run by a university or college that is state operated) (see 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(8)).

⁴⁴See 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. §§ 36.302, 35.130(b)(7).

⁴⁵A number of Federal courts have found that the Peace Corps, as a program conducted by an Executive Agency, is subject to the Rehabilitation Act: see *Mendez v. Gearan*, 956 F.Supp. 1520, 1523 n 2 (1997), citing *Lane v. Pena*, 518 U.S. 187, 116 S.Ct. 2092 (1996).

⁴⁶See the *Civil Rights Act of 1991*, *supra* note 12, though there would still be the further step of establishing that the nonprofit volunteer organization described here is an “employer” within the meaning of 42 U.S.C.A. § 2000e-1(c), and that any requested accommodations can be provided by the organization or “a corporation” under the organization’s control.

⁴⁷States and places of public accommodation may set legitimate safety requirements applicable to everyone who seeks participation in the entity’s services, programs or activities, just as they may require participants to be “qualified.” See 28 C.F.R. §§ 35.130(b)(8) and 36.301. Also, even though Title I likely does not apply to the volunteer organizations addressed in this case study, its requirement that an employee who poses a “direct threat” to the health or safety of himself or others could be useful, since a “direct threat” must be a significant risk that cannot be eliminated or reduced by reasonable accommodation. A mere speculation or possibility of future incapacity does

not constitute a “direct threat.” See 42 U.S.C. § 12113(b), 29 C.F.R. §§ 1630.3, 1630.15, and *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 122 S.Ct. 2045 (2002).

⁴⁸ This was essentially the conclusion reached in *Mendez v. Gearan*, 956 F.Supp. 1520 (N.D. Ca. 1997), an action brought under the Rehabilitation Act against the Peace Corps, by an applicant whose invitation to serve in Panama was withdrawn when her medical evaluation found that she had a chronic form of mild depression. The court stated that “[w]here a decision-maker excludes an individual on the basis of a disability without gathering and carefully examining the relevant evidence regarding the disability and the likelihood of harm, a court must assume that the decision-maker based the exclusion on unfounded presumptions about the disability.” Furthermore, the arbitrary nature of the Peace Corps’ decision was exacerbated by its failure to make any inquiry into whether the applicant’s disability could be accommodated overseas (e.g., through medication, or with occasional sessions of long-distance therapy, etc.) It must be noted that the *Mendez* court did not consider the presumption of extraterritoriality at all. The plaintiff was not asking the court to direct the Peace Corps to give her an overseas placement or accommodation, but only a direction for her application to be considered without discrimination.

⁴⁹ 42 U.S.C. 12101 (a)(8).

STUDY ABROAD EXPERIENCES OFFER
UNIQUE OPPORTUNITIES AND
CHALLENGES FOR STUDENTS
WITH DISABILITIES



STUDY ABROAD EXPERIENCES OFFER UNIQUE OPPORTUNITIES AND CHALLENGES FOR STUDENTS WITH DISABILITIES

By Ward Newmeyer, Former ADA/504 Compliance Officer, University of California, Berkeley

Colleges and universities, more than most public services, have a long history of working to accommodate people with disabilities in their programs. Some disabled students services offices have been around since the early 1940s, reflecting colleges' efforts to include newly disabled war veterans. Most U.S. colleges and universities, subject to Section 504 of the Rehabilitation Act of 1973, delivered some form of organized services for students with disabilities by 1980.

Even then, for various reasons, not many students with disabilities participated in international study opportunities. Now, at the University of California, Berkeley, students with disabilities regularly participate in the competitive Berkeley Programs for Study Abroad and other international study opportunities. Similarly, more and more colleges are including students with disabilities in their international study programs.

As UC Berkeley worked to achieve full access for students, the students themselves have been the greatest asset. The continual support of the administration; a physical campus that has been improved as needed, and, over the last 25 years or so, some legal guidance from disability civil rights laws.

In international settings, exchange programs are sometimes dependent on other administrations in areas with limited architectural access standards and, usually, little or no civil rights protection for people with disabilities. Societal and cultural responses to disability are usually quite different outside the United States. Not necessarily worse, just different. As you can imagine, almost every time a student with a disability wants to take advantage of an international study opportunity, some new challenge, new opportunity and occasionally a new adventure arises.

Campus collaborations between education abroad and disabled students services offices create opportunities for increasing participation of students with disabilities in education abroad programs. Also, collaborations offer natural supports for thinking creatively with the students about possible disability-related accommodations overseas. For a free booklet on collaborative ideas, download it from the National Clearinghouse on Disability and Exchange website (www.miusa.org).

Also, to learn more about including students with disabilities and arranging disability-related accommodations in international exchange programs, the National Clearinghouse on Disability and Exchange publishes *Building Bridges: A Manual for Including People with Disabilities in International Exchange Programs*.

UC Berkeley starts with a team composed of the student, an advisor from the international study program and usually an advisor from the Disabled Students' Program. Many times, colleagues at other universities who have worked through similar situations are helpful as well. Over the years, each situation has added to the perspectives, principles and hopefully the wisdom with which UC Berkeley serves its students.

Each opportunity for international education may be subject to the school's nondiscrimination policies, but implementation depends on people and locations that aren't subject to those policies. Can a U.S. university influence comprehensive architectural access modifications at a foreign university? Can it, or should it try to, alter cultural beliefs that view disability as a sort of "punishment" for the wrongdoings of one's ancestors? Is a U.S. university discriminating by contract, an action that might violate the ADA, when it makes arrangements allowing U.S. students to study at a foreign university that doesn't meet U.S. standards for architectural and program access? It is intriguing questions like these that I, as UC Berkeley's former ADA and 504 Compliance Officer, enjoyed thinking through with my colleagues on campus and at other universities.

Much current thinking stems from experiences that can serve as case studies. They can illustrate how UC Berkeley has learned to better serve students who have disabilities and who participate in international study programs. The lessons illustrated by these experiences may be helpful to students at other universities.

U.S. education abroad programs would be impractical if they insisted on U.S. access standards abroad; likely not many non-U.S. colleges meet those standards. However, UC Berkeley tries to keep international programs as accessible as possible. Students might require more auxiliary services (such as readers, notetaking assistance, research assistance, sign language interpreters and the like) than at UC Berkeley. They may require different and more creative services and accommodations. It seems that most students who participate in study abroad have a certain intellectual curiosity and an adventuresome spirit. These characteristics go a long way toward creating a successful experience in an inaccessible environment.

