

TOPIC:

FEDERAL DISABILITY LAWS: DO THEY TRANSLATE TO STUDY ABROAD PROGRAMS?

INTRODUCTION:

Study abroad programs [\[1\]](#) for college and university students have exploded in popularity in the past decade, [\[2\]](#) and the number of students with physical and mental disabilities has likewise steadily increased in recent years. [\[3\]](#) Given the convergence of these two factors and also the 2008 amendments to the Americans with Disabilities Act, which significantly broadened the scope of students protected by federal disability discrimination laws, the number of students with disabilities participating in study abroad programs is likely only to increase in the coming years. [\[4\]](#) Additionally, it is likely that each successive generation of students and their parents will place greater demands on colleges and universities to provide equal opportunities to study abroad and to provide disability accommodations in connection with such opportunities. [\[5\]](#)

Accordingly, it is important that higher education administrators and legal counsel carefully consider how to address student disability issues in the context of study abroad programs. Yet there remains plenty of confusion regarding how federal disability discrimination laws impact those programs. Do such laws apply to programs that take place outside of the United States? What type of disability-related inquiries may study abroad program administrators make and when may they make them? How does the concept of “reasonable accommodation” apply in the study abroad context? These are just some of the questions that study abroad program administrators and their higher education colleagues face.

This NACUANOTE will address the current state of federal disability discrimination law with respect to college and university study abroad programs for students, [\[6\]](#) suggest best practices, and provide additional resources for college and university counsel and administrators.

DISCUSSION:

I. Federal Disability Discrimination Laws

Section 504 of the Rehabilitation Act (“Section 504”) and Titles II and III of the Americans with Disabilities Act (“ADA”) and their implementing regulations all apply in the higher education context and prohibit discrimination on the basis of disability against otherwise qualified individuals with disabilities.

Section 504 prohibits discrimination against individuals with disabilities in connection with programs

and activities that receive federal financial assistance (and thus applies to almost all colleges and universities); Title II of the ADA applies to state and local government-operated higher education institutions; and Title III applies to various categories of private providers of public accommodations – including, specifically, private colleges and universities. [7]

Section 504 and the ADA protect only individuals who (1) qualify as an individual with a disability under the applicable statutory definitions *and* (2) are “otherwise qualified” for the programs in question. [8] With regard to the first requirement, the ADA defines an individual with a disability as one who has “a physical or mental impairment that substantially limits one or more major life activities; . . . a record of such an impairment; . . . or [is] regarded as having such an impairment.” [9] Section 504 uses the same definition. [10] Higher education institutions must also consider whether the individual is otherwise qualified, *i.e.* “able to carry out the essential requirements of the program with or without reasonable accommodation.” [11] Recent amendments to these laws and their implementing regulations clarified and greatly expanded the scope of their coverage. [12]

II. Extraterritorial Application of the ADA and Section 504 – An Unsettled Issue

Unfortunately, the recent ADA Amendments offered no clarification with respect to whether the ADA and Section 504 apply to programs taking place outside of the United States. There is at least a colorable argument that they do not apply abroad, but for the reasons discussed below, institutions should strongly consider designing and administering study abroad programs with the presumption that those laws *do* apply.

A. Extraterritorial Application Generally

Historically, there has been a presumption against extraterritoriality in determining the reach of federal legislation. [13] In 1991, the Supreme Court affirmed this presumption in *EEOC v. Arabian American Oil Co. (“Aramco”)*, holding that Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination, did not apply extraterritorially. [14] In response, Congress swiftly enacted the 1991 Civil Rights Amendments, [15] effectively overturning the *Aramco* decision and extending Title VII of the Civil Rights Act and Title I of the ADA to overseas conduct. With respect to disability discrimination, Congress extended the reach of only Title I of the ADA, which concerns employment discrimination, but not Section 504 or Titles II or III of the ADA.

While Congress’s failure to extend the reach of Section 504 and Titles II and III of the ADA in connection with the 1991 amendments may have created or reinforced a presumption against the extraterritorial application of those laws, as more fully discussed below, it is quite possible that courts and administrative agencies will choose not to recognize or enforce such a presumption. Additionally, there are a number of practical factors that may weigh in favor of colleges and universities operating under the assumption that Section 504 and the ADA apply to their study abroad programs.

