

Article 23

## **Disability Accommodation in Higher Education: An International Perspective**

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As we consider the needs of international and multicultural students in Higher Education, we wonder about their experiences with and attitudes toward disability service provision. We question whether our current U.S. system, which is focused on the Americans with Disabilities Act (ADA), sufficiently accounts for the experiences and viewpoints of persons with roots in other countries and cultures. Even more importantly, after our initial exploration of the literature, we are now asking “What can we learn from what is being done in other countries?” This paper is a philosophical piece that examines our current state of affairs and calls for the development of a best practices proposal in Higher Education Disability Service Provision for students who travel internationally and/or hail from minority cultures.

In March of 2011, at the VISTAS authors' banquet, Courtland Lee challenged the profession of counseling to focus on global literacy. He expressed concern that counselors, particularly in academic settings, who are ill informed about global events, may not understand the angst of international students or even those who are American

born, but have family in regions of concern. Additionally, Dr. Lee called for greater collaboration between counselors and professionals in other fields to better serve students. On the heels of this charge, the authors received their Fall 2011 American College Counseling Association newsletter which featured an article entitled "Reaching Out to the International Student Population: The Role of the College Counselor" (Heard, 2011). To answer these calls, this article attempts to understand the unique challenges faced by college students with special needs who hail from various backgrounds.

Anne Fadiman (1997) provides an eye opening detailing of the culture clash that can occur between U.S. medical professionals and families from other countries in her poignant anthropological study, *The Spirit Catches You and You Fall Down*. We believe that the essence of what we are trying to understand in this endeavor is beautifully captured in Fadiman's description of her work:

I have always felt that the action most worth watching is not at the center of things but where edges meet. I like shorelines, weather fronts, international borders. There are interesting frictions and incongruities in these places, and often, if you stand at the point of tangency, you can see both sides better than if you were in the middle of either one. This is especially true, I think, when the apposition is cultural. (p, viii)

We agree, and thus, we as counselors are standing off to the side trying to examine the intersections between the U.S. service provision in higher education, international laws and the diverse cultures represented in our student body. Though perhaps not as extreme as the Hmong/Western 'collision' detailed by Fadiman (1997), the intersection of international study and disability accommodation is ripe for numerous legal and cultural fender benders. Though a wealth of disability related information and protocol hails from the fields of law, education, and psychology, Fadiman's anthropological exploration of the medical community lends itself well to use here, as the comparison is obvious; cultural misunderstandings can prevent effective service delivery.

Thus, what if the students we serve (and/or their parents) come from countries without an ADA equivalent? How do we educate them about their rights here? Sure, we can meet the letter of the ADA law by making sure that all students receive the contact information for a disability support office on campus, but are we meeting the spirit of the law if we do not attempt to bridge cultural gaps and make sure that all students understand that it is safe and 'okay' to request, receive, and utilize appropriate accommodations. Conversely, how do we learn to respect differing views of disability and not assume that we are always correct in our culturally biased interpretations of what is fair and reasonable?

### **Cultural Models**

We begin by asking, what are some cultural views about disability around the world that might prevent international students or those from first or second generation families from accessing services even if we suggest they would be eligible? Most experts in the area of disability studies would agree that there are three basic models that can be used to describe the disability experience: the moral model, the medical model, and the interactional/minority model (Olkin, 2002). The current U.S. focus is on the continuing development of the interactional (or minority culture) model, but in many parts of the

world (including parts of the U.S.), individuals still view disability from a medical model (Mackelprang & Salsgiver, 2009). More problematic, at least from the U.S. perspective, is the fact that many cultures around the world still view disability from a moral model which places blame on the individual with the disability (and/or his/her parents) causing feelings of shame and doubt for the individual and the family (Mackelprang & Salsgiver, 2009). When this is the case, it is unrealistic to expect college students with disabilities and their families to speak freely about the disability and understand that they are entitled to appropriate accommodations. This cultural barrier can be found when working with international students and those from the U.S. who hail from early generation families who hold strong cultural views about disability from a moral model (perceived 'test of faith' or disability as a reflection of 'parental sin or the wrath of a higher power') or a medical model with an expectation that the disability can be fixed or removed, rather than merely accommodated.