A case in point is when a Deaf student, who uses American Sign Language (ASL), decided to attend Leeds University for the 1993-94 academic year. Although the spoken languages are essentially the

same, British Sign Language (BSL) is a completely different language than ASL. It would not be fair to make Deaf students learn a new sign language when their hearing colleagues do not have to learn a new language. This student might have requested ASL interpreters (or transliterators if she had preferred signed English) in her classes at Leeds. Most likely, UC Berkeley would have flown interpreters to England for the year as it had for a student studying at Oxford a few years before. However, this student became interested in BSL and studied BSL at Gallaudet University in Washington, DC before going to Leeds. At Leeds, she chose to use local BSL interpreters and had a very successful year. She probably learned far more about British Deaf culture than if she had stayed with ASL. It was less expensive for UC Berkeley to fund the BSL interpreters, but that's not important. This student's intellectual curiosity and adventuresome spirit led her to a far richer experience.

Adventuresome spirit is not always enough, however. In order to assure students will have reasonable expectations, they must be well informed about the physical area, culture and attitudes about disability where they will be studying. They will also need personal adaptability, patience, flexibility and creativity. They may also need to make a careful, personal judgment about what will constitute minimum levels of independence.

The 1992-93 academic year brought an interesting contrast in the experiences of two students. Both have similar disability characteristics: they are quadriplegic and used power wheelchairs at home and on the Berkeley campus. Both students had worked hard to establish their own independence. Both participated in the Berkeley Programs for Study Abroad, a full academic year in residence at a foreign university. One of these students went to England, the other to Cairo, Egypt.

With its cobblestone streets and many ancient buildings, Cairo is notoriously inaccessible. Residences are on the upper floors, since the ground floors are used for common areas, and typically don't have elevators. UC Berkeley's Study Abroad and Disabled Students' Program staff worked hard to provide the Cairo student with information about the area, its culture and attitudes about disability. Extra services were arranged, but it was clear that the student would need almost full-time help to get around. Physically, this would be a level of dependence that years before she had struggled to escape, but her passion for her studies and other experiences in Cairo was more important to her. She learned that independence is more of an attitude than a physical state of being. She had a wonderful, successful experience. She became fluent in another

language and culture. She enjoyed meeting the inordinate challenges. She worked hard; she played hard; she had fun. Although she had to be carried up and down stairs every day, she can now look back with pride to a time when she learned an essential dimension of independence and confidence.

The second student left for her program in England and returned to UC Berkeley just weeks later. She reported being bitter and disappointed. Although the same staff members worked with her and tried to provide realistic information about England, she reported surprise that restrooms, paths of travel and buildings weren't as accessible as at home. Although she had taken a vacation trip to England just before her study abroad trip, she was not prepared for, and did not cope successfully with, her new environment. It is unclear whether she received all of the information she should have had or if the information she received was accurate. It is clear that the staff knew more about England than about Egypt, and that her university in England was generally more accessible.

Both students were supported by the efforts of dedicated, experienced staff. Both had access to a full array of services from the university, beyond that required by any law. Both were adventuresome. For these two students, it appears that their differences in adaptability, flexibility and creativity were the keys to quite different experiences abroad.

MEETING THE ADA CHALLENGE:
A U.S. STUDENT IN SPAIN



MEETING THE ADA CHALLENGE: A U.S. STUDENT IN SPAIN

By Julie Ann Cheshire and Pamela Houston, National Clearinghouse on Disability and Exchange

Alona Brown's journey to Alicante, Spain began several years ago when she decided that she would be able to contribute to her community more effectively and confidently if she had a college education. At the age of 47, Brown began her studies at the University of Denver. To fulfill a language requirement, she decided to study Spanish. Her tutor, who was from Spain, suggested that she enhance her language study by spending a semester overseas.

Brown, who is visually impaired, spent many hours with her reader in the study abroad library researching options and weeding through possible sources of funding. Brown worked with her study abroad advisor to learn everything she felt she needed to know to make the best choice for herself. "It is crucial," Brown asserts, "to ask lots of questions and get in touch with the directors of the programs that interest you." Brown communicated clearly about what she expected from her experience and what support she would require to study and participate successfully in the exchange experience.

This opportunity was available to her in large part due to the passage of the Americans with Disabilities Act (ADA). Brown realized that she had the right to participate in international exchange and felt empowered to find the study abroad program that would be best for her.

Brown wrote letters and made phone calls to several programs that especially appealed to her. She chose a program at the Colegio Mayor in Alicante, Spain. Brown then contacted the Council on International Educational Exchange (CIEE), which coordinates the program there. "I told them I was a visually impaired student and asked if they could help me," she recalls. "They were willing and happy to help. They answered all the questions I had."

Those who want to learn about other students with disabilities stories and disability-related tips can visit the National Clearinghouse on Disability and Exchange/Mobility International USA's website at www.miusa.org.

Marie Alice Arnold, a CIEE program officer at the time, confirms that she and Brown communicated frequently and at great length. Arnold has learned through experience with many kinds of students, including other students with disabilities, that open communication is essential to facilitating a successful overseas experience. Arnold advises that study abroad coordinators working with disabled students start early, as they would for all unique circumstances. "It is possible to accommodate a student with a disability, but there is a lot of preparation that goes into working out details, so lead time is key," she says.

Arnold says that CIEE's approach to the ADA involves evaluating sites for accessibility, as well as providing individualized support for students with disabilities. "When the ADA was passed, we decided that we would do a site evaluation to find answers about the levels of accessibility at different sites," she explains. "Where was it impossible for a student who used a wheelchair all of the time? Where was it possible with modifications?" This gave CIEE the information it needed to provide students like Brown with good data on accessibility at their host universities. In this way, Arnold was able to inform Brown ahead of time about the Colegio Mayor program and work with her to find ways to accommodate her particular needs.

In Brown's case, it was essential to gather all relevant information on the accommodations she would need to participate successfully. "It was a fascinating process for me to learn about all the different issues we would need to consider and work out," explained Arnold. "Alona said she would need mobility training, and I needed to learn what that meant. She talked about needing readers and tutors and about needing a homestay situation where everything would be left in place so she could find it."

