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2022

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### Recommended Citation

Fischer, Heidi (2022) "Education Abroad for Students with Disabilities: Legal Implications," *BYU Education & Law Journal*: Vol. 2022: Iss. 1, Article 2.

Available at: [https://scholarsarchive.byu.edu/byu\\_elj/vol2022/iss1/2](https://scholarsarchive.byu.edu/byu_elj/vol2022/iss1/2)

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## Education Abroad for Students with Disabilities: Legal Implications

Heidi Fischer

Prior to the COVID-19 pandemic, United States (U.S.) student participation in education abroad (EA) programs increased by more than thirty percent over a ten-year span.<sup>1</sup> During the 2018-19 academic year, more than 36,000 students studying abroad identified as students with disabilities (nearly ten percent).<sup>2</sup> The steady rise in U.S. student participation in EA programs in the past decade not only suggests renewed post-pandemic growth, but it also supports the idea that greater quantities of students with disabilities will study abroad during their postsecondary education than in previous years. With nearly one in five undergraduate students identifying as having a disability,<sup>3</sup> U.S. campus administrators must be equipped to work with students with disabilities who seek to participate in EA programs, particularly in the realm of reasonable accommodations and support services.

The number of students with disabilities studying abroad raises several questions. Do U.S. laws that protect students with disabilities, such as the Americans with Disabilities Act (ADA) of 1990<sup>4</sup> and the Vocational Rehabilitation Act of 1973<sup>5</sup>, offer them protections while participating in study abroad programs? To what extent do reasonable accommodation requirements normally applied in the classroom

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<sup>1</sup> INTS. FOR INT'L EDUC., *Open Doors Data*, <https://opendoorsdata.org/data/us-study-abroad/> (last visited Feb. 22, 2022) [hereinafter IIE].

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Education, *Fast Facts: Students with Disabilities*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=60> (last visited Oct. 14, 2019).

<sup>4</sup> Americans with Disabilities Act of 1990, Publ. L. No. 101-336, 104 Stat. 328.

<sup>5</sup> Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355.

setting apply to EA programs? Are EA administrators prepared to support these students throughout their international sojourns? These are questions which higher education legal counsel and administration must answer to support their students with disabilities abroad and to avoid violations of U.S. law.

This article reviews legislation applicable to U.S. students with disabilities who are enrolled at U.S. Higher Education Institutions (HEIs) and who may intend to study abroad on university-sponsored programs, such as short-term, faculty-led programs or programs held on U.S. campuses abroad. Specifically, the article discusses the 1973 Rehabilitation Act as well as the 1990 ADA and its 2008 amendment, as well as sample court cases and letters from the Department of Education's Office of Civil Rights (OCR) regarding institutions alleged of having failed to provide reasonable accommodation to their students. Finally, the article concludes with practical implications for EA administrators as they work with students with disabilities at their institutions.

## I. STUDENTS WITH DISABILITIES IN THE U.S. EDUCATION ABROAD CONTEXT

According to the Centers for Disease Control and Prevention,<sup>6</sup> “[a] disability is any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions).”<sup>7</sup> There are many different types of disabilities, such as those that impair a person’s vision, movement, learning, hearing, or mental health.<sup>8</sup> Of the students with disabilities who study abroad, approximately one third identify as having a learning disability.<sup>9</sup> For U.S.-sponsored EA programs, an essential consideration for students with disabilities during the program selection

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<sup>6</sup> *Disability and Health*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html> (last visited June 6, 2020).

<sup>7</sup> *Id.* para 1.

<sup>8</sup> *Id.*

<sup>9</sup> IIE, *supra* note 1.

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process is whether the institution is able and willing to provide accommodations and services related to learning disabilities.

Another third of EA participants with disabilities identify as having a mental health disability.<sup>10</sup> These impairments include mental illnesses such as major depression, schizophrenia, or anxiety disorders. These diseases can have a significant impact on a student's major life activities, such as concentrating, sleeping, personal hygiene, eating, or interacting socially with faculty or friends.<sup>11</sup>

Despite the protection of the Americans with Disabilities Act Amendment Act of 2008 (ADAAA),<sup>12</sup> students with mental disorders still face many challenges in pursuit of their higher education. Mental health disabilities are often exacerbated by participation in an EA program. Particularly, students who suffer from anxiety disorders may find the cultural differences, language barriers, and crowds of unknown people even more challenging than they do at home in their familiar surroundings. It has also been reported that students are often diagnosed with a mental illness for the first time during their program overseas.<sup>13</sup> Combined with the fact that English-speaking counselors or appropriate medications are not always available in every country, this poses a significant challenge for the student, lead faculty, and the EA administrators.

