Listserv Summary: Rogue Faculty

January 2019

An SIO from a private southeastern university posed a question to the listserv asking for advice on how to handle a faculty member who advises an ineligible student to participate in a study abroad program as a “non-student,” ignoring administrative guidelines and requests in the process.

Summary of responses:

#1: I have dealt with these folks on and off throughout my career as an SIO. Although most faculty are great to work with, a small number are real pains, and can seriously affect international programs and policies.

Talking to them often doesn't help, because they think they're smarter and more important than you. What I have found extremely effective is to bring other people into the conversation. At the universities I worked at, one of the scariest things for the administration is a lawsuit in which the university is blamed for something that has happened overseas to a student. And they are right to be scared, since settlements often run into the millions. So the "other people" I've involved have often been university lawyers and public relations heads.

Faculty are generally indemnified, meaning that if they mess up, they generally won't be prosecuted as individuals. Their university will be, however. A student who goes on a study abroad program without official permission is a walking risk, and should anything happen, the first thing a prosecuting lawyer will ask (possibly of the faculty member him/herself, on the stand) will be "why did you think it was a good idea to advise this student to go abroad without official clearance?" All of the faculty umbrage and bluster in the world will not change a court judgment.

You should not, by yourself, have to make this argument to a balky faculty member. Let the university lawyer do it. The faculty member is used to being an independent agent, but they cannot -- and should not -- make decisions which imperil the wider community. If something goes wrong, it will be (a) the PR person who will have to explain to the press what happened; and (b) the university lawyer who will have to defend the institution in court. Neither of them will want to do this, and so they are your allies. You may also have a risk management person, who is also your ally.
This need not be a tense discussion. I’ve found it useful to bring together the faculty member, the student, the lawyer, the PR director and someone from the upper administration, and to have a civilized discussion about the whole thing. It generally works, especially if no-one has to lose face. Lawyers can be picky sometimes, but they are good at explaining risk and liability to people. Once you’ve had that discussion, you might all want to draft a policy memo on the subject for your provost to sign, just to avoid any future repetition.

Hope this helps. I can provide more detail on specific cases if you need it.

#2: Sounds thorny! Rogue faculty indeed, we see that all the time. If such a thing happened here we’d have some ways to counter the moves. Not knowing what made the student ineligible in the first place, I’d say that ‘non-students’ are not covered by medical or liability insurance abroad. You probably have a rider in your insurance policy stipulating that coverage is for students only (and faculty). Few things get the attention of folks quicker and more decisively than no insurance coverage abroad.

Good luck with this!

#3: Is there anything I can do to be of help?

#4: What about insurance coverage? Will your provider be able to provide same support to non-student?!

And what is institute policy on credit if not enrolled? Sounds like a slippery precedent to start.

Can your office step in with provost support and explain why not eligible?

#5: I have dealt with this on numerous occasions. In my experience, the best path is to keep the university waaaaayyyyyyyy out of it. [Your institution] is not a prison. If a student wants to leave the university for a semester (or winter term) or whatever, so be it. I would even send a letter on letterhead and attached to an email (for the purposes of date and time stamping) detailing for the student that the university has no connection to whatever this rogue opportunity is and does not sanction it in anyway.

What happens to a student who does not enroll in classes at [the university] during a term? How do they get back in if they want to come back? Reapply for admission? That is what this student will have to do. No financial aid, obviously. No credits at [the university] unless you have some
non-study abroad mechanism to deal with transfer credits from foreign universities. For example, maybe she could pay the $175 or so for a WES evaluation of her foreign transcript and maybe the registrar’s office would accept the credits as free electives after the fact.

Students will travel the world and have great adventures. The University is not obligated to support with credit or university sanctioned support any international activity in which a student chooses to engage.

That would be my thought. I hope it is helpful.

#6: This is a tough one. Just quickly, is there a financial solution, e.g. either the faculty member or the ineligible student pays to join the group at the full cost (not subsidized student cost?). The real cost might help wake up the professor or the student. Or in a similar vein, is the professor and/or student willing to assume all risk and pay for a separate insurance policy (two separate signature/deliberations)?

Those two assume you have already tried to persuade the professor on fairness to the students that fulfilled the requirement or broader academic integrity grounds as a professor? Or the possibility that this student’s presence actually diminishes the other students’ learning gains and creates a serious source of disgruntlement for them and their parents. Their parents will resent a “free rider.”