When working with students from various cultural backgrounds, higher education professionals need to realize that our Western expectation may not be met. We cannot assume that all students will be alright with our current system that asks students with disabilities to self-identify to a non-medical professional, discuss their personal limitations quickly and in detail with a stranger, and present documentation of their need for assistance to faculty members who are perceived as authority figures. These tasks which have become routine to us in the disability support arena can be inconceivable to persons who associate their disabilities with shame and guilt and/or those who have cultural taboos about sharing such private personal/familial matters with strangers.

Indeed, it would probably be best if disability service professionals worked to better understand cultural assumptions about disability from around the world and from minority U.S. cultures. There are many aspects of disability that are perceived differently in other cultures, such as causation, responsibility for accommodation, independence/interdependence, individual and familial privacy/confidentiality, respect for and deference to perceived medical and/or spiritual authority, and the personal rights or personhood of the individual with a disability. All of these cultural differences and many others have the potential to impact the way(s) in which the student and his/her family perceive the disability and may affect whether or not the individual is permitted to continue his/her educational pursuits with or without accommodation.

In addition to understanding the cultural context of the student with a disability, we are also charged with explaining the mainstream U.S. system of laws and accommodations to the students and their families. This can be difficult when language and cultural differences prevent our explanations from being received in the context we intended. In the U.S., we operate from a model that is driven by the law, but in many other cultures, accommodations are determined on an individual basis and conversations focus on individual need and familial/community responsibility, rather than on our perception and utilization of legal mandates. Though not as common in higher education as in the medical communities, it is also possible that a student may hail from a country or culture of origin where there are no words in their vocabulary that parallel our disability related vocabulary and the laws of accommodation, making our conversations even more complicated.

We need to be mindful of the fact that there are some cultural views about disability around the world that might prevent international students or those from first and second

generation U.S. families from accessing services even when we inform them that they would be eligible. For example, in some cultures, family members are expected to provide support for individuals with disabilities and our U.S. insistence on formalized accommodation and assistive technology may interfere with family roles. This can be further complicated in a culture where young, single women are expected to be in the company of male family members who may also accommodate the disability as well. Our insistence on a trained support professional for disability accommodation may violate multiple cultural/spiritual beliefs.

Though U.S. disability service providers are familiar with the concept of being “twice exceptional” (having both a disability diagnosis and a gifted, talented, and/or creative label) many worldviews hold tightly to the concept that higher education is only for the stereotypical ‘best of the best.’ This cultural viewpoint may prohibit some students/families from seeking help for a disability if their paradigm does not allow for the concept of being ‘twice exceptional,’ thus negating the viewpoints that allow for both a disability and a gifted aspect to co-occur. In this instance, individuals are reluctant to disclose aspects of disability which may cause them to be viewed as less than ‘top student’ and, from their perspective, jeopardize their academic standing.

### **The World View**

Historically, people with disabilities around the world have been viewed and treated as objects of welfare, health, and charity programs, thus segregating and excluding them from mainstream society (Degener & Quinn, 2002). The current zeitgeist finds students with disabilities around the world receiving greater support than ever before. Many countries around the world are finally beginning to view disability support as a human rights issue (Degener & Quinn, 2002). This larger systemic change may be helpful in allowing people from varying cultures to accept support and access services for disabilities without feeling shame. Many countries have put policies into place to enhance the education for younger children and for students with disabilities who pursue secondary education and training. These laws have created social, economic, and public space for people with disabilities and thereby have recognized the need for accommodations in these areas (Degener & Quinn, 2002).