A third type of disability includes physical impairments, such as visual, physical, or hearing impairments. Of the students with disabilities studying abroad, approximately four percent identify as having a physical disability, meaning more than 1,000 U.S. students with physical disabilities studied abroad in the 2019-20 academic year.<sup>14</sup>

Often there are field-based activities included in EA programs. Particularly in short-term, faculty-led programs, students may be expected to do a lot of walking, hiking, climbing stairs, or perhaps even water-based activities. In European countries, students with mobility

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<sup>10</sup> *Id.*

<sup>11</sup> Sharlene A. Kihara & Dixie S. Huefner, *Students with Psychiatric Disabilities in Higher Education Settings: The Americans with Disabilities Act and Beyond*, 19 J. DISABILITY POL'Y STUD. 103 (2008).

<sup>12</sup> Americans with Disabilities Act of 2008, Pub. L. No. 110-325.

<sup>13</sup> *Mental Health and Education Abroad*, NAFSA, <https://www.nafsa.org/professional-resources/browse-by-interest/mental-health-and-education-abroad> (last visited June 5, 2020).

<sup>14</sup> IIE, *supra* note 1.

challenges may encounter the difficulty of walking on cobble-stone streets and staying in hotels that do not have elevators.<sup>15</sup> The inability of EA programs to accommodate student needs should be understood by program administrators and made known to potential applicants. Otherwise, students with physical disabilities may spend time applying for programs only to discover no suitable programs are available. It is also possible that many more students with physical disabilities may be interested in studying abroad but are discouraged from participation by EA staff.

## II. SETTING THE STAGE: BACKGROUND OF DISABILITY LEGISLATION IN THE U.S.

There are no specific laws regarding U.S. students with disabilities studying abroad on faculty-led programs. As a result, international educators look to federal disability law and case law to guide their actions regarding students with disabilities. Section 504 of the Rehabilitation Act of 1973 protects individuals with disabilities from discrimination at all institutions that receive federal funding. Title III of the ADA prohibits disability-based discrimination in, among other areas, employment, public services, and public accommodation and services operated by private entities, regardless of whether these entities receive public funding. Both Section 504 and Title III are often used in tandem in litigation.<sup>16</sup>

### A. Vocational Rehabilitation Act of 1973

The Rehabilitation Act of 1973<sup>17</sup> was the first significant piece

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<sup>15</sup> Tanja C. Link, *Strategies and Challenges for Creating an Inclusive Study Abroad Program*, 29 J. POSTSECONDARY EDUC. & DISABILITY 293 (2016).

<sup>16</sup> See WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION: STUDENT VERSION* (5<sup>th</sup> ed.); Judith Stiliz Ogden & Lawrence Menter, *Inaccessible School Webpages: Are Remedies Available?*, 38 J. L. & EDUC. 393 (2009); Suzanne Wilhelm, *Accommodating Mental Disabilities in Higher Education: A Practical Guide to ADA Requirements*, 32 J. L. & EDUC. 217 (2003).

<sup>17</sup> Vocational Rehabilitation Act, Pub. L. No. 93-112, 87 Stat. 355 (1973) (codified at 29 U.S.C. §§701-97 (2006)).

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of legislation to prevent discrimination of individuals with disabilities (then referred to as “handicap”) in employment and federally funded higher education programs. This legislation greatly improved access to higher education for students with disabilities.<sup>18</sup> Section 504 states that “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... any program or activity receiving federal financial assistance.”<sup>19</sup> This section required both public and private institutions of higher education who received federal funding to consider applicants with disabilities and to provide accommodations to these students, provided they otherwise met the academic requirements for admission to the institution.

Under the Rehabilitation Act, disabilities were defined as a physical or mental impairment that substantially limits one or more major life activities.<sup>20</sup> This definition was amended in 1974 to further clarify that major life activities included caring for oneself, walking, seeing, hearing, speaking, breathing, learning, and receiving education or vocational training.<sup>21</sup> Section 504 also requires students to make their disability and their request for accommodations known to the HEI.<sup>22</sup>

One case that challenged the scope of this statute was *South-eastern Community College v. Davis* (1979). This case involved a hearing-impaired student who sought to pursue an associate degree in nursing but was denied admission by the college to the program because the student had to rely on lip-reading even with improved hearing aids. The student sued their college, arguing that she was being discriminated against based on her disability, and claiming a violation of Section 504 of the Rehabilitation Act of 1973. The college argued that the student would not be able to participate in clinical rotations where nurses and doctors wear face masks, thus she would miss out on a required portion of the program. In an unanimous decision, the Supreme Court held that institutions did not need to lower academic

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<sup>18</sup> Joseph W. Madaus, *The History of Disability Services in Higher Education*, 2011 NEW DIRECTIONS FOR HIGHER EDUC. 5 (2011).