B. Court and Agency Decisions on the Application of Federal Disability Discrimination Law in the Study Abroad Context

Very few federal courts have examined the applicability of federal disability discrimination laws to study abroad programs, but at least two opinions signal that courts may find extraterritorial application. The Department of Education’s Office for Civil Rights (“OCR”), which enforces Section 504 and the ADA as they relate to disability accommodations for college and university students, has issued various opinion letters involving disability discrimination in study abroad programs. Three of those opinion letters declined to address the extraterritoriality question directly but seemed to employ an analysis that assumed extraterritorial application, and one of the opinion letters concluded

that federal disability discrimination laws do not have extraterritorial application.

While these cases and opinion letters do not provide a clear answer regarding extraterritorial application, they can be instructive as institutions determine how to administer their study abroad programs.

1. Court Decisions

In *Bird v. Lewis & Clark College*, a federal district court in Oregon held that Section 504 and the ADA did apply to a study abroad program. [16] The plaintiff was an undergraduate student who used a wheelchair to participate in the college's study abroad program in Australia. The college accommodated her disability in many, but not all, activities, and at times she had to be carried. The student sued the college in federal court on a number of theories, including Section 504 and ADA claims and breach of contract and breach of fiduciary duty claims.

In ruling on the extraterritoriality issue, the district court emphasized that the plaintiff was an American student participating in an American university's overseas program, taught by American faculty. [17] Based on these facts, the court found that the presumption against extraterritoriality should not apply and cautioned that if Section 504 and the ADA did not apply to study abroad programs, "students in overseas programs would become the proverbial 'floating sanctuaries from authority' not unlike stateless vessels on the high seas." [18]

On appeal, the Ninth Circuit declined to address the district court's ruling on extraterritoriality but nonetheless denied the plaintiff's Section 504 and ADA claims, finding that Lewis & Clark's program, "when viewed in its entirety, [was] readily accessible to and usable by individuals with disabilities." [19]

Importantly, while the court denied the student's federal discrimination claims, the court did conclude that the college had a fiduciary relationship with the student under state law because the college assured the student that it would accommodate her disability, assured the student's parents that they commonly assisted students who were more physically challenged than the student, and indicated that adequate facilities would be available for most of the outdoor trips. [20] The court further found that the student had reason to trust the college's assurances because the college had accommodated the student on the home campus. [21]

In *Tecza v. University of San Francisco*, [22] a law student with attention deficit hyperactivity disorder alleged that the University of San Francisco did not accommodate his disability during his participation in its study abroad programs in Dublin and Prague. Specifically, the plaintiff claimed that professors made it known to other students that the plaintiff was receiving special testing accommodations and that a maintenance person disrupted the plaintiff during a testing session. Citing *Bird v. Lewis & Clark*, the Federal District Court for the Northern District of California rejected the student's claims because the program, when viewed in its entirety, was readily accessible to the student, and the disruptions to his accommodations were limited exceptions to the rule. [23] The court did not address the extraterritorial application of Section 504 and the ADA, but by citing *Bird*, it seems the court at least tacitly agreed that the ADA and Section 504 may, at least in some circumstances, apply to study abroad programs.

2. OCR Decisions

OCR decisions provide some additional, albeit inconclusive, guidance.

At least one OCR regional office has clearly stated its position that the ADA and Section 504 *do not* apply to study abroad programs. In *Arizona State University* (OCR Region VIII, November 29, 2001), [24] a deaf student requested that ASU provide a sign language interpreter for him while he studied

abroad at an Irish university. ASU denied the request, and the student filed a complaint with OCR. OCR concluded that “Section 504 and Title II protections do not extend extraterritorially . . . [n]or does either statute otherwise prohibit discrimination on the basis of disability in overseas programs.” [25] Some commentators have noted that – unlike in the *Bird v. Lewis & Clark College* case discussed above – the ASU student sought to attend a program run not by a U.S. institution but by a foreign university. [26] However, OCR neither raised this distinction in its letter nor indicated that the outcome would have been different had ASU handled the day-to-day administration of the program in Ireland.