Our colleagues around the world are working to make higher education accessible for students with disabilities. Efforts to prepare and support students with disabilities are being made at the institutional level. Internationally, disability accommodations for students in higher education are often identified and met with support and guidance. Factors that have helped to create easier access to support include centralized policies. In certain regions in Russia, regional levels of organized support have developed, using a consortium to solve problems. At the institutional level, there is monitoring of pre-university training, enrollment, and academic guidance (Batukhtin, Shcherbov, & Martynova, 1999). Countries such as France, Spain, Sweden, and the United Kingdom (UK) employ a Support Coordinator, also known as a Disability Officer, in every university for the development of accessibility and educational support for students with disabilities (Higher Education Accessibility Guide, 2012). This disability service is intended to welcome students with disabilities to the university, assist them with their identified accommodations, and in Spain, further assist these students with job placement

(Higher Education Accessibility Guide, 2012). These centralized policies support an accessible learning environment for all students across a country and were reported by students with disabilities to be an essential need (Batukhtin et al., 1999; Erten, 2001; Holloway, 2001). These policies increase the equity in accessibility and facilitate student access to consistency in language, programs, and support. Having central coordination also helps ensure variety, flexibility, quality, and parity in teaching and learning (Fuller, Healy, Bradley & Hall, 2004; Holloway, 2001). Moving forward, the European region has recently developed organizations such as the Council of Europe and the European Union, which can facilitate the reception of equal opportunities and human rights ideas into national policy making apparatuses (Degener & Quinn, 2002).

Globally, changes have been made to allow for accessibility, accommodations and the rights of students, such as the Equal Opportunity Law for Persons with Disabilities in Costa Rica (Sygall & Scheib, 2005). This law mandates identification of student need and specifies recommendations for how school activities and programs through college can be made accessible to students with disabilities for physical accessibility, assistive devices, and modifying course content. Crucial to the validity of how these recommendations are made, parents and students with disabilities are represented in the decision making process (Stough, 2003).

Universities may provide an array of support and accommodations. Denmark, Slovenia, Spain, and the UK provide accommodations for test taking, which may include: scribes, alternate setting, alternate forms of the test, breaks, and assistive technology. Accommodations also exist for lectures and assignments, such as: sign language, Braille, advance notice of readings, online study materials, assistive technology such as laptop programs with speech synthesizers and voice recognition, use of an audio recorder, and e-learning (Higher Education Accessibility Guide, 2012). Universities will also put these types of accommodations into place: extended time for tests, special seating, visual language interpreters, live captioning, adaptive technology, alternative formats of print and special seating (Erten, 2011; Higher Education Accessibility Guide, 2012). In Slovenia, additional disability accommodations are provided by the university library system. Additional support is offered through the extension of library loan deadlines, agreements that books can be borrowed by an identified assistant through the identified student's library card, and assistance from library personnel in searching for, locating, and retrieving library materials (Higher Education Accessibility Guide, 2012).

Although laws have been enacted and many services and accommodations are now in place, there are still areas that need revision and support. Students with disabilities in the UK who have attended higher education institutions have voiced their concerns regarding what is needed for them to be more successful in secondary education. A number of students reported that they have not had any guidance in exploring the possibilities of higher education. Additionally, once they decided that higher education was an option, they were not always aware of their career and educational choices, or the skills needed for these programs (Madriaga, 2007). This lack of information has the potential to severely limit their experiences and prevent them from making educated choices about avenues to pursue for support.

Students with disabilities in Canada and the UK have also expressed a need for increased disability awareness in staff training to facilitate both better awareness of and improved attitudes toward persons with disabilities, leading to more support from

university staff and faculty members (Erten, 2011; Holloway, 2001; Madriaga, 2007). There are times when students have to explain their disability or their need for accommodation to every instructor, finding a lack of knowledge about the disability and a lack of compassion and diligence in following through with required support.

Of major concern to both students and providers is the inconsistency in the definition of disability from country to country and culture to culture. Types of disabilities and categories of disabilities vary from region to region, thus traveling to a new area may make students feel more like a ‘disabled person’ than a person with a disability (Prowse, 2009). Many students are already hesitant in reporting their disability and requesting accommodations (Barnard-Brak, 2010). Some students may adopt a ‘wait and see’ approach whereby they attempt to blend in and self-accommodate to see if they can be successful going forward on their own rather than dealing with the frustrations of explaining their needs once again. A dilemma ensues when these students, who may not want to declare themselves as students with disabilities, must do so in order to gain financial and academic support at the university level (Prowse, 2009).