<sup>19</sup> Vocational Rehabilitation Act, Pub. L. No. 93-112 § 504 (1973).

<sup>20</sup> Vocational Rehabilitation Act, Pub. L. 93-112 (1973).

<sup>21</sup> 29 U.S.C. 794 § 111, Pub. L. 93-516, 88 Stat. 1619.

<sup>22</sup> *Id.*

standards to accommodate a student with a disability. Thus, South-eastern Community College was not in violation of Section 504 of the Rehabilitation Act of 1973.<sup>23</sup>

## B. Americans with Disabilities Act of 1990

The ADA is a civil rights law that was enacted in 1990. The law forbids discrimination based on any kind of disability, narrowly defined. The law is comprised of five titles: employment, public services (which covers access to state and local government services), public accommodation and services operated by private entities, transportation, and miscellaneous provisions. The ADA requires HEIs to be accessible by individuals with disabilities, requiring these institutions to provide reasonable accommodations for otherwise qualified students.<sup>24</sup>

Using the standard of the Rehabilitation Act, the ADA also defines a qualified disability as a physical or mental impairment that substantially limited a major life activity. Major life activities, as defined by the ADA included hearing, seeing, speaking, walking, caring for oneself, communicating, interacting with others, concentrating, and learning. The law also protected students with a history of such disabilities as well as any students with perceived disabilities.<sup>25</sup> The statute defines accommodations as modifications to existing programs, practices, policies, and facilities that would provide students with disabilities equal opportunity to apply, equal access to perform the essential functions of their academic program, and the ability to reap equal benefits and privileges of the program. The ADA requires HEIs to make reasonable accommodations, i.e., only those modifications that do not fundamentally alter the nature or quality of the academic program and those that do not place an “undue burden” on the institution. The statute also requires the accommodations to be effective.

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<sup>23</sup> *Se. Cmty. Coll. v. Davis*, 422 U.S. 397 (1979).

<sup>24</sup> 42 U.S.C. § 12182 (2010).

<sup>25</sup> 42 U.S.C. § 12101 (2009).

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## C. Americans with Disabilities Act Amendment Act (2008)

After the passage of the ADA in 1990, courts repeatedly sided with employers in litigation regarding discrimination against and failure to provide reasonable accommodations for individuals with disabilities. The resulting narrow Supreme Court decisions led Congress to revise the original law with the ADAAA in 2008, which strengthened and clarified protections for persons with disabilities.<sup>26</sup> Further, there was now a broader scope of disabilities protected by law, which led disability service centers at HEIs to reevaluate their policies regarding providing accommodations. For example, disability service centers began providing supports to students with learning disabilities and psychiatric disabilities, as well as to veterans with hidden disabilities, such as traumatic brain injuries or posttraumatic stress disorders.<sup>27</sup>

The ADAAA enacted several significant changes. First, the law encouraged institutions to consider a “broad standard”<sup>28</sup> when determining which of their constituents have a disability. Second, HEIs must no longer consider mitigating measures, such as medication for students diagnosed with attention deficit disorder, when providing accommodations. Third, the list of what constitutes a major life activity was expanded and more clearly defined. Fourth, the amendment called for accommodations for persons who are regarded as having a disability, even if they were not claiming this disability. All of these changes greatly expanded the number of persons who can seek protection under the ADA.<sup>29</sup> While institutions were not asked to lower academic standards when providing accommodations, they were encouraged to be proactive in their policies to meet the individual needs of their students with disabilities.<sup>30</sup>

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<sup>26</sup> Office of Public Affairs, *Justice Department Revises Regulations to Implement Requirements of ADA Amendments Act of 2008*, DEP’T OF JUST., <https://www.justice.gov/opa/pr/justice-department-revises-regulations-implement-requirements-ada-amendments-act-2008> (last visited Jul. 20, 2020).

<sup>27</sup> Madaus, *supra* note 18.

<sup>28</sup> Lorenzo Bowman, *Americans with Disabilities Act as Amended: Principles and Practice*, 2011 NEW DIRECTIONS FOR ADULT & CONTINUING EDUC. 85 (2011).