In three other matters, OCR regional offices seemingly concluded – without explicitly discussing extraterritoriality – that under certain factual scenarios, Section 504 and the ADA *do* apply to study abroad programs.

In *Husson College* (OCR, Eastern Division, January 5, 2005), [27] a student applied for a nursing program class offered in Honduras but claimed that she had disabilities that caused “constant headaches” and periods where she was unable to function mentally or physically. The College discussed with the student the medical safety issues that could arise if she participated in the class, and subsequently the student withdrew her request to participate. She then filed a complaint with OCR alleging that the college denied her the opportunity to participate in the Honduras program. OCR may have been able to dismiss the complaint based on a lack of extraterritorial application, but it did not. It simply found that the college never denied the student participation and that it was reasonable for the college to engage in discussions with her about potential safety issues.

In *College of St. Scholastica* (OCR Region V, September 15, 1992), [28] a deaf student alleged that St. Scholastica discriminated against her by denying her request for sign language interpreter services during a study abroad program in Ireland. OCR found that the college did not properly address the student’s accommodation concerns, did not examine the cost of interpreter services, and had no formal disability-related grievance procedures. Thus, OCR determined that the college had violated Section 504 by refusing to provide interpreter services. While it appears that neither St. Scholastica nor OCR explicitly addressed the potential presumption against extraterritorial application of Section 504, OCR’s decision makes clear that, at least in the opinion of that regional office and under the factual scenario presented, Section 504 indeed did apply abroad. [29]

Additionally, in *St. Louis University* (OCR Region VII, December 12, 1990), [30] a student with a learning disability alleged that St. Louis University violated Section 504 by providing him with an IBM instead of a Macintosh computer on its study abroad program in Spain. OCR concluded that there was no evidence that the student should have been provided with a Macintosh over any other computer and that the university had not violated Section 504. Again, while this decision did not explicitly address the extraterritoriality question, OCR’s analysis of Section 504 suggests a belief that it applies abroad.

3. Additional Considerations

Case law and OCR decisions do not provide absolute clarity as to whether Section 504 and the ADA apply to study abroad programs. Yet a number of factors suggest that colleges and universities should assume they do apply; structure study abroad programs to promote compliance; and then rely, where necessary, on the protections these laws provide to institutions – for instance, the principle that institutions are only required to offer reasonable accommodations that do not fundamentally alter the nature of a given program. Specifically, there are significant mission-related, image-related, and practical considerations that favor proceeding as if disability discrimination laws apply to study abroad programs.

Study abroad programs have become an integral part of the mission, curriculum, and student experience at many colleges and universities. [31] To effectively deny students with disabilities

access to such programs, based simply on the belief (or hope, as the case may be) that the protections afforded by the ADA and Section 504 lack extraterritorial application may be inconsistent with an institution's broader goals and purposes. Additionally, it may run afoul of the ADA's stated goal of "end[ing] discrimination against individuals with disabilities and bring[ing] those individuals into the mainstream of American life." [32]

Moreover, denying accommodations based solely on a presumed lack of extraterritorial application could lead to serious public relations problems and costly litigation. And, given the inconclusive state of the law, it is quite possible that in addition to incurring the costs of such litigation, institutions could ultimately lose on a "no extraterritorial application" defense. It is not difficult to imagine a federal court, which is not bound by OCR's opinion on the matter, holding that Section 504 and the ADA apply to study abroad programs, which are commonly planned, developed, and administered (at least partially) in the United States. [33] Furthermore, even if a school escapes liability under federal disability discrimination laws, it may be subject to liability under some other theory, as was the case in *Bird v. Lewis & Clark College*.

Also, by way of analogy, the regulations and OCR opinions applicable to domestic off-campus externship programs and trips may arguably extend to study abroad programs and thus weigh in favor of applying disability laws to study abroad programs.