Very tough situation. Best of luck with it.

#7: If you haven’t consulted already, your Campus Counsel and/or Risk Management offices might be key in this situation.

You didn’t specify the type of programs (faculty-led, campus exchange, etc.) however, we at UC Davis encountered two similar situations with our faculty-led programs this year – one was a student who failed a prerequisite course for a program and the faculty encouraged the student to audit as a non-participant; the second was a student who demanded to participate without credit (i.e. to reduce program fees).

We’ve learned from past cases, so our student contracts already reference campus policies related to auditing, non-student status, and liability. Campus Counsel and Risk Management stand firmly behind our interpretation of the policies: a non-student would be exempt from campus insurances, evacuation and repatriation services, and not entitled to campus services while abroad – all of which dramatically elevates the risk exposure to campus and the student her/himself. A case can also be made that students can reasonably expect only registered students to share living spaces and instructional environments with them.
This course of action, unfortunately, puts the student in the middle. If Counsel and Risk are on your side, I recommend approaching the faculty first and state that her/his guidance to the student jeopardizes both the institution as well as student safety, and that your unit is prevented from acting on that recommendation. And, of course, third-party, non-institutional programs are always an option if the faculty or student are adamant that they must go abroad – efforts on the part of the faculty to pursue exceptions could might be more appropriate for them in the academic credit realm (where they would presumably have sway over education policy) rather than institutional liability.

#8: I don’t know that there’s a completely successful outcome here, but I’m happy to talk it through with you if you wish. I’m largely available this afternoon and my direct number is …

#9: God be with you – is about all I can say. I have been through this so many times I could (and maybe should) write a book about it. Mostly it was in previous institutions, but there are little specialized examples of it here, too.

If there are no policy mechanisms to prevent it, then I think the steps to take are two major things:

1. Mitigate as much as possible by making it clear to the student that, in spite of Professor X's endorsement, the program is not a [university] program and is not supported. Clarify that no credit will be awarded, that no insurance cover is provided, etc. Maybe ask her to sign a document (or reply by email, at least) that she understands all of that.

2. Build the process for the next time this happens. Is there a way to ask the institution, from the top (e.g., Provost) or the faculty-governance structure (Faculty Senate, etc.) to set a policy that precludes faculty members from endorsing participation in non-sponsored programs? If not, then what are the mechanisms to discourage the students and more officially do what is described in 1.

I hope this helps.

#10: We could discuss numerous ways to address this but let me get to one that will allow you legal cover . . . please talk to your counsel at [your institution]. Title IX and the Cleary Act require that the university is “in loco parentis” for all students. The advice of my counsel is that even though the student won’t be receiving credit, he/she will reasonably expect the institution to
help her if she falls ill or is otherwise endangered while on a sanctioned trip. So, their travel must be approved.

The way to address “powerful” faculty is to get a legal reading of the situation. I could discuss multiple other ways to address this form of faculty behavior but not knowing your institutional culture, I’d start with the university lawyer!

#11: Hope this finds all well, other than your having to deal with this particular problem.

I would think the thing to do is to go directly asap to your direct supervisor, who I assume is your Provost, and ask that either your or the Provost or both confer directly and immediately with college counsel. Everyone is exposed in this situation: you, the Provost, the President, the governing board, the faculty member, the department chair, the relevant dean, your study abroad director, and on and on. If this student goes abroad, and something unfortunate happens, the institution has a liability, and likely would not be defended by your insurer, since the student is ineligible and his or her participation would be a violation of policy. The institution the student will be visiting abroad would likely also have a claim against your institution. And if the student does go abroad, despite being ineligible, the institution is in a no-win situation, even if nothing unfortunate happens: if your University grants credit, you are violating your own policies; if you don't, the student can sue you, because he was advised to go abroad anyway. The liabilities far outweigh the politics of the situation.