### **Legal Issues**

Any discussion of disability accommodation should begin with an understanding of the U.S. laws and regulations surrounding the civil rights afforded to individuals with disabilities. As Mobility International USA (2012) has suggested, it is important for U.S. based exchange programs to understand the many nuances and intricacies associated with the legal obligations required by both U.S. law, as well as the laws of other countries. This section will provide an overview of both the laws governing the rights of individuals with disabilities, as well as recent legal decisions that have clarified, and at times, confused, these laws.

Two significant pieces of legislation largely dictate the rights of individuals with disabilities who study at U.S. colleges and universities. One is Section 504 of the Rehabilitation Act of 1973 (Section 504); the second is the Americans with Disabilities Act of 1990 (ADA), as amended in 2008. Both laws make it illegal to discriminate against an individual on the basis of a disability, as well as requiring colleges and universities to provide reasonable accommodations to students with disabilities.

The law defines a disability as “a physical or mental impairment that substantially limits one or more major life activities” (“Nondiscrimination on the Basis of Handicap,” §104.3, Definitions). Physical or mental impairment is further defined using a range of physical and psychological challenges that may constitute a disability. Major life activities are defined as “functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (“Nondiscrimination on the Basis of Handicap,” §104.3, Definitions). In order to meet the legal definition, the law requires that the disability either be documented or the individual be generally regarded as having such impairment, such as an individual who uses a wheelchair or is blind.

The Americans with Disabilities Act of 1990 uses an almost identical definition of disability as defined in Section 504, and while the 2008 amendments to the ADA did not change the legal definition of a disability, they did emphasize a broader definition of the term (ADA, 2008). For example, these amendments expanded the definition of major life

activities including a section on major bodily functions, such as those of the immune system, cell development, reproduction, and so forth (ADA, 2008). Additionally, these amendments also clarified that impairments that are episodic or in remission still qualify, provided they would substantially limit major life activity if they were active (ADA, 2008). The 2008 amendments also clarify that transitory (i.e., lasting six months or less) and minor impairments do not qualify under the definition of a disability. Finally, the fact that a disability can and may be mitigated (e.g., medications, therapies, etc.) does not imply the absence of a disability, with the exception of ordinary eyeglasses or contact lenses (ADA, 2008).

These laws affect colleges and universities by providing legal protections for students studying at higher education institutions in the U.S. For example, Section 504 specifically states that “No otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her 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” (Section 504, 2000 §794a, Promulgation of Rules and Regulations). The statute goes on to provide one specific definition of a program or activity as, “a college, university, or other postsecondary institution, or a public system of higher education” (Section 504, 1973 §794b, “Program or activity” defined). It should be noted that Section 504 only protects individuals who attend higher education institutions receiving Federal monies; institutions that do not receive Federal funding (e.g., Stafford Loans, researching funding, Pell Grants, etc.), are not covered under Section 504.

The ADA, however, was written to have greater protections for individuals with disabilities. The ADA consists of five subsections; Titles II and III directly impact educational institutions (ADA, 2008). Title II extends the ADA protections to colleges and universities that receive public funding while Title III addresses these protections for private institutions. In practice, there are substantial similarities in the educational protections afforded in Section 504 and Titles II and III of the ADA; the most significant is the issue of Federal funding. Section 504 applies only to institutions receiving federal funding, and Title II of the ADA does as well. Title III, however, extends protections to institutions that do not receive such funding. It should be noted that schools covered under Title III of the law have a lower standard of burden, in part because these institutions may not have access to the range of resources available to publicly funded universities (Leuchovius, 2004). Regardless, privately funded institutions still must extend protections to individuals who meet the standard of having a disability.