Section 504's implementing regulations read in part:

A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons. [34]

Indeed, OCR has found discrimination by schools in the context of students participating in domestic off-campus programs. For example, in *San Jose State University* (OCR Region IX, July 30, 1993), [35] OCR found discrimination where a student with dyslexia, attention deficit disorder, and other processing deficits enrolled in a social work course that was a field assignment and was denied services and adjustments to participate effectively in the fieldwork. Also, in *San Francisco State University* (OCR Region IX, May 28, 1997), [36] OCR found discrimination where a student who used a wheelchair claimed that transportation to a university geology field trip was inaccessible.

Thus, for the numerous reasons listed above, colleges and universities should strongly consider proceeding as if federal disability discrimination laws apply to study abroad programs.

That does not mean, of course, that colleges and universities must provide any and all accommodations requested in connection with study abroad programs. For example, as discussed more fully below, Section 504 and the ADA only require that schools provide "reasonable" accommodations, and requests that are reasonable in the domestic context may not fall into that category in the international context.

It does mean, however, that institutions will be faced with additional questions such as, "At what point can we inquire about a student's disabilities in order to arrange for accommodations?" And, "To what lengths must we go to accommodate a student with a disability who is studying abroad?" Those issues are discussed more fully below.

III. Disability-Related Inquiries: When and What to Ask During the Study Abroad Admission Process

While the law is clear that a student must disclose his or her disability in order to receive reasonable

accommodations, it is not clear as to whether, during the study abroad program application process, administrators may require disclosure of disabilities. The law with regard to disclosure before and after admission to a college or university, however, provides useful guidance. It prohibits postsecondary institutions from making pre-admission inquiries of students with disabilities, but it allows for such inquiries post-admission:

In administering its admission policies, a recipient to which this subpart applies . . . may *not* make preadmission inquir[ies] as to whether an applicant for admission is a handicapped person but, *after* admission, may make inquiries on a *confidential* basis as to handicaps that may require accommodation. [37]

Thus, to avoid any implication of discrimination or “screening out” in study abroad program admission, it is strongly recommended that, before a student is admitted to a study abroad program, a school not ask whether the student has a disability or otherwise require disclosure of disabilities.

It is, however, a good practice to *encourage* (rather than require) students applying to study abroad programs make disability accommodation requests to the office of disability services as early as possible, because many accommodations or auxiliary aids must be arranged for or procured in advance. It is also a best practice to provide students with several reminders of the importance of timely requests for accommodation. [38]

Additionally, it is important to note that Section 504 and the ADA do not appear to prohibit study abroad programs from clearly stating essential program requirements in their informational materials or from making narrowly-tailored and disability-neutral inquiries aimed at determining whether students are “otherwise qualified” for a program (i.e., able to meet program requirements like GPA or language proficiency requirements with or without accommodations). Moreover, even in the pre-admission phase, disability laws do not appear to prohibit institutions from requiring that a physician certify a student’s ability to safely and fully participate in the program. Such forms, however, should be carefully drafted so as not to directly inquire regarding disabilities, but rather to focus on the essential program requirements. Additionally, such forms, if used, should be required of *all* program applicants.

Furthermore, once students have been admitted to a study abroad program, administrators may make *confidential* inquiries of the admitted students to determine whether they may need accommodations during the program. These confidential inquiries may be related to both mental and physical disabilities. In making such disability-related inquiries, the study abroad office should work closely with the institution’s disability services offices. In fact, due to the strict limitations Section 504, the ADA, and their implementing regulations place on disability-related inquiries, some institutions may prefer to have the disability services office handle all disability-related inquiries on behalf of the study abroad office.

IV. Accommodating Students with Disabilities in Study Abroad Programs

As mentioned above, administering study abroad programs with a presumption that Section 504 and the ADA apply does not mean that postsecondary institutions must grant all accommodation requests made in connection with those programs. When applied within the United States, both Section 504 and the ADA require higher education institutions to provide reasonable accommodations to students with disabilities; however, they do not require colleges and universities to fundamentally alter the nature of the programs or activities in question or take on an undue financial or administrative burden. [39] Assuming Section 504 and the ADA apply to a particular study abroad program, these same standards and limitations should apply in assessing the reasonableness of a particular accommodation request.