<sup>29</sup> *Id.* at 85–95.

<sup>30</sup> *Id.*



The ADA required students to alert the HEI to any disabilities and to officially request accommodations. If the HEI contests the validity of a student's disability, the law placed the burden of proof in assessing the existence of a disability on the HEI. In these cases, HEIs must conduct an individual assessment to prove that a student either does not have an impairment or is not substantially limited in a major life activity by their impairment. Further, if the evidence is inconclusive, schools were asked to err on the side of determining that the student has a disability. Once it is determined that a student has a disability, then a reasonable accommodation must be made.

### III. CASE LAW REGARDING REASONABLE ACCOMMODATIONS

There have been several court cases related to institutions' alleged failure to provide students with reasonable accommodations. In the first case reviewed, the court sided with the HEI in question, arguing that either reasonable accommodations were made, or that the student did not appropriately request them.

In *Halpern v. Wake Forest University Health Sciences*,<sup>31</sup> the plaintiff was a medical student that had previously been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Initially, Halpern did not disclose his disability to the medical school, nor did he ask for accommodations. The student was repeatedly admonished for unprofessional behavior, such as not receiving feedback from faculty in a gracious manner, missing meetings and rotations, and treating staff disrespectfully. This behavior was in violation of the medical school's policy of collaborative work and could undermine patients' care. The court found that even with accommodations, Halpern was not "otherwise qualified"<sup>32</sup> for his program.

Citing *School Board of Nassau County v. Arline*,<sup>33</sup> the court argued that accommodation is only reasonable if it does not impose undue financial and administrative hardship and if it does not require the program to be fundamentally modified. Halpern failed to disclose his accommodation promptly and was now looking for a second chance

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<sup>31</sup> *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454 (4th Cir. 2012).

<sup>32</sup> *Id.* at 464.

<sup>33</sup> *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 287, n. 17 (1987).

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by being under strict supervision and in ongoing psychiatric care. Finally, the court held that “the Rehabilitation Act and ADA do not obligate a school to permit a student to continue in an educational program with the hope that at some unknown time in the future he will be able to satisfy the program’s essential requirements.”<sup>34</sup>

In *Dean v. University at Buffalo School of Medicine*,<sup>35</sup> the Second Circuit Court of Appeals set aside summary judgment of a lower court that ruled in favor of the university. Maxiam Dean was a medical student who suffered from major depression during the time he was scheduled to take Step 1 of a national board examination. After failing the exam twice, Dean developed debilitating depression and requested a medical leave of absence due to his disability beyond the timeframe granted by the school. He subsequently failed the exam a third time and was dismissed from the school, which prevented him from pursuing medical education at any medical school in the U.S. The appeals court found that Dean was not treated in an “evenhanded manner” compared to other students attempting the exam a third time. Dean’s accommodation afforded him less time to prepare for the exam than abled students, and was, thus, ineffective. Further, the university was unable to prove that granting a longer timeframe within which Dean could reattempt the exam would have imposed undue financial and administrative burdens.

#### IV. EXTRATERRITORIALITY

In the case of students studying abroad, providing accommodations is often complicated by the international nature of the programs. Perhaps for that reason, the question of extraterritoriality of the ADA and the Rehabilitation Act has remained unanswered. In 1991, the Civil Rights Act Amendments Act amended Title I of the ADA so that U.S. employees of U.S. companies operating abroad would be protected. That particular amendment does not extend to Title III, and, subsequently, the ADA is silent on extraterritoriality of EA programs.<sup>36</sup>

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<sup>34</sup> Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 466 (4th Cir. 2012).

<sup>35</sup> Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis., 804 F.3d 178 (2d Cir. 2015).

<sup>36</sup> 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); *Federal Disability Laws: Do They Translate to Study Abroad Programs?*, 10

There have, however, been court cases (e.g., *Bird v. Lewis & Clark College*) and letters from OCR that have taken a stand that Title III of the ADA and Section 504 of the Rehabilitation Act do apply to U.S. citizens and residents studying abroad through a U.S. HEI. Even though these cases and letters are not as broadly precedential as U.S. federal law or Supreme Court decisions, they can serve as guidance to EA administrators across the U.S. as they work with students with disabilities.<sup>37</sup>