Arnold then communicated Brown's concerns and needs to the resident program director, who used ONCE, a Spanish disability advocacy group, as an information resource. Forming a relationship with a local disability group was essential to making Brown's study abroad program a success. ONCE was able to provide general information, mobility training and support for Brown during her stay in Alicante. By the time Brown arrived in Spain in January of 1996, everything she needed had been arranged. Her mobility training, provided through a contract with ONCE, went well.

However, the Colegio Mayor soon began an extensive construction project on campus. It became clear that Brown would not be able to move independently around an ever-changing campus. The program staff pulled together a team of CIEE and Spanish students to walk her to and from classes and activities each day. Program representatives also assisted Brown with securing tutors and readers.

Brown is convinced that blindness is not a barrier to studying abroad. In thinking about choosing a program, Brown suggests that the process of selecting a study abroad site will vary based on each individual's expectations and what each feels is necessary to make the experience successful. "Everyone is so different," she says. "I am a 'people person.' I wanted, sought and gave out a lot of attention. I could have requested that my course materials be taped or Brailled, but I would have missed the relationships I formed with my readers and tutors."

For Brown, studying in Spain was the experience of a lifetime. She affirms that her self-esteem "went up 100 percent." Brown explains, "Here I was, a blind individual, I didn't know the language that well, I'm older and I'm African American. I didn't know many of the challenges I would be faced with and I didn't know if I would be accepted." Her voice rings with pride as she declares, "I did it. I met every challenge, and I was warmly received. Now I have bigger dreams for myself and the courage to pursue them!"

ARRANGING FOR SIGN LANGUAGE
INTERPRETATION ABROAD:
A DISABILITY SERVICE
PROVIDER PERSPECTIVE



ARRANGING FOR SIGN LANGUAGE INTERPRETATION ABROAD: A DISABILITY SERVICE PROVIDER PERSPECTIVE

By Karen Keen, M.S., Disability Services Coordinator, University of California Santa Cruz

Disability services offices across the country are asking themselves whether or not to provide accommodations for Deaf students who hope to travel abroad through educational exchange programs. After the U.S. Department of Education's Office for Civil Rights (OCR) ruled that Arizona State University did not have to provide interpreter services for a Deaf student who wanted to attend University College in Cork, Ireland, in January 2002, *The Chronicle of Higher Education* reported, "Advocates for students with disabilities say the decision... could cause some colleges to begin denying many students accommodations when they want to study overseas."¹ However, the Arizona case remains one ruling among several regarding overseas accommodations, leaving the educational community with lingering questions.

For the Disability Resource Center at the University of California, Santa Cruz (UCSC), the question was not *whether* to provide overseas accommodations, but *how*. So, when Sarah Beauchamp stepped into our office to let us know of her hopes of spending her junior year at the University of Edinburgh in Scotland, we looked beyond the red tape to determine how to make this vibrant young woman's hopes a reality.

As the coordinator of Deaf services, my initial questions included: Does the University of Edinburgh have a Disability Services Office? Can we hire interpreters in Scotland or will we need to send an interpreter? How many interpreters would be needed? How much will it cost? How will we find interpreters? What if the interpreter is not a good match for the student?

I began contacting various people at the Education Abroad Program (EAP) office on campus, the University of Edinburgh, the Scottish Association of Sign Language Interpreters and the East of Scotland Deaf Society to get answers. Sarah was also a tremendous help by taking the initiative to collect information. Through her efforts, I was able to get a copy of the University of Edinburgh's "Information for Students with Hearing Impairments" and an e-mail address for its Disability Office.

The disability advisor agreed to arrange for notetakers and to also provide further interpreter contacts.

As I connected with organizations in Scotland, I discovered little disparity in cost per hour for a Scottish interpreter compared to a Santa Cruz interpreter. However, there were only a handful of interpreters in the entire country who knew American Sign Language (as opposed to British Sign Language), and Scotland in general was experiencing a significant interpreter shortage. It became clear Sarah would not receive adequate accommodations unless we sent an interpreter with her.

So, how does one go about finding and sending an interpreter to a foreign country, not just for a summer or six months, but the whole school year? In our case, Sharyn Martin, director of the UCSC Disability Resource Center, had made a casual acquaintance with a top-notch interpreter from Southern California at a regional meeting. Not only was Tracy exhilarated by the idea of interpreting abroad, but she also had certification and travel experience, making her ideal for the job. Due to the lower number of classroom hours required for many EAP courses, especially in European schools, Tracy agreed to interpret solo. After bringing her to UCSC to discuss her contract and meet Sarah over a lunch outing with Sharyn and me, it was evident the match was perfect. We worked out a contract that included airfare to Scotland and a monthly salary. The sum took into consideration costs for housing—but technically she paid for her housing with her salary.

The last hurdle was determining how Tracy would obtain a visa for a 9-10 month period. Scotland usually issued visas on a six-month basis. Also, would she be required to get a work permit? Numerous phone calls and e-mails to the British consulate in Los Angeles, the U.S. Consulate General in Edinburgh, as well as searches on government websites failed to reveal a clear answer. The best option seemed to be a six-month tourist visa, which she might be able to renew. It turned out that the six-month visa worked out just fine. She simply renewed it with no problems. (In fact, she liked it there so much that she decided to remain in Scotland for another year!)

Once the student and interpreter arrived in Scotland, the 2001-2002 school year sailed by smoothly, with Sarah sending e-mails recounting her exciting adventures. In January 2002, she wrote:

“Tracy and I get along really well. The system here is quite different,

but I'm getting the hang of it. I still have two same classes from last term [and] one new class, the Anthropology of Cross-Gender. It is a very interesting class. I have a note taker; actually, she prefers to use the word, scribe.... She writes down everything that the lecturers say. I'm still taking British Sign Language. Its fun learning another language, using signs in different ways. Scotland is incredible! It's amazing that I have been here for four months!"

