

The Forum on Education Abroad
Ethics Meeting Minutes
Carlisle, PA
September 23-25, 2007

In attendance: Bill Anthony (Northwestern University), Neva Barker (Pitzer College), Amy Bartnick-Blume (Institute for Study Abroad, Butler University), Shelia Bayne (Tufts University), Adrian Beaulieu (Providence College), , Laurie Black (School for International Training), Jerry Bookin-Weiner (The Scholar Ship), Jon Booth (Syracuse University Abroad), Joseph Brockington (Kalamazoo College), Bill Clabby (International Studies Abroad), Mary Cooper (Hampden-Sydney College), Andrea Custodi (South India Term Abroad), Stephen DePaul (University of Texas System), Molly Donovan (Council on International Educational Exchange), Steven Ferst (Rutgers University), Kay Glass (The Forum on Education Abroad), Dennis Gordon (Santa Clara University), Adam Grotzky (Towson University), Martha Johnson (University of Minnesota, Twin Cities), Kim Kreutzer (University of Colorado at Boulder), David Larsen (Arcadia University, Center for Education Abroad), Kathleen McDermott (Columbia University), Gwen Moore (The Forum on Education Abroad), Michael Morrison (Baylor University), Laurie Mossler (Dickinson College), Anne Newman (Pepper Hamilton LLP), Teresa O'Donnell (Commission on English Language Program Accreditation), Jeanette Owen (American Councils for International Education) Barbara Rowe (Yale University,) Thomas Schmidt (Pepper Hamilton LLP), Maureen Shelburn (Cultural Experiences Abroad), Michael Steinberg (Institute for International Education of Students), Anders Uhrskov (Danish Institute for Study Abroad, Scott Van Der Meid (Brandeis University), Paul Watson (American Institute for Foreign Study), John Wells (Wells College), Annmarie Marlin Whalen (The Forum on Education Abroad), Brian Whalen (The Forum on Education Abroad), Valerie Woolston (University of Maryland), Annagene Yucas (University of Pittsburgh)

Monday, September 24

At 8:30 am, Brian Whalen, President and CEO of Forum on Education Abroad, called meeting to order and made introductory remarks, thanking the participants for taking time from their busy schedules to attend this historic meeting and contribute to the Forum's important work. Whalen thanked Sheila Bayne, Chair of the Forum Council, and Michael Steinberg, Chair of the Forum's Standards Committee, for their help in planning and convening the meeting, and the Forum staff, Gwen Moore, Annmarie Whalen, and Kay Glass for organizing the meeting so quickly and effectively.

Michael Steinberg, Chair of the Standards Committee spoke about the meeting in the context of the Committee's work. The Standards Committee had decided that a code of ethics should be dealt with in depth and should be the main agenda item for the year. Given recent interest in study abroad practices, it seemed appropriate to accelerate development of the code. The object of the meeting is to look at all aspects of study abroad, not only marketing practices, though they are a primary focus of the current scrutiny. Since the Forum membership is institutional, the Forum code of ethics will deal with institutional practices rather than individual practices, although there is obvious overlap. The Standards Committee and this Ethics Working Group will assemble the results of this meeting to begin to draft the code of ethics, and the Standards Committee and this group will meet in Toronto in November to finalize a draft to be presented to the membership at large.

Whalen noted that resources for continued discussion of the code of ethics include the Ethics Working Group resource website, the Forum website, and the Program Management survey developed and conducted by Kim Kreutzer, Chair of the Forum's Data Committee and Forum Council member. Whalen asked those assembled to thank Kim Kreutzer for her leadership in conducting the survey, which provides important information about study abroad practices. Those assembled thanked Kreutzer with a round of applause. Kreutzer noted that there were 96 respondents (a 36% response rate) to the survey, and there is a plan to open the survey again. Whalen said the survey results will be summarized in a press release to

go out in the near future. Whalen then reviewed the meeting agenda and introduced Tom Schmidt, Forum legal counsel.

Mr. Schmidt began with a disclaimer that his comments were meant as general information and should not be construed as legal advice. He presented an overview of antitrust issues. The main antitrust law is established by the Sherman Antitrust Act. Section 1 of the Act established that an agreement between parties that restrains trade is illegal. Prosecution of antitrust violations is pursued as either a “per se violation” or a violation of the “Rule of Reason.” Per se violations include price-fixing and other outright violations. Violations of the Rule of Reason include acts that are not overt violations but have negative economic consequences.