What, then, do these laws mean for students studying at U.S. colleges and universities? Generally speaking, both Section 504 and the ADA protect the civil rights of individuals with disabilities and provide individuals with legal remedies should they experience discrimination on the basis of that disability. These laws protect students from discrimination in admissions, as well as the provision of reasonable accommodations. Additionally, Title I of the ADA protects individuals from discrimination in employment (ADA, 2008); while higher education institutions are centers for learning, they are also employers and therefore also fall under the requirements of Title I.

Regarding reasonable accommodations, Section 504 and the ADA require institutions to assist in mitigating the educational impact of a student’s disability (ADA, 2008; Section 504, 2000); generally speaking, the goal of these laws is to provide

individuals with disabilities the same opportunities as those without disabilities. On campuses across the country, reasonable accommodations may include: accessible buildings and classrooms, accessible residence hall accommodations, interpreters, Braille and large print materials, TTY devices, additional time for tests and assignments, audio recordings, computer software, and other technology-assisted learning opportunities. Another point of the ADA is that such accommodations must be made in as integrated a setting as possible (ADA, 2008). For example, providing an accessible residence hall room within a typical residence hall would be an example of integration; providing an entirely separate residence for one student who required accommodations would not.

Another important nuance of the ADA is that in order for an accommodation to be legally required, that accommodation must be readily achievable (ADA, 2008). The ADA defines readily achievable as being “easily accomplishable and able to be carried out without much difficulty or expense” (ADA, 2008, § 12181, Definitions [Section 301]). The law provides additional direction by asking institutions to examine the cost and challenges involved related to available resources, the type of institution, and the aggregate impact on the institution if the accommodation were to be made.

The ADA establishes other limits on the reasonability of accommodations. For example, the ADA states that it is discriminatory to deny an individual “goods, services, facilities, privileges, advantages, or accommodations unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered” (ADA, 2008, § 12182, Prohibition of discrimination by public accommodations [Section 302]). However, if making an accommodation “would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations” (ADA, 2008, § 12182, Prohibition of discrimination by public accommodations [Section 302]), then the accommodation cannot be required. In other words, if making a requested accommodation would either prevent or fundamentally change the service, program, or experience, then the requested accommodations need not be made.

When individuals believe that their rights under Section 504 or the ADA have been violated, they have a number of options for recourse. In higher education institutions, the law requires an internal grievance process for students to seek resolution of such complaints (Leuchovius, 2004). Students may also file a complaint with the Office of Civil Rights (OCR) of the U.S. Department of Education (Leuchovius, 2004). Additionally, students may file a lawsuit in federal court seeking relief; the ADA provides for injunctive relief, that is, access to the right that was denied as well as legal costs. Damages are only awarded in cases where intentional discrimination can be proven. The ADA also prohibits retaliation, coercion, or intimidation against individuals who exercise their rights under the law (ADA, 2008).

### **Practical Implications**

What, then, does this legislation mean for study abroad programs and for students who participate in them? For international students studying in the U.S. (e.g., individuals attending U.S. institutions on F-1, M-1, and J travel visas), it means that those international students are afforded the same legal protections as American students. There are no provisions in either the Rehabilitation Act or the ADA to exclude international students from the protections provided by these laws. For example, Section 504 reads, in



part, “No otherwise qualified individual with a disability in the United States... [shall] be excluded from participation...” (Section 504, 2000, §794a, Promulgation of rules and regulations); the text of the law makes no distinction for nationality, citizenship, and so forth. The ADA provides similar protections to all individuals in the U.S., regardless of nationality, citizenship status, or reason for attending a U.S. college or university.

While these laws protect the rights of international students studying in the U.S., there are still a number of obligations the student must meet in order to receive reasonable accommodations if they have a disability. First, the student must know they *have* a disability; while there are concrete legal and medical definitions of the term disability, cultural definitions can vary widely (Mackelprang & Salsgiver, 2009). Additionally, the student must make the disability known; institutions have no legal responsibility to accommodate a disability of which they are unaware (Leuchovius, 2004). If the student is aware of the disability and willing to present it to the college or university, the student must be aware of the process for doing so, and the disability must meet the legal definition as described in the ADA or Section 504. Any required documentation should be current and be provided by a qualified healthcare provider. This begs the question, do international students have access to such healthcare professionals, or the credentials and do these professionals meet the burden required by U.S. colleges?