It only takes one e-mail like this to confirm the value in making the effort to provide accommodations for a Deaf student studying abroad. The memories created and lessons learned are priceless and last a lifetime. Surprisingly, arranging for interpreters and notetakers for a study abroad program may not be as difficult as many think. Here are some points to keep in mind:

- There are many interpreters who would love the unique opportunity to work and travel overseas. Ask interpreters in your area or post a message on a listserv such as PepNet (www.pepnet.org). Keep in mind interpreters you have met at past meetings or conferences.
- Work closely with the disability office, or other contact person, at the university the student is planning to attend. Rosie, the disability advisor in Edinburgh, was very friendly and helpful, not only with arranging supplemental accommodations, but also in providing contact information for housing for the interpreter, Deaf clubs in Scotland, etc.
- Contact the country's various Deaf and interpreter associations for information on local interpreter demographics. You may be able to hire an interpreter who already lives there. If you are unsure how to find these organizations, the Internet can be a great resource or contact the National Clearinghouse on Disability and Exchange.
- Don't assume that it will be more expensive to provide accommodations for a Deaf student overseas. As mentioned previously, class schedules can actually make it less expensive to send a Deaf student abroad for a year than pay for interpreters for the same year at home.

In essence, if your school is wrestling with what stance to take as a result of OCR rulings or other legal precedents, first consider the possibilities and reasons *for* sending a Deaf student abroad with accommodations. Your efforts will change a student's life.

1 Hebel, Sara. (2002). "No Interpreter: Advocates for Disabled Students Criticize a Ruling by the U.S. Education Department on a Study-Abroad Program." *The Chronicle of Higher Education*, 48(18), A31.

COLLABORATION BETWEEN HOME AND HOST UNIVERSITIES



COLLABORATION BETWEEN HOME AND HOST UNIVERSITIES

By Johana Schwartz

As a student of the works of James Joyce, I had wanted to visit Ireland for some time. My home university strongly encourages foreign study, so I concluded early in my college career that an academic experience in Ireland would be essential to my understanding of Irish literature. Although my university does not sponsor a study abroad program in Ireland, the campus center for international study proved helpful in referring me to various institutions that do. The options were numerous but I had specific goals for my study abroad experience that only the New York University (NYU) Irish Studies Program satisfied. I enrolled in the NYU in Dublin 2001 Summer Study Abroad program because it offers an annual six-week summer program at my desired location, Trinity College in Dublin, as well as the courses I was interested in, Irish literature and language.

I also knew that, as an American entity, NYU was subject to the Americans with Disabilities Act (ADA). At the time of my application for the program, I was unfamiliar with Ireland's policies toward people with disabilities, and students in particular. Since I am severely disabled with cerebral palsy, which inhibits my mobility, I preferred to work through an American university while in Dublin.

NYU worked with me to accommodate my disability-related needs. Before my departure, I contacted the Henry and Lucy Moses Center for Students with Disabilities on the NYU campus to explain my classroom needs. The center arranged for me to have extended time on examinations and offered to provide a note taker for lectures. I was pleased to discover that the center was receptive to me supplying a note taker of my own selection.

I also contacted the director of the NYU in Dublin program to discuss my housing requirements. Trinity College has wheelchair accessible dormitory rooms on campus, but during my stay they were being remodeled and were unavailable to me. Based on my adaptive needs, the

program director located an appropriate and comfortable apartment near the Trinity College campus, which included some modern amenities, such as a washing machine and dryer, but was lacking in others. Upon arrival, I found that, in particular, the shower/bathtub needed extensive remodeling.

Because of my needs, I was housed separately from the other students in my program but I lived with students in an affiliated NYU program. The disadvantage of this placement was that it involved a daily 15-minute walk to campus and it limited socializing with my classmates, who were living nearer each other on campus. I later toured one of the accessible rooms being remodeled on campus, and observed that it was located in a historic building and not as comfortable as where I was living.

The sacrifice of comfort and accessibility in favor of historic preservation arose frequently during my stay in Ireland. The Trinity College campus has a lot of cobblestone, which presents a bumpy and uneven path between classrooms. The campaign to install a smooth path for wheelchairs and walkers faces resistance from heritage associations and the outcome remains uncertain. Beyond the campus, many other streets are also paved in cobblestone. Most of the sidewalks are narrow and crowded. Although present, curb cuts are steep and not guaranteed on all corners of an intersection. Many tourist attractions are located upstairs in older buildings that lack lifts. In this case, the advantage of enrolling in a group program like NYU in Dublin is that other participants are often available to assist in carrying a wheelchair up steps. Some of the oldest attractions on the NYU itinerary were completely inaccessible to me. However, the program leaders warned me about these barriers and consulted with me to plan an alternative activity.

Initially, some problems with accessibility were due to insufficient communication. In the United States, accessibility is defined precisely by the ADA, leading the NYU staff and me to assume that a place claiming to be accessible would meet the standard we were accustomed to. We discovered that we needed to ask specific questions about a building to determine its accessibility. For example, one hotel used by NYU had a ramp into the building but the path from the lobby to the rooms and restaurant required descending a staircase with five steps. Based on experiences like this, I recommend familiarizing oneself with a country's legal code regarding disability (see "Disability Rights Education and Defense Fund" in the

Resources section) and access prior to traveling there and making specific inquiries about accessibility.

Personal assistant referrals are offered by Irish Wheelchair Association (IWA). Anyone may access IWA's list of care providers that can be hired privately, and it was easy for me to locate an appropriate caregiver with this service. Students affiliated with Trinity College, whether enrolled directly during the school year, or through a program, as I was, may also consult Trinity's Disability Liaison Officer for a roster of graduate students interested in working as academic and personal care assistants. Trinity College students, including eligible foreigners, receive a stipend from the university to hire attendants for the number of hours they require help. Americans who study abroad and receive personal assistant funding through their home states may have the additional option of bringing along an attendant from home or recruiting an American abroad, depending on local state policies. I availed myself of a combination of an aide funded by California's In-Home Supportive Services (IHSS) and an IWA aide I hired privately, thereby smoothly meeting my extensive need for attendant care.

For such a small country, Ireland has a wealth of programs that support people with disabilities, and I was equally impressed by the attitude of the Irish people toward disability. The people of Ireland are hospitable and open-minded, which explains their willingness to assist people with disabilities in overcoming physical obstacles present in the environment. The combination of public agencies, the sentiment of the Irish people, and the flexibility of the NYU in Dublin faculty made my first overseas experience successful and rewarding.

ACCOMMODATING EXCHANGE STUDENTS IN THE UNITED STATES



ACCOMMODATING EXCHANGE STUDENTS IN THE UNITED STATES

By Jane Falls, Educational Consultant, Western Regional Resource Center, University of Oregon

International exchange offers exciting opportunities for students, families, communities and schools to learn, share and grow. As we continue toward educational globalization, students around the world leap at the chance to travel and study internationally. Students with disabilities should be encouraged to make these dreams a reality as well. Exchange organizations consider a variety of criteria in selecting a placement for each student. While student criteria may vary from program to program, for educational exchange they typically include grade averages, school and community service, a willingness and desire to immerse in a new culture and language, open-mindedness, flexibility and adaptability. Host families and schools that volunteer to accept exchange students do so based on a number of factors. Weighing these factors, exchange programs attempt to strike a delicate balance that results in a successful match for the student, host family and school.