## V. OFFICE OF CIVIL RIGHTS DECISIONS

The OCR is one venue for students to file complaints if they feel they have been discriminated against based on having a disability. OCR decisions provide guidance to HEIs but do not award monetary damages. If OCR investigates the complaint and rules that the HEI did not comply with the respective laws, OCR will work toward a voluntary resolution agreement and monitor the implementation of the terms of the agreement. If the educational institution fails to implement the agreed-upon terms, OCR can initiate proceedings to terminate federal financial assistance.<sup>38</sup>

One OCR decision in 1990 regarding EA dealt with a student with a learning disability at St. Louis University in St. Louis, MO, who participated in a semester-long EA program in Spain. The student requested a MacIntosh computer and was initially provided with an IBM computer instead. The OCR upheld that the university was not in violation of Section 504 of the Rehabilitation Act, as any type of computer would assist the student with his learning disability. Also, the university finally provided him with a MacIntosh computer less than two months into the semester abroad. OCR could have dismissed the appeal based on extraterritoriality, but it did not.<sup>39</sup>

Two years later, a 1992 OCR decision was issued regarding the College of St. Scholastica in Duluth, MN. A deaf student at the college planned to participate in an EA program in Ireland. The student asked for an interpreter for the duration of her stay abroad. The OCR deci-

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NACUA NOTES 291-320 (Apr. 2012) [hereinafter NACUA].

<sup>37</sup> NACUA, *supra* note 36.

<sup>38</sup> Off. for C.R., *How the Office for Civil Rights Handles Complaints*, U.S. DEP'T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html> (last visited Oct. 16, 2019).

<sup>39</sup> Kanter, *supra* note 36; NACUA, *supra* note 36.

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sion held that the institution failed to research the cost of an interpreter, and that it did not adequately respond to the student's request for accommodation. Further, the college failed to show it had a proper grievance procedure. Again, this ruling indicates that the OCR believes that Section 504 of the Rehabilitation Act does indeed apply to EA programs.<sup>40</sup>

More recently, an OCR decision regarding Husson College in Boston, MA, was made in 2005. The student in question planned to study abroad in Honduras on a college-operated faculty-led program. She disclosed that she suffered from debilitating headaches and was advised by college administrators that her condition may pose a medical safety risk. The student subsequently withdrew her application and filed a complaint with OCR. The complaint failed because the college did not deny the student's participation, but rather counseled her on potential risks.<sup>41</sup>

## VI. CASE LAW SPECIFIC TO EDUCATION ABROAD

There is limited case law on cases of discrimination against students with disabilities on EA programs. Aside from those known about due to being filed with OCR, other cases may often be settled out of court. There are two landmark cases, *Bird v. Lewis & Clark College* (2002) and *Tecza v. University of San Francisco* (2010), which were decided in the Ninth Circuit Court of Appeals and which warrant a closer look.

### A. *Bird v. Lewis & Clark College*<sup>42</sup>

In *Bird v. Lewis & Clark College*, the Ninth Circuit Court of Appeals held that the college did not violate student Arwen Bird's rights under the ADA and Rehabilitation Act. Bird sustained an injury while

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<sup>40</sup> NACUA, *supra* note 36.

<sup>41</sup> *Id.*

<sup>42</sup> *Bird v. Lewis & Clark Coll.*, 303 F.3d 1015 (9th Cir. 2002).

studying at the college that left her paralyzed and bound to a wheelchair. Bird applied and was accepted to the college's Spring 1996 EA program in Australia. The program was heavily field-work based. After consulting with the provider that arranged the program, the college assured Bird that the program would be able to accommodate her needs where possible. In the cases where it was not possible, alternate activities would be arranged.<sup>43</sup>

Throughout her program, there were twenty-two sites where Bird was unable to use her wheelchair and had to be either carried or could not participate. Despite the many challenges during the program, the college was able to show that it had made many accommodations for Bird. For instance, the college arranged and paid for air travel between cities when the rest of the students on the program took trains or busses. The college also paid two program participants to serve as Bird's helpers, and it offered or arranged for changes in her housing options. Bird also participated in several modified out-of-class activities and earned sixteen credits toward her biology degree with a 2.1-grade point average for the term.<sup>44</sup>

On May 12, 1998, Bird filed suit against the college, alleging violation of the Rehabilitation Act, violation of Title III of the ADA, breach of contract, breach of fiduciary duty, defamation, negligence, fraud, negligent misrepresentation, and intentional infliction of emotional distress. Bird claimed she was discriminated against based on her disability. The court held to the contrary. While not all aspects of the program were wheelchair accessible, the college made and paid for several accommodations that allowed Bird to participate and that made the program as a whole accessible for a student with Bird's disability.