The following parties can initiate antitrust cases:

1. Department of Justice – The Attorney General can subpoena information without filing charges.
2. Federal Trade Commission
3. States’ Attorney General Offices
4. Private Plaintiffs – often in the form of a class-action suit; plaintiffs can be awarded damages.

Administrative subpoenas can be issued by public agencies before a suit is filed. The subpoena issued by a state agency may or may not be effective across state lines, depending upon the circumstances. When a suit is filed by a private party, there are additional rules of discovery. In these cases, electronic files are a significant issue. It is important to note that once a subpoena is issued, information cannot be purged or destroyed.

Antitrust law applies to realms outside of conventional business and industry. In what is known as the “Brown litigation” Ivy League schools were investigated for sharing student information during the admissions process, including tuition and financial aid details. In this case tuition was considered a list price and financial aid seen as a discount; competing universities sharing such information was viewed as a form of price-fixing. The Federal 3rd Circuit Court ruled that violations had to be measured by the Rule of Reason and from this litigation there evolved what became known as the “MIT Standard.” Eventually Congress in Section 568 of the Sherman Act allowed some element of the practice that had given rise to the litigation.

Most higher education institutions have:

1. Set of antitrust guidelines (ie. Yale University’s Antitrust Compliance policy, http://www.yale.edu/provost/Yale_Antitrust_Compliance.pdf)
2. Policies about handling information (ie. Brown University’s Confidentiality and Safeguarding Information Policy, <http://www.brown.edu/Facilities/CIS/policy/casi.html>)

Non-public information such as individual students’ tuition and scholarships, as well as staff salaries is sensitive/confidential. Sharing this information and making agreements based on this information can be a violation of the Sherman Act. For example, the NCAA was found in violation for “fixing salaries” of assistant coaches.

As a point of case law, the exchange of non-public information such as salaries can be a violation, even if it is not for the purpose of making agreements. Rules do allow some room for setting and publishing standards, such as the Forum seeks to do.

Discussion followed.

The meeting then moved to small group discussions. Participants divided up into breakout working groups to discuss and propose approaches to the following topics: protection of individual rights and privacy, observance of law and good practice, fair competition, disclosure of rules and procedures, obligations to host societies, responsibilities to employees.

The meeting adjourned for lunch at noon.

At 1:00 pm, Whalen introduced Adis Vila, Assistant Professor, Department of International Business & Management, Dickinson College, who spoke on issues to consider in drafting a code of ethics. Professor Vila outlined a theoretical approach to ethics. In ethics development there are two approaches:

1. Aspirational
2. Prescriptive

A code of ethics is generally aspirational; it is goal-related and instructs individuals to aspire to particular behaviors. Research has shown that people behave more ethically when a code of ethics exists for them to follow. A code may be in the form of ethic cues or litmus tests (ie. The Rotary International Four-Way questions test).

A responsible/ethical organization is expected to have an established credo expounded in prescriptive rules and best practices. Substantial, relevant, and regular training is also expected, as well as a method for reporting violations and protection for whistleblowers. To measure success, both formal and informal processes should be audited.

Question from member: How could a Forum Code be enforced?

Vila: Membership could be withheld or otherwise negatively affected.

Brian Whalen noted that the Forum intends for the Code to be an honor code to which institutions voluntarily adhere in the same way that when institutions join the Forum they pledge to adhere to the Standards of Good Practice. A further commitment to the Standards, and also to the code when it is adopted by the Forum, comes through voluntary participation in the Forum's Quality Improvement Program (QUIP). In this voluntary program, a self-study and peer review process brings to light how well the organization is meeting the Standards of Good Practice, and this would also be true of the Code of Ethics.

Ms. Vila emphasized that the purpose of a code of ethics is to inspire people to behave ethically. Also, since current scrutiny has identified specific areas as questionable, it could be useful to have a more prescriptive code.

Whalen then introduced Steven DePaul, University of Texas System

Mr. DePaul, an attorney, discussed the issue of university relationships with providers and lessons learned from the financial aid scandal. Study abroad practices currently under scrutiny are similar to those practices questioned in the field of financial aid. Thus it is useful to look to the new guidelines for financial aid as a model for study abroad.

UT has signed an agreement with the Texas Attorney General as assurance of ethical financial aid practices, including the following:

1. Acceptance or solicitation of gifts