This article suggests strategies to maximize the success of educational exchanges in the United States for inbound students with disabilities.

EDUCATIONAL SERVICES FOR STUDENTS WITH DISABILITIES IN THE UNITED STATES

Students with disabilities can expect the following while studying in the United States:

- Schools in the United States have an obligation to be physically accessible to students with disabilities.
- Specific supports and services for students with disabilities are determined on an individualized basis.
- Students with disabilities usually learn right alongside their nondisabled peers in schools and communities.

- While in some cultures having a disability results in a lack of opportunity, students with disabilities in the United States are experiencing more opportunities than ever before to be actively involved in all areas of life.

WHAT DOCUMENTATION SHOULD AN EXCHANGE STUDENT BRING?

When an international student with a disability is accepted in an educational exchange program, he or she should bring to the United States copies of school records or descriptions of any educational supports and services he or she received in the home school. This information will help the exchange program staff make a good match with both a host family and school. Depending on the type of disability and how it affects the student in home, community and school life, various supports may need to be set up to make the experience most successful. These supports could include providing sign language interpretation or a personal assistant in the classroom, access to adaptive technology at the host home, school counseling services, or connecting the student with disability-related resources in the host community, such as an independent living center or support groups.

WORKING TOGETHER FOR SUCCESS: EXAMPLES

One high school student from Ukraine came to the United States and had a prosthetic hand in need of replacement. The exchange program staff was told, "He has a problem but don't worry, he knows how to hide it." After the first few months, the student grew accustomed to life in the United States. Then, the exchange program staff asked if he wanted assistance replacing his prosthetic hand. Somewhat shyly, he agreed. Exchange personnel worked with the school to produce a student dance performance at the high school to raise money to purchase the new prosthesis. The exchange student's physics class challenged one another to see who could raise the most money selling tickets. The principal agreed to serve as master of ceremonies at the dance and the exchange student ran the lighting system and took photographs. With the support of many teachers, students and community members who attended, the event raised \$10,000 for a new state-of-the-art prosthesis. The event increased the self-esteem of the students, and generated closeness between the school and community. Imagination, creativity and collaboration provided all the supports this student needed for a

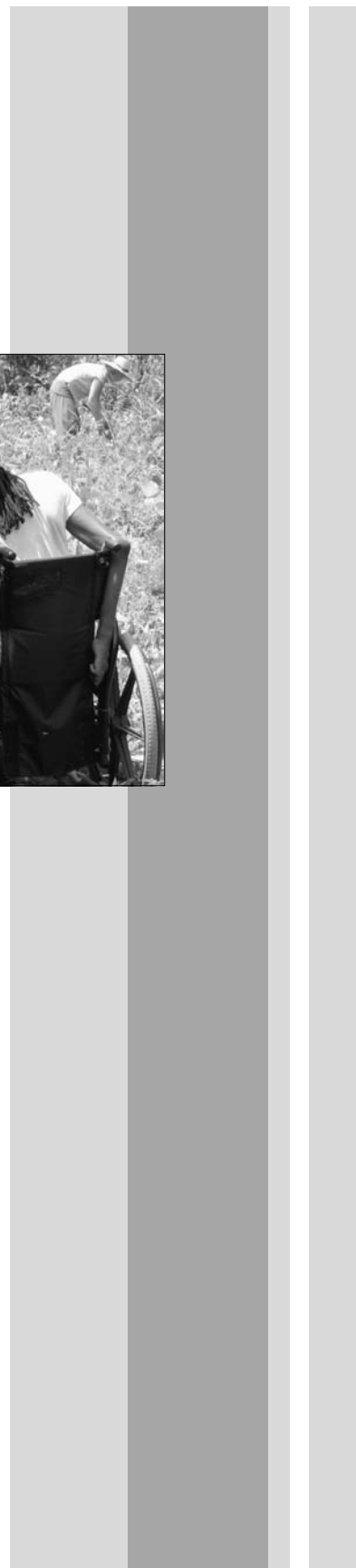
tremendously successful exchange, and the students at the host school learned valuable collaborative skills.

Another high school exchange student came to the United States with a significant hearing impairment. The exchange program carefully considered her needs and matched her with a family living in a community with both a school for students who are Deaf or hard of hearing, and a mainstream high school where American Sign Language is an approved foreign language course. This provided the opportunity for the student to attend one school for most of her coursework, allowing full access to direct sign language instruction and socializing with American peers who are Deaf. She also attended the other high school for some classes, where many of the students were learning sign language. Again, creativity and maximizing existing resources resulted in a successful and diverse experience for the student, her peers, the host family and the schools involved.

CONCLUSION

International exchange is a wonderful opportunity for students with and without disabilities to expand knowledge and skills while exploring another culture. As students with disabilities apply to exchange programs, it is important that exchange staff be prepared to explain the types of accommodations that may be available while studying in the United States. Students should be prepared to provide documentation of their disabilities, as well as information on the types of supports and services they have received in their home country. Students and program coordinators should be flexible and creative when addressing accommodation issues and finding a school and family that fits the student's interests.

A SHORT OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT (ADA)



A SHORT OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT (ADA)

WHAT IS THE ADA?

The Americans with Disabilities Act of 1990 (ADA) is a comprehensive civil rights law protecting people with disabilities from discrimination in employment, public accommodations, transportation, telecommunications and the activities of state and local government.

It is important for exchange organizations to understand the ADA's requirements and follow the spirit of the ADA. This means creating equal opportunities for everyone interested in international programs, regardless of disability status.

Exchange organizations should also note that other disability civil rights laws may affect international programs as well. For example, any program or activity receiving federal financial assistance is covered by Section 504 of the Rehabilitation Act of 1973. This law has requirements similar to the ADA but follows a different enforcement process.

DEFINING DISABILITY

Under the ADA, the same protections provided in the United States on the basis of race, sex, national origin and religion now also apply to disability. The ADA defines a person with a disability as 1) someone with a physical or mental impairment that substantially limits one or more major life activities, 2) someone with a record of such an impairment or 3) someone who is regarded or perceived as having such an impairment.