For U.S. students studying abroad, legal protections are much less obvious. While Section 504 and the ADA protect American students studying in the U.S., there are no such protections guaranteed overseas; however, this is not to say that U.S. students cannot benefit from legal protections in other countries. For example, in 1993, the United Nations adopted the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, a nonbinding, voluntary set of guidelines for protecting civil rights; yet, the *Standard Rules* certainly are by no means legal protections (Breslin & Yee, 2005). In addition to the *Standard Rules*, over 45 countries have established some form of legally binding civil rights legislation, protecting the rights of individuals with disabilities (Breslin & Yee, 2005). However, each country has different protections, different remedies, and different degrees of enforcement.

There is a long-standing legal concept known as the presumption against extraterritoriality, which argues that laws enacted by the U.S. Congress apply only within the territorial jurisdiction of the U.S. (Kanter, 2003). For over 200 years, courts have held to the presumption against extraterritoriality, assuming sovereignty for other nations to enact and enforce their own laws without interference from other countries (Kanter, 2003). This legal standard has been used to argue that Section 504 and the ADA do not apply to U.S. students studying abroad. Section 504 does not specifically discuss U.S. students studying overseas, nor do Titles II or III of the ADA. However, it should be noted that Title I of the ADA, addressing employment, was amended to include U.S. corporations operating overseas (ADA, 2008).

### **Recent Legal Decisions**

One case where the presumption against extraterritoriality was argued was in *Bird v. Lewis and Clark College* (2000/2002). Arwen Bird, a student at Lewis and Clark College, used a wheelchair for mobility and was accepted to a study abroad program that the college administered in Australia. Bird alleged that upon her arrival, she did not receive the accommodations she had requested prior to leaving for the program;

specifically, she was not permitted to participate in some elements of the program, and was often carried by faculty and other students, rather than having accommodations made for her wheelchair.

A federal district court in Oregon denied the college's claim that the presumption against extraterritoriality applied in this case. Specifically, the court noted that Bird was an American student attending an American university's overseas program, being taught by American faculty who were employed by an American college incorporated and doing business within the United States (*Bird v. Lewis and Clark College*, 2000/2002). As such, the court found the college responsible for providing the accommodations Bird had requested, applying U.S. law as a result of the enmeshed involvement of the American college in the overseas program.

On appeal, the Ninth Circuit Court upheld the lower court's ruling, but using different legal rationale (*Bird v. Lewis and Clark College*, 2000/2002). The appeals court did not base its findings on the issue of extraterritoriality; the judges denied Bird's remedy under Section 504 and the ADA. Instead, the Ninth Circuit found that Lewis and Clark College had breached its contract with Bird by failing to provide the requested accommodations.

During the same year, the OCR ruled on a complaint brought by a student at Arizona State University. In this case, a student claimed that Arizona State was required under Section 504 and the ADA to provide interpreter services during a study abroad experience in Ireland ("Federal Disability Laws," 2012; Kanter, 2003). In this case, the OCR ruled that Section 504 and the ADA could not be applied extraterritoriality, declaring that the laws do not apply to overseas programs. Despite the fact that the student was entitled to similar accommodations at Arizona State, the OCR found that the U.S. university had no legal obligation to provide the same accommodations in a foreign country based on the presumption against extraterritoriality. The student never attended the program after the OCR ruling.

A 1990 case decided by a regional OCR office involved a student from St. Louis University who was studying at a university in Spain. The student claimed the need for a Macintosh computer to accommodate a disability; St. Louis University initially attempted to meet the requested need by providing the student with an IBM computer to assist with spelling and punctuation ("Federal Disability Laws," 2012; Kanter, 2003). In this case, the OCR regional office did not address the issue of extraterritoriality, but instead identified that St. Louis University did have an obligation to provide a computer to mitigate the documented disability. However, the OCR found that the university had met its burden under Section 504 by providing the IBM computer, as well as failing to request the specific brand of computer early enough to give the university adequate time to meet the accommodation. Furthermore, when the university was made aware of this preference, they replaced the IBM computer with a Macintosh, six weeks after classes began (Kanter, 2003).