It is important to note, however, that specific factors may exist in the international context that do not

exist (or do not exist to the same degree) in the domestic context. For example, institutions have varying levels of control over different study abroad programs. The case law and OCR opinions suggest that, the more control an institution has over a study abroad program, the greater the institution's responsibility will be to ensure reasonable accommodations for otherwise qualified students with disabilities participating in that program who have requested such accommodations. Accordingly, on a faculty-led program, where the university would have "complete" control, the university may reasonably be able to provide wheelchair accessible transportation and classrooms. On the other hand, if the student chooses an exchange program in which the U.S. university has little or no control, the university may not reasonably be able to provide or ensure the same accommodations. Additionally, a given country may have laws, customs, lack of resources, or other challenges that make the provision of a particular accommodation unreasonable or inappropriate. In short, factors such as these may impact the analysis of what constitutes an accommodation a school can reasonably provide and ensure. And, as mentioned above, some requests that are reasonable and appropriate in the domestic context may not be reasonable or appropriate in a particular international context.

Courts will generally defer to an institution's diligent assessment of the reasonableness and appropriateness of requested accommodations. Determining what is a reasonable accommodation is a fact-intensive, case-by-case process. In *Wynne v. Tufts University*, the First Circuit established the widely-accepted and frequently-cited standard for deference to institutions on the issue of reasonable accommodations in academic programs. [40] Specifically, the Court concluded that if the school reaches "a rationally justifiable conclusion that the available alternatives would result in either lowering academic standards or requiring substantial program alteration," an accommodation would be deemed unreasonable. [41] *Wynne* and subsequent court decisions require that an institution demonstrate that the proper officials undertook an individualized review of the circumstances and considered alternative means of accommodation, including their feasibility, cost, and effect on the academic program. [42]

Just like in the domestic context, the analysis of accommodation requests is extremely fact-intensive and varies on a case-by-case basis. Thus, once a student makes his or her accommodation request to the office of disability services, *that office*, with input from appropriate faculty or administrators, should evaluate the request, review the medical documentation, and grant those accommodations that are reasonable. In other words, because the office of disability services is in the best position to handle student disability accommodation requests in compliance with applicable laws, the reasonable accommodation dialogue should likely happen there, rather than in the study abroad office. But the disability services office should solicit input from the study abroad office to determine the essential requirements of the program. By engaging the disability services office, study abroad program administrators can ensure that reasonable accommodations are being made without fundamentally altering their programs and also that the institution is dealing with similar such requests on a consistent basis.

Finally, while students seeking accommodations at postsecondary institutions are required to disclose their disabilities, some may wait to make such a disclosure until they are already abroad, and institutions should be prepared to address those cases. Should the college or university officials send the student home? Try to make accommodations while the student is abroad? This becomes increasingly difficult in situations involving mental health issues. While this NACUANOTE cannot address all potential risks or recommended courses of action, it is clear that a study abroad office might face some exposure if it were to remove the student immediately without exploring alternative accommodations. Keep in mind, however, that if a student becomes a direct threat to others on the program, prompt removal should be considered reasonable.

V. Best Practices

Because of the unsettled state of the law, and for other practical, image- and mission-related

reasons, institutions should strongly consider designing and administering study abroad programs as if the ADA and Section 504 apply to them. The following are suggestions for administrators and legal counsel to consider:

- Include comprehensive information for students with disabilities in your materials and on your study abroad website. Clearly describe the process students should follow to request reasonable accommodations abroad and strongly encourage students who plan to seek accommodations to contact the disability services office as early as possible in the process. This will show students you are open to accommodating their needs and will enable you to start as early as possible to help them find the most appropriate programs and accommodations.
- Do not make any direct pre-admission inquiries regarding whether students have disabilities (including mental health disabilities), but do clearly inform students of essential program requirements and make narrowly tailored and disability-neutral inquiries aimed at determining whether students are “otherwise qualified” for a specific program. Indicate that all program participants must meet the essential program requirements (such as, for example, GPA, letters of recommendation, and language fluency requirements), with or without reasonable accommodations.
- If, in the pre-admission context, you choose to require students to submit forms from physicians certifying that the students are able to fully and safely participate in a particular study abroad program, ensure that such forms do not ask about disabilities, but rather focus on the essential program requirements. Also, ensure that such forms are required of *all* program applicants.
- Consider making *confidential* disability-related inquiries (perhaps as part of a mandatory health disclosure form) after students have been admitted to a given program, and consider having the disability services office handle all such inquiries.
- Critical points: All determinations as to whether a student meets the definition of a student “with a disability” must be made by the disability services office in accordance with its typical protocol for such determinations. Also, while the study abroad office and others can certainly be part of discussions regarding whether a student is “otherwise qualified” for a program and regarding the reasonableness of requested accommodations, the ultimate determinations must be made by the disability services office in accordance with its typical protocol for such determinations.
- Make sure your study abroad office, disability services office, and relevant individuals in other countries, such as employees and program administrators, have open lines of communication and work collaboratively. For example, many schools have the study abroad office or the disability services office serve as a liaison between the overseas program staff and the disability service provider to ensure that information is communicated clearly and effectively. Include the student in all “what if” discussions and accessibility planning.
- Use technology to your advantage. For example, some programs accommodate students with disclosed mental health disabilities by having them Skype once a week with school counselors. Another common practice is to use remote captioning to accommodate a student with a hearing loss in an overseas class.
- Make sure the faculty and administrators leading trips or study abroad programs are fully equipped and trained to handle a student’s disability-related accommodation needs. Provide training to overseas staff on disability issues, access, and the confidential nature of disability-related information. Intense pre-departure training must be taken seriously.
- After putting in place an accommodation plan, inform the departing student of overseas program contacts for disability-related accommodation needs or for addressing additional, unexpected access barriers.

CONCLUSION:

While the extraterritorial application of Titles II and III of the ADA and Section 504 of the Rehabilitation Act has not been conclusively established, for the variety of reasons discussed in this NACUANOTE, institutions should strongly consider proceeding on the assumption that they do apply to study abroad programs and conforming their practices accordingly. This policy will both mitigate potential legal risks and also result in greater access to study abroad programs for students with both mental and physical disabilities. Institutions should note that the administration of such a policy requires close coordination with the disability services office, recognition of the unique challenges students with disabilities may encounter in a particular study abroad program, early identification of needed accommodations, careful exploration of the reasonableness of providing the requested accommodations overseas, detailed planning for the provision of granted accommodations, and appropriate training of all relevant employees.

FOOTNOTES:

FN1. Through their use of the term “study abroad programs,” the authors do not intend to limit the scope of this NACUANOTE to programs that are tied to a specific course or that allow students to earn academic credit. They intend for this NACUANOTE to apply to all college and university programs in connection with which students travel outside the United States.

FN2. INST. INT’L EDUC., OPENDOORS 2010 FAST FACTS (2010).

FN3. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-33, HIGHER EDUCATION AND DISABILITY: EDUCATION NEEDS A COORDINATED APPROACH TO IMPROVE ITS ASSISTANCE TO SCHOOLS IN SUPPORTING STUDENTS (2009) (“Students with disabilities represented nearly 11 percent of all postsecondary students in 2008, according to a federal survey. Moreover, this population appears to have grown, based on selected federal and state data.”).

FN4. ADA Amendments Act of 2008, Pub. L. No. 110-325 (stating, “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act” and expanding the definition and representative list of the “major life activities” for which a substantial limitation caused by physical or mental impairments may rise to the level of a “disability.”).

FN5. Laura Rothstein, *Millennials and Disability Law: Revisiting Southeastern Community College v. Davis*, 34 J.C. & U.L. 169, 171–172 (2007).

FN6. This NACUANOTE does not attempt to cover issues related to college and university employees (including student employees) who travel abroad. While some of the principles discussed herein may apply to that context, it likely involves different and/or additional considerations arising out of the employment relationship and the laws and regulations that govern that relationship.

FN7. Section 504 provides, in pertinent part, “No otherwise qualified individual with a disability in the United States . . . shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. 794(a).

Title II provides, in pertinent part, “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or

activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. 12132.

Similarly, Title III states, “No individual shall be discriminated against on the basis of disability in 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.” 42 U.S.C. 12182(a).

FN8. See *id.*

FN9. 42 U.S.C. 12102(1).

FN10. 34 C.F.R. 104.3(j).

FN11. Rothstein, *supra* note 4, at 176; see *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041, 1051 (9th Cir. 1999) (concluding that a university was correct in its determination that a student was not otherwise qualified to complete the medical school's requirements).

FN12. See, e.g., ADA Amendments Act of 2008, Pub. L. No. 110-325.

FN13. See, e.g., 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 (2003).

FN14. 499 U.S. 244, 248 (1991).

FN15. Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 2, 29, 42 U.S.C.).

FN16. 104 F. Supp. 2d 1271 (D. Or. 2000).

FN17. See 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 (2003) at 307 (citing District Court’s Order on Extraterritoriality (D. Or. Oct. 13, 1999)).

FN18. *Id.*

FN19. *Bird v. Lewis & Clark College*, 303 F.3d 1015, 1021 (9th Cir. 2002), cert denied, 538 U.S. 923 (2003).

FN20. *Id.*

FN21. *Id.*

FN22. 2010 WL 1838778 (N.D. Cal. May 3, 2010).

FN23. *Id.* at *4.

FN24. [22 NDLR \(LRP\) 239](#).

FN25. Letter to Dr. Lattie Coor, President, Ariz. State Univ., from L. Thomas Close, Office for Civil Rights, U.S. Department of Education, Region VIII, (Nov. 29, 2001).

FN26. See 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 (2003) (at 158).

FN27. [31 NDLR 180](#).

FN28. [3 NDLR \(LRP\) 196](#).

FN29. OCR did not address the extraterritorial application of the ADA in this particular opinion letter.

FN30. [1 NDLR \(LRP\) 259](#).

FN31. See 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 (2003) at 311.

FN32. *Id.*, citing 42 U.S.C. §§ 12101 – 12213.

FN33. By way of comparison, a federal district court in Michigan determined that, despite statutory language (like Section 504's) indicating that Title IX applied "in the United States," Title IX's prohibition on discrimination was meant to apply to all educational programs, including study abroad programs. See 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 (2003) at 312-313 (discussing *King v. Board of Control of Eastern Michigan Univ.*, 221 F.Supp. 2d 783 (E.D. Mich. 2002)).

FN34. 34 C.F.R. Part 104.43(b).

FN35. [4 NDLR \(LRP\) 358](#).

FN36. [11 NDLR \(LRP\) 122](#).

FN37. 34 C.F.R. 104.42(b)(4) (emphasis added).

FN38. Some study abroad programs require students seeking accommodations to make their request by some specified date--for example 60 days before departure. While this may be a reasonable requirement, it may be difficult to enforce. For example, if a student seeks accommodations 55 days before departure, OCR and/or the courts may not be sympathetic to an outright denial based on this technicality. Accordingly, any identification in program materials of a specific timeline for accommodation requests should be more in the nature of a strong encouragement than an inflexible deadline and should be described as such. Institutions should not hesitate, however, to emphasize to students that it takes more time to make accommodation determinations and arrangements in connection with study abroad programs and that if students make accommodation requests later than the suggested time, it may be more difficult (or even impossible) for programs to make the necessary arrangements.

FN39. See ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3353 (2008); Laura Rothstein, *Disability Law Issues for High Risk Students: Addressing Violence and Disruption*, 35 J.C. & U.L. 691, 700 (2009).

FN40. *Wynne v. Tufts University School of Medicine*, 976 F.2d 791 (1992) (internal citations omitted).

FN41. *Wynne v. Tufts University School of Medicine*, 932 F.2d 19, 26 (1991).

FN42. See, e.g., Hattie Kaufman, [Access to Institutions of Higher Education for Students with](#)

[Disabilities](#), NACUA Publication Series (2005).

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RESOURCES:

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- [NACUA ADA Facilities Access Resource Page](#)
- [University of Minnesota's Access Abroad Resource](#)
- [NAFSA "Best Practices in Addressing Mental Health Issues Affecting Education Abroad Participants"](#) (Requires Purchase)

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