Foreign students with disabilities are also protected by the ADA while in the United States. This assures them the right to participate in mainstream activities and enjoy the same opportunities as their nondisabled peers.

INTIMIDATED BY COSTS?

Many organizations are concerned about the monetary cost of accommodating people with disabilities. Reasonable accommodation is not necessarily expensive. According to the Equal Opportunity Employment website (www.eeoc.gov/ada), 20% of accommodations have no monetary cost; more than half cost between \$1 and \$500 and the median cost is \$240. Technological advances continue to reduce the cost of many accommodations and some employees supply their own accommodations in the form of assistive devices or equipment. The Internal Revenue Code allows a deduction per year for expenses associated with the removal of qualified architectural and transportation barriers. The Internal Revenue Service (IRS) also offers a tax credit for small businesses of up to 50% of the amount spent on eligible expenses. Check with the IRS or a qualified tax accountant for more information.

There are many easy, low-cost approaches to complying with the Americans with Disabilities Act. Bathroom stalls can be widened by removing a door and adding a curtain. A desk can be raised by placing it on blocks of wood. Many other innovative solutions can make complying with the Americans with Disabilities Act a simple matter.

Contact the National Clearinghouse on Disability and Exchange or see the Resources section of this publication for more information.

PUBLIC ACCOMMODATIONS

The ADA's public accommodations requirement includes accessibility of restaurants, hotels, theaters, doctors' offices, museums, libraries, private schools and other facilities and programs open to the public. This may require structural modifications, including remodeling bathrooms for wheelchair accessibility, providing Braille signs for elevators, ramping steps in public-use areas, and purchasing teletypewriter devices for those who have hearing or speech disabilities (TTYs).

All new construction and alterations must provide accessibility. Hotels that offer transportation must also provide equivalent transportation service to people with disabilities at no additional cost. For international exchange organizations hosting foreign students in the United States, this means that accessible facilities should be available for most group activities. Hotels, museums, theaters and transportation within the United States should all be accessible.

International exchange programs are covered under the ADA because they offer goods, services or programs to the general public. Public universities and exchange organizations must conduct their programs in a way that does not discriminate against potential participants with disabilities. Privately funded exchange organizations are obligated to provide accommodations for any aspect of a program that occurs within the United States.

An exchange organization cannot use the fact that an applicant has a disability to screen that person out of a program. International organizations may ask about accommodation needs only after a participant has been accepted to a program. Once an applicant has been accepted, the organization should ask all participants about what accommodations they will need to be successful. Disabled participants cannot be singled out in this process.

EMPLOYMENT

The ADA also includes provisions related to the employment of people with disabilities. Employers with 15 or more workers must have non-discriminatory hiring practices and provide reasonable accommodations for people with disabilities.

The ADA states that employers must reasonably accommodate the

disabilities of qualified applicants or employees, unless undue hardship to the employer would result. This means that workplace modifications must be made for a qualified applicant unless this would be a significant difficulty or expense for the business. It is the employer's responsibility to demonstrate that a financial hardship would result from the hiring of a disabled person.

For example, an organization might want to hire an excellent applicant who has a disability. This applicant's disability could prevent him from entering the workplace through a door with steps or answering a phone with his hands. This organization would need to build a ramp, widen a door, or purchase a speaker phone compatible with the individual's abilities. For an employee with a visual impairment, a reader might be necessary. A Deaf employee might need an interpreter or notetaker for meetings.

Employers and potential employees can often work together to find creative solutions that will prevent undue hardships to businesses and organizations. For example, if providing an accessible water fountain is an undue hardship for an organization, providing a paper cup dispenser by the existing fountain could be a reasonable accommodation. Adaptations can be as simple as using pen and paper or an overhead projector instead of voice communication with people who are Deaf or hard of hearing.

It is important to note that an employer cannot ask on an application whether an individual has a disability. The employer may, however, ask how a potential employee might perform job functions. It is also important to note that the employer does not need to have all of the answers about appropriate accommodations immediately. Employers must be willing to investigate options and resources, if doing so is not an undue hardship. The potential employee will often have helpful ideas and should be consulted. In fact, the ADA regulations require that an employer engage in an "interactive process" with willing employees with disabilities as they ascertain reasonable accommodations. Many people with disabilities may not require major accommodations while others will not require any adaptations at all.

TRANSPORTATION

The ADA assures access to public transportation for people with disabilities. New buses and rail vehicles must be accessible; transit authorities must offer alternative transportation service to people who

cannot use fixed-route service; existing rail systems must have at least one accessible car per train; new rail and bus stations must be accessible; existing inter-city rail (Amtrak) stations must be made accessible by the year 2010.

TELECOMMUNICATIONS

Under the ADA, companies offering telephone services to the general public are required to offer relay services to individuals who use TTYs. Through this service, TTY users can place calls to organizations that do not have TTYs.

Businesses and organizations are encouraged to purchase TTYs, which can be used with existing phone systems. These devices allow direct communication with Deaf people or those with speech impairments. Staff should be trained in how to operate the TTY. Sign language interpreters, hearing loop systems and public telephones with TTYs should also be available for people with hearing or speech disabilities.

STATE AND LOCAL GOVERNMENT

State and local government programs and facilities are also covered under the ADA. This means that all public facilities and programs should be open to people with disabilities. Public meetings must be held in physically accessible sites. Alternative format materials (Braille, audiotape, large print, computer disks) and sign language interpreters or captioning should be provided for blind or Deaf individuals. Capitol buildings, county facilities and city services should also be accessible. International exchange programs run by state and local government-funded universities are covered as well.

MODIFYING POLICIES

Under the ADA, in addition to modifying physical structures, businesses and organizations must be willing to accommodate people with disabilities through their policies and procedures.

This means changing rules and requirements that do not fundamentally alter the program in order to facilitate the participation of people with disabilities. For example, a museum might allow blind visitors to touch sculptures that they cannot see. Restaurants may honor requests by hard of hearing individuals to lower music volume.

For exchange programs, these requirements may mean changing program policies to accommodate participants with disabilities. For example, a program might consider adapting its grading policy to accommodate a student with a learning disability by allowing that student to present a portfolio of his or her overseas work rather than going through the standard grading process.