A 2002 case brought before a third OCR regional office involved a hearing-impaired student at St. Scholastica College in Minnesota. The student received sign language interpretation services at St. Scholastica and requested similar services during a student abroad program in Ireland. In its decision, the OCR found that St. Scholastica College failed to properly address the requested accommodations, failed to investigate the cost of such accommodations, and lacked the legally required internal grievance

procedures (“Federal Disability Laws,” 2012; Kanter, 2003). In its decision, the OCR did not address the presumption against extraterritoriality, but did make it clear that Section 504 and the ADA apply to study abroad programs in the same manner as they apply to domestic educational programs.

In 2005, a regional OCR office was presented with the case of a nursing student at Husson College who applied to a study abroad program in Honduras. The student identified a disability that caused her severe headaches and periods where she was unable to function physically or cognitively (“Federal Disability Laws,” 2012). College administrators discussed potential safety concerns with the student, after which she withdrew her application to the overseas program. She later filed a complaint with the OCR, claiming Husson College denied her the opportunity to participate. This OCR ruling also did not address the extraterritoriality issue, but did find that the student was not denied the opportunity to participate but instead withdrew her application, and that it was reasonable for the College to discuss potential safety concerns with the student.

Finally, the Federal District Court for the Northern District of California heard the case of *Tecza v. University of San Francisco* (2010). In this case, Jason Tecza, a law student at the university, filed suit claiming that the institution had violated his rights under the ADA during study abroad experiences in Dublin and Prague. Specifically, Tecza argued that faculty had disclosed his accommodations to other students, and that during special testing accommodations, a maintenance employee disrupted him. The court rejected the claim, not on the basis of extraterritoriality, but instead because when viewed in the aggregate, the university did attempt to accommodate the student, and the disruption was a limited exception. In the ruling, the court cited *Bird v. Lewis and Clark College* (2000/2002), reinforcing the decision that Section 504 and the ADA apply to study abroad programs.

### **Implications for the Profession**

In conclusion, there is little doubt that Section 504 of the Rehabilitation Act and the ADA apply to students who are studying in the United States, despite the challenges international students may face when exercising their legal rights. However, for U.S. students studying overseas, the waters are much murkier. Conflicting rulings from both the courts and the OCR have created confusion, among both students and campus administrators. As Kanter (2005) points out:

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.” (p. 47)

However, not all cases are as obvious as the one described here. Some study abroad programs are run under contract with a U.S. institution; others are not. Conflicting rulings on the application of Section 504 and the ADA overseas make it difficult to clearly advise students. Furthermore, when students believe their rights under Section

504 or the ADA have been violated, their remedies may involve time-consuming legal challenges that will likely not be resolved during their time abroad, limiting the potentially positive experiences of study abroad programs (Leuchovius, 2004). A compilation of legal precedent, unfortunately, does little to help the professional counselor who works with study abroad students; in fact, conflicting rulings from district courts, appellate courts, and the OCR make it difficult to discern exactly where students' rights begin and end.

In short, it is in students' best interests to work closely with administrators at their U.S. colleges or universities prior to traveling abroad in an effort to eliminate any potential concerns and receive requested accommodations. As professional counselors, we have a responsibility to advocate for our clients, both individually and systemically. When our clients are international students studying in the U.S., we have a responsibility to know how the law protects our clients' civil rights. When working with U.S. students planning to study abroad, we have an equal responsibility to advocate, both by navigating the challenging legal obstacles as well as empowering our clients to do the same. Regardless, it is our professional responsibility to become aware of the rights and challenges facing students with disabilities.

### **Conclusions**

In summary, though much is being done to take disability advocacy to a global level, our cultural differences and varying legal systems make international study and disability accommodation a somewhat confusing process for students, their families and the higher education professionals who want to meet their needs appropriately.

We were pleased to discover that any student studying in the U.S. (regardless of nationality) is protected by the ADA, Section 504 of the Rehabilitation Act of 1973, and the Civil Rights Act of 1991, but we continue to have concerns about whether or not international students understand these rights and protections. We were also encouraged by the fact that legislation requires higher education institutions to make reasonable accommodations for individuals with documented disabilities, as well as provides legal remedies for students who have experienced discrimination under these laws. And though we found that international students studying in the U.S. on student visas are protected by these laws; we were concerned to realize that U.S. citizens traveling abroad may or may not be, depending on the nature of the academic program. It seems that consistency in higher education accommodation internationally would facilitate greater opportunities for students with disabilities who would like to study in other countries, but may be fearful of losing their accommodations if they leave the U.S. Furthermore, laws and regulations are only helpful if the people impacted by them understand them; thus, we must do a better job of bridging the gaps created by different languages, cultures, and expectations.

Many countries have instituted laws and programs to help students with disabilities by accommodating for physical access, curricular modifications and other supports such as understanding disabilities. These international findings are encouraging and can be used to inform our collective knowledge base. We did however notice the heavy U.S. and European concentrations in the literature and hope to see a more internationally inclusive literature base being built in the coming years. We believe that

we have much to learn about the culture of disability, but our euro/U.S.-centric literature, limits our ability to expand our horizons. We need to better understand our students from Latin American, African, Middle Eastern, and Asian countries, where disability-related accommodations are commonly arranged through informal social networks, personal discussions with professors/staff, or host family members.

Though we are beginning to have conversations about disability from a global perspective, these conversations seem to be generating more questions than answers. We are clearly at a point where more research is needed to blend our knowledge bases of cultural difference, disability awareness, the legalities of accommodation and global higher education service provision. We need to develop best practices for educating and accommodating cultural minority and international students. We encourage other professionals from varying disciplines and viewpoints to pick up this conversation and explore these issues in greater depth from a multitude of perspectives, thus creating greater opportunities for collaboration and development of best practices that work for many cultures and situations.

It is our hope that one day, we will feel more comfortable and competent in conversations that are not stereotypical and where responses to our questions cause us to stretch our boundaries and grow along with our students and their families as we strive to understand the edges where our worlds overlap. To that end, we leave you with Fadiman's (1997) insightful summary of the dialogues between medical professionals and parents that made up the case of Lia Lee:

1. What do you call the problem?

*Qaug dab peg. That means the spirit catches you and you fall down.*

2. What do you think has caused the problem?

*Soul loss.*

3. Why do you think it started when it did?

*Lia's sister Yer slammed the door and Lia's soul was frightened out of her body.*

4. What do you think the sickness does? How does it work?

*It makes Lia shake and fall down. It works because a spirit called a dab is catching her.*

5. How severe is the sickness? Will it have a short or long course?

*Why are you asking those questions? If you are a good doctor, you should know the answers yourself.*

6. What kind of treatment do you think the patient should receive? What are the most important results you hope she receives from this treatment?

*You should give Lia medicine to take for a week but no longer. After she is well, she should stop taking the medicine. You should not treat her by taking her blood or the fluid from her backbone. Lia should also be treated at home with our Hmong medicines and by sacrificing pigs and chickens. We hope Lia will be healthy, but we are not sure we want her to stop shaking forever because it makes her noble in our culture, and when she grows up she might be a shaman.*

7. What are the chief problems the sickness has caused?

*It has made us sad to see Lia hurt, and it has made us angry at Yer.*

8. What do you fear most about the sickness?

*That Lia's soul will never return.* (pp. 260-261)

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*Note: This paper is part of the annual VISTAS project sponsored by the American Counseling Association. Find more information on the project at: [http://counselingoutfitters.com/vistas/VISTAS\\_Home.htm](http://counselingoutfitters.com/vistas/VISTAS_Home.htm)*