I'm not an attorney, but there are times when attorneys have to become involved, and this surely looks like one of them. I would think the institution's lawyer would write immediately via certified mail to the student, the faculty member (copying you, the department chair, the appropriate dean, and the provost), explaining that he or she shouldn't go abroad, and why, and also the consequences if he or she does. The faculty member needs to understand that he is violating institutional policy, and he should be advised of the consequences, especially if he does not reverse course and instruct the student that he was in error and that the student should not go abroad. If the faculty member does not recant, then there must be an institutional policy specifying penalties (I don't know what they might be at your institution, but no salary increase, loss of tenure, dismissal for cause, etc. could be possibilities.) The student would need to be advised that the institution is correcting the faculty member's erroneous advice, and advising him now not to go. The institution cannot award credit for study abroad to an ineligible student, and is further exposed if the student sues to receive credit. The lawyer would know whether or not to tell the student that since he is not eligible or authorized to go abroad, the institution and its insurer can accept no responsibility if he or she has difficulty of some kind abroad. I could go on, but the point is that this has become not just an unseemly political situation, but a legally fraught one, and the institution and all its employees and its governing board need to do the right
thing asap to protect themselves. You will likely need to supply the attorney will all the relevant policies, faculty manual provisions, etc.

Happy to discuss if you like. Since the semester is ending, there likely isn't time to go through channels, i.e., approach the department chair or dean, etc. Probably only officer-level positions are authorized to contact college counsel, so I'd go to the provost immediately, and I'd document that you did so. I'd bring your study abroad director with you, and them write a follow-up note to the Provost summarizing the substance of the conversation. If the student has an assigned advisor, other than this particular faculty member, I would involve that advisor as well. Hope this is helpful.

#12: Wow! What a dilemma. I work at [a large community college in California], where the faculty have utmost power, as well as the support of a strong collective bargaining unit (union). I have dealt with similar issues in regards to faculty going rogue with teaching, non-compliance, etc.

At this point I would:

1) Inform the faculty that if the student goes to the trip without approval, the institution would be held liable for he/she in the event of accident, injury, assault, death. Being a university, you probably have your rules and regulations that the institution adheres to in regards to liability. Reference those, as well as your legal counsel or Title IX person.

2) I am not sure if the President has a good relationship with said faculty but if not, you might have to go to him/her. State your concerns and tell him/her that you would not want to put the College at risk of hosting F-1 or other international students, or also of having students being limited to travel abroad because of a negative incident. In addition, you would not want to risk hosting/sending international students with bad press.

3) Ultimately, CEO's don't want the bad press, and they don't want one of their students losing their life or being injured on their watch.

I know that you may not want to jeopardize your relationship with the faculty but ultimately we have to make decisions that are career defining. It seems that the faculty is placing the institution at liability. Do the right thing. In the end, you will be valued for it, regardless of where you are.

I am happy to discuss this further via telephone if you would like. I hope this helps coming from a community college perspective.
#13: My sympathies! Is the student being encouraged to participate in a program run by [university] faculty and staff? Is the student’s ineligibility a function of their academic status? Or something else? Will the student be paying same price as eligible students?

#14: Oh my goodness……If I had a dollar for every time this happened. 

Sadly, I have been unable to develop policies that strictly limit faculty behavior like this as my current and previous institutions were unionized and the faculty senate had to approve any new policies. Of course that meant nothing would change!

One group on campus that has helped me has been legal counsel. Twice they have denied this “non-student” stuff based upon legal considerations and risk management. In one case the student HAD to enroll and pay tuition and therefore be under our insurance policies. The second simply could not go but it was other people making that firm decision. Not me.

In your case, this seems pretty cut and dry that the person is not eligible so it would not matter who the faculty member is and what they want. But politics is a nasty thing on a campus. Good luck with that. I have my own personal cross to bear here in the form of an entitled chair.

I have always put my concerns in writing relative to students/programs where I found some sketchy things going on. In one case, this did keep me from facing fallout when a student broke an arm on an unscheduled side trip the faculty member threw together. CYA just in case.

Oh the fun we have!

#15: I would go to the high levels of leadership and request their support and not allowed the student to participate. This is not acceptable.

#16: HI -- I had some experience dealing with rogue faculty. Here are some ideas:

1. Explain the problem to the Dept. Chair/Dean to whom the faculty member reports and ask them to intervene in support of your office.

2. Prepare a waiver of responsibility addressing the problem, have it approved by legal counsel, and have it signed by the appropriate parties.

3. Call in the student and have them sign a statement that acknowledges s/he is not a member of the university study abroad program and has no rights as a "non-student" to bring any claims or receive any academic credit.

One or all of these should serve to protect your office and rein in the rogue.....

Good luck