Again, keep in mind that compliance with the spirit of the ADA is essential. A commitment to treat people with disabilities in a fair and unbiased manner is the most important aspect of running a successful, inclusive program.

For more information on the ADA, see the Resources section of this booklet.

RESOURCES AND PUBLICATIONS



RESOURCES AND PUBLICATIONS

ORGANIZATIONS

Access Board/Architectural & Transportation Barriers Compliance Board

1331 F Street NW, Suite 1000
 Washington, DC 20004-1111
 Tel: (202) 272-0080 or (800) 872-2253
 Fax: (202) 272-0081
 TTY: (202) 272-0082 or (800) 872-2253
 E-mail: info@access-board.gov Web: www.access-board.gov

The Access Board offers technical assistance and provides information on Americans with Disabilities (ADA) accessibility guidelines.

American Association of People with Disabilities

1819 H Street NW, Suite 330
 Washington DC 20006
 Tel: (800) 840-8844, (202) 457-0046 Fax: (202) 457-0473
 TTY: (888) 712-4672
 E-mail: aapd@aol.com Web: www.aapd-dc.org

The American Association of People with Disabilities is a non-profit, cross-disability membership organization advocating for the rights of disabled Americans. It fosters leadership among people with disabilities and supports the full implementation and enforcement of disability nondiscrimination laws.

American National Standards Institute

25 West 43rd Street, 4th Floor
 New York, NY 10036
 Tel: (212) 642-4900 or (212) 642-4900 Fax: (212) 398-0023
 E-mail: info@ansi.org Web: www.ansi.org

American National Standards Institute can provide information on accessibility standards related to architecture.

Association on Higher Education And Disability

PO Box 540666

Waltham, MA 02454

Tel: (781) 788-0003

Fax: (781) 788-0033

TTY: (617) 287-3882

E-mail: AHEAD@ahead.org

Web: www.ahead.org

The Association on Higher Education And Disability is an international, multicultural organization of professionals committed to full participation in higher education for people with disabilities.

Disability and Business Technical Assistance Centers

Tel/TTY: (800) 949-4232

Web: www.adata.org

Disability and Business Technical Assistance Centers provide information, materials, technical assistance and training on the ADA to businesses and individuals. There are regional networks of technical assistance centers throughout the United States.

Disability Rights Education and Defense Fund

2212 Sixth Street

Berkeley, CA 94710

Tel/TTY: (510) 644-2555

Fax: (510) 841-8645

E-mail: dredf@dredf.org

Web: www.dredf.org

Disability Rights Education and Defense Fund (DREDF) is the leading national law and policy center in disability civil rights. DREDF works to advance the civil rights of individuals with disabilities.

Federal Communications Commission

445 12th Street SW

Washington, DC 20554

Tel: (888) 225-5322

Fax: (866) 418-0232

TTY: (888) 835-5322

E-mail: fccinfo@fcc.gov

Web: www.fcc.gov

Federal Communications Commission offers technical assistance on ADA provisions applying to communications.

HEATH Resource Center

George Washington University

2121 K Street, NW Suite 220

Washington, DC 20037

Tel: (202) 973-0904 or (800) 544-3284 Fax: (202) 973-0904

TTY: (202) 939-9329

E-mail: askheath@heath.gwu.edu

Web: www.acenet.edu

HEATH Resource Center is the national clearinghouse for information about education after high school for people with disabilities. It provides written materials on a variety of topics related to postsecondary education for students with disabilities.

Independent Living Research Utilization

2323 South Shepherd, Suite 1000

Houston, TX 77019

Tel: (713) 520-0232

Fax: (713) 520-5785

TTY: (713) 520-5136

E-mail: ilru@ilru.org

Web: www.ilru.org

Independent Living Research Utilization provides technical assistance pertaining to disability rights and a list of independent living centers across the United States.

Job Accommodations Network

PO Box 6080

Morgantown, WV 26506-6080

Tel/TTY: (304) 293-7186 or (800) 526-7234 Fax: (304) 293-5407

E-mail: jan@jan.wvu.edu

Web: www.jan.wvu.edu

The Job Accommodations Network is a free consulting service that provides information about job accommodations, the ADA and the employability of people with disabilities.

Internal Revenue Service (IRS) provides information about tax credits that can assist businesses in complying with the ADA.

Tax Code Information

Tel: (800) 829-0433 or (800) 829-4059 (TTY)

Tax Code Legal Questions

Tel: (202) 622-3110 (TTY users can use the relay service)

National Association of Protection and Advocacy Systems

900 Second Street, NE, Suite 211

Washington, DC 20002

Tel: (202) 408-9514

TTY: (202) 408-9521

Fax: (202) 408-9520

E-mail: info@napas.orgWeb: www.napas.org

National Association of Protection and Advocacy Systems is the national umbrella organization of the congressionally mandated protection and advocacy network. This network provides legal representation to people with disabilities. It also monitors the facilities that care for people with disabilities and works on inclusion in education, employment, health care, housing and more.

**National Clearinghouse on Disability and Exchange
Mobility International USA**

PO Box 10767

Eugene, OR 97440

Tel/TTY: (541) 343-1284

Fax: (541) 343-6812

E-mail: clearinghouse@miusa.orgWeb: www.miusa.org

The National Clearinghouse on Disability and Exchange, managed by Mobility International USA and sponsored by the Bureau of Educational and Cultural Affairs of the United States Department of State, provides information and referrals about the range of international exchange opportunities available to people with disabilities and works to provide international exchange organizations with the information and guidance needed to assist their staffs in including people with disabilities in their programs. The NCDE also maintains a searchable online database of exchange organizations, which includes information regarding each program's experience including participants with disabilities as well as disability-related organizations searchable by country, region or disability type.

Office of Disability Employment Policy

U.S. Department of Labor

Frances Perkins Building

200 Constitution Avenue NW

Washington, DC 20210

Tel: (202) 693-7880 or (866) 487-2365

Fax: (202) 693-7888

TTY: (202) 693-7881 or (877) 889-5627

Web: www.dol.gov/odep/

The Office of Disability Employment Policy (ODEP) formerly the President's Committee on Employment of People with Disabilities focuses on both the supply and demand side of the labor market related to employment of people with disabilities. The ODEP provides a number of programs and technical assistance services and operates the Job Accommodation Network, which provides advice for accommodating disabled employees.