#### B. *Tecza v. University of San Francisco*<sup>45</sup>

##### 1.

Jason Tecza was a law student at the University of San Francisco. He received accommodations for ADHD, including a quiet room and extended time on exams. Tecza participated in the university's summer 2007 program to Dublin, Ireland, and Prague, Czech Republic. The plaintiff alleges that in Dublin the faculty member asked him

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Tecza v. Univ. of San Francisco*, No. C 09-03808 RS (N.D. Cal. May 3, 2010).

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to accompany the faculty to his testing location in front of other students. He also was told to vacate the room 45 minutes early by a local maintenance person. In Prague, it came to Tecza's attention that students had received materials that indicated he was receiving accommodations for his tests.<sup>46</sup>

Citing *Bird v. Lewis & Clark College* (2002), the court held that the university faculty did not violate Tecza's rights under the ADA or Section 504 of the Rehabilitation Act. The court indicated that for a violation of the Acts to occur, accommodations must be withheld more than a limited number of times. Further, the court argued that the program as a whole was accessible to the student.<sup>47</sup> As in *Bird v. Lewis & Clark College*, the court sided with the university and held that no discrimination occurred. Tecza appealed the lower court's decision that his privacy was not violated during the program. The appellate court reversed and remanded that decision, ruling that Tecza's privacy had been violated, but not the ADA or Rehabilitation Act.<sup>48</sup>

## CONCLUSION

There is evidence to suggest that students with disabilities encounter significant logistical, psychological, and practical barriers to studying abroad and that these barriers, whether actual or perceived, prevent many of these students from studying abroad.<sup>49</sup> With 10.5%, the percentage of students with disabilities who study abroad is nearly half that of students with disabilities enrolled in U.S. higher education.<sup>50</sup> These statistics support the idea that higher education administrators must continue to further enhance programming, provide relevant information, and offer specific advising services to support

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Tecza v. Univ. of San Francisco*, 532 Fed. Appx. 667 (9th Cir. 2013).

<sup>49</sup> Sofie Heirweg et. al, *Study Abroad Programmes for All? Barriers to Participation in International Mobility Programmes Perceived by Students with Disabilities*, 67 *Int'l J. of Disability, Dev. & Educ.*, 73-91 (2019).

<sup>50</sup> Nat'l Ctr. for Educ. Stats., *Profile of U.S. Study Abroad Students, 2006/07 - 2019/20*, U.S. DEP'T OF EDUC., file:///C:/Users/1610623375M/Downloads/StudyAbroad\_Students-with-Disabilities\_OD21.xlsx\_safe.pdf (last visited June 3, 2022).

students with disabilities who may want to study abroad.

The legislation, OCR decisions, and court rulings discussed have practical implications for the day-to-day work of HEI legal counsels, EA program providers, and EA administrators. Based on OCR rulings, HEI staff should err on the side of treating students with disabilities on EA programs just as they would students on their home campus. Students are not required to disclose their disability during the application process. It is recommended, however, that students and EA advisors work with the campus office of disability services before the student applies. This way, students can be assured that reasonable accommodations can be made for their desired program.<sup>51</sup>

In both *Bird v. Lewis & Clark College* and *Tecza v. University of San Francisco*, the courts held that for reasonable accommodations to have been made, the program in general needed to be accessible for the student with a disability. In other words, HEIs need not lower their academic standards, nor need they provide cost-prohibitive or unreasonable accommodations. For example, Lewis & Clark College cannot be required to build a wheelchair-accessible ramp at a motel in Australia as it had done on its home campus to accommodate Arwen Bird.<sup>52</sup>

In addition to the legal responsibility to provide reasonable accommodations for students with disabilities, it is vital for EA administrators to build partnerships with relevant offices across campus, such as the office of disability support or counseling services and to create support networks for these students. Further, EA brochures should be available in those offices so that students with disabilities feel a sense of inclusion and may seek out conversations with disability support staff before visiting their EA advisor's office.<sup>53</sup> Finally, more information specific to available accommodations and program constraints need to be readily available on EA websites. The joint efforts of higher education administrators can foster an environment where students with disabilities feel informed, supported, and even encouraged to study abroad.

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<sup>51</sup> NACUA, *supra* note 36.

<sup>52</sup> *Bird v. Lewis & Clark Coll.*, 303 F.3d 1015 (9th Cir. 2002).

<sup>53</sup> *Mental Health and Education Abroad*, *supra* note 13.