

# Study Abroad Accommodations Under the Law

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## Road Map

- Statutes
- Case Law
- Regulatory Law
- Policy Considerations
- Practical Application



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## Section 504 and the ADA

“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.”



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## Section 504 and the ADA

“a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, *unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.*”



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## Section 504 and the ADA

Protects 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.

## Extraterritoriality

- Text silent
- Presumption against
- EEOC v. Aramco (Title VII)
- Expansion of Title I (employment)
  - Presumption against?

## Bird v. Lewis & Clark College

- Federal District (Oregon)
- Held 504/ADA applied to study abroad because
  - the plaintiff was an American student participating in an American university's overseas program, taught by American faculty; and
  - 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."



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## Bird v. Lewis & Clark College

- Ninth Circuit did not address extraterritoriality question
- Concluded that the College had violated its own assurances to student
  - Aspects of program inaccessible to student in wheelchair
  - Student's experience was fundamentally different from peers



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## Tecza v. University of San Francisco

- Federal District Court (California)
- Did not rule of extraterritoriality, but cited *Bird*
- Held that student's experience substantially complied with ADA
  - Privacy violations and disruptions were minor
  - Study abroad accommodations must be viewed in totality of program



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## Arizona State University (OCR Region VIII, November 29, 2001)

- Deaf student requested sign language interpreter from ASU while participating in exchange program with Irish university
- “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.”



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## Husson College (OCR, Eastern Division, January 5, 2005)

- Nursing student with chronic headaches was counseled by College regarding the difficulties she would experience during program in Honduras
  - Student withdrew from program
- OCR found that student was not denied participation and that College acted reasonably in counseling student about issues she would face during program



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## College of St. Scholastica (OCR Region V, September 15, 1992)

- Deaf student alleged that College discriminated against her by denying request for sign language interpreter during study abroad program in Ireland
- OCR determined that College had violated student's rights because it did not fully evaluate feasibility of providing interpreter and did not have effective grievance procedure



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## St. Louis University (OCR Region VII, December 12, 1990)

- Student with learning disability alleged that University violated his rights by providing him with an IBM, rather than a Macintosh, during study abroad program in Spain
- OCR demined that there was insufficient evidence that Macintosh was a required accommodation



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## Your Policy Says Something Like

- “The [University] is committed to providing equal educational opportunity and equal access to services, programs, and activities for persons with disabilities. . . . The *university’s programs and activities will be accessible to all individuals.*”
- “Student Access Services (SAS) provides disability related education, services, and resources to the [University] Community. SAS ensures equal access to education for all [University] students, regardless of disability, in compliance with federal law and in keeping with [University’s] long-standing *commitment to equality and access in its programs and services.*”



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## A Good Policy Statement to Consider

“Students in need of disability-related accommodations who are considering global opportunities at [University] are strongly encouraged to contact the [Disability Service Office] before choosing a site. An Accessibility Specialist is able discuss accessibility and accommodations at locations of interest.”



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## Practice Pointers

- Partner with your disability services office early and often
- Provide clear information about where and how to seek information about study abroad accommodations
- If a program has physical requirements, publish those in any promotional literature
- Ask about accommodation needs after program admission
  - This information should be collected by the office that usually processes disability accommodations



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## Practice Pointers

- In consultation with your disability services office, engage student in interactive process
  - Be honest about difficulties
  - Nothing wrong with counseling student toward programs where they are most likely to be successful
- Only deny access to program where:
  - Necessary accommodation would constitute a fundamental alteration of the program
  - Student's participation would constitute a direct threat to safety



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## Practice Pointers

- Train staff in your office to deal with issues
- Train trip leaders to handle accommodations before problems arise
  - Train trip leaders to spot problems and communicate with campus experts
  - Confidentiality should be maintained to the greatest extent possible
- Consider how technology can boost accommodations
- A word on animals



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## Lessons:

- Set clear expectations about trip requirements in promotional information
- Seek information about disabilities early (after admission).
- Work as a team and clearly explain why things are being done the way that they are.
- Have conversations with partners in advance and chose partners that are willing and able to work with us.
- Consider alternative options – we cannot always provide a perfect apples-to-apples experience. Effort, communication (and documentation) are key.
- Build the cost of providing accommodations into programs in advance



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## Questions and Discussion

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## Thank You

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