Project Action

700 13th Street NW, Suite 200

Washington, DC 20005

Tel: (202) 347-3066

Fax: (202) 737-7914

TTY: (202) 347-7385

E-mail: project_action@opa.easter-seals.org

Web: www.projectaction.org

Project Action works to make transportation accessible to people with disabilities and assists transportation operators to implement transportation provisions of the ADA.

Thompson Publishing Group

1725 K Street NW, Suite 700

Washington, DC 20006

Tel: (813) 282-8807 or (800) 964-5815

Fax: (800) 999-5661

E-mail: service@thompson.com

Web: www.thompson.com

Thompson Publishing Group publishes the *ADA Compliance Guide, Section 504 Compliance Handbook* and *the Workplace Accommodations Under the ADA*.

U.S. Department of Justice

950 Pennsylvania Avenue NW

Civil Rights Division

Disability Rights Section – NYAV

Washington, DC 20530

Tel: (202) 514-0301

Fax: (202) 307-1198

ADA Hotline: (800) 514-0301 or (800) 514-0383 (TTY)

Web: www.ada.gov

U.S. Department of Justice enforces the ADA on a federal level. The Department of Justice also provides general information and technical assistance, produces a number of ADA-related publications.

U.S. Department of Transportation

Federal Transit Administration

400 7th Street SW

Washington, DC 20590

Web: www.fta.dot.gov

ADA Documents and General Questions

Tel: (202) 366-1656 or (202) 366-4567 (TTY)

ADA Legal Questions

Tel: (202) 366-1936 or (202) 366-0748 (TTY)

Complaints and Enforcement

Tel: (202) 366-2285 or (202) 366-0153 (TTY)

U.S. Department of Transportation Federal Transit Administration can answer ADA questions related to transportation through the contacts listed above.

U.S. Equal Employment Opportunity Commission provides information on the ADA as it relates to the employment of people with disabilities.

Questions

Tel: (800) 669-4000 or (800) 669-6820 (TTY)

Fax: (513) 489-8692

Web: www.eeoc.gov

Documents

Tel: (800) 669-3362 or (800) 800-3302 (TTY)

OTHER LAWS RELATED TO DISABILITY: WHERE TO FIND ADDITIONAL INFORMATION ABOUT THEM

Fair Housing Act

U.S. Department of Housing and Urban Development

451 7th Street SW

Washington, DC 20410

Tel: (202) 708-1112

TTY: (202) 708-1455

Web: www.hud.gov

The U.S. Department of Housing and Urban Development (HUD) provides a number of resources and information for people with disabilities as it relates to the law and other housing issues.

Air Carrier Access Act**Office of Aviation Enforcement and Proceedings**

400 Seventh St. SW, Room 4107

Washington, DC 20590

Tel: (202) 366-5957

TTY: (202) 755-7687

Travelers with Disabilities Hotline:

(800) 778-4838 or (800) 455-9880 (TTY)

E-mail: airconsumer@ost.dot.gov

Web: <http://airconsumer.ost.dot.gov>

For more information about the Air Carrier Access Act, contact the Department of Transportation Aviation Consumer Protection Division.

Architectural Barriers Act

For information on accessibility in federal facilities and post offices, contact the Access Board listed under the organizations above.

Title IV, Civil Rights Act of 1964

For information about this Act, contact the U.S. Department of Justice listed under the organizations above.

OTHER RESOURCES FOR EXCHANGE ORGANIZATIONS**Disabled Students Services Offices**

College and university disabled students services offices serve as resources for information and consultation on adaptive technology and accessibility issues. These offices can provide support services for disabled foreign students and overseas exchange participants. See the Organization listing above for *AHEAD*, the professional association of disabled student liaisons.

Independent Living Centers

Independent living centers are a great resource for information on accommodating people with disabilities. Contact Independent Living Research Utilization (see under the organizations listed above) for independent living centers in your area.

Local and State Disability Rights and Advocacy Organizations

Local and state disability rights and advocacy organizations can also be of assistance. Check a local telephone book or a state department listing for more information.

Mobility International USA Publications

The following resources are published by Mobility International USA/ National Clearinghouse on Disability and Exchange, listed above under organizations.

A World Awaits You (AWAY) is a journal of success in international exchange for people with disabilities. It includes personal experience stories, accommodation information and opportunities for people with disabilities. Free!

Building Bridges: A Manual on Including People with Disabilities in International Exchange Programs features more than 200 pages of suggestions and creative ideas for including, recruiting and accommodating people with disabilities in international programs. This edition contains essential information, as well as chapters on cross-cultural issues on disability, community service programs, recruiting and legal issues for international exchange advisors.

Survival Strategies for Going Abroad: A Guide for People with Disabilities is an easy-to-use guide that addresses the disability-related aspects of going on an international exchange, including choosing a program, applying, preparing to travel, adjusting to life in a new country and returning home.

OTHER RESOURCES ON DISABILITY AND EXCHANGE

Access Abroad

Learning Abroad Center
University of Minnesota
230 Heller Hall
271 19th Avenue South
Minneapolis, MN 55455

Tel: (612) 625-2571

Fax: (612) 626-8009

Web: www.umabroad.umn.edu/access/contact.htm

Access Abroad was a federally-funded project (1997-2000) to enhance education abroad opportunities for students with disabilities. The University of Minnesota, Institute for the International Education of Students (IES), and Pennsylvania State University were partners in this 3-year FIPSE project. The project ended in 2000, but the website can still be accessed. It includes a wealth of information for advisors to replicate at their own institutions from checklists to template letters to outlined processes on their roles and responsibilities.

No Barriers to Study

Lock Haven University

Robinson Hall 205

Lockhaven, PA 17745

Tel: (570) 893-2926 or (800) 233-8978 Fax: (570) 893-2517

Web: www.lhup.edu/international/no_barriers.html

No Barriers to Study (NBTS) is a consortium of private and public universities in central Pennsylvania. Representatives from Bucknell University, Lock Haven University, Pennsylvania State University and other higher education institutions meet regularly to share information about ways to increase participation in study abroad by students with disabilities at their campuses. They are interested in students with disabilities studying abroad as well as international students coming to the United States. Formally founded in 1988, the focus of NBTS is on including college students with disabilities into existing study abroad programs. International education staff, disability service providers, and other faculty and staff collaborate and share ideas, resources, and enthusiasm. Research they conducted can be found at www.frontiersjournal.com/back/five/groff.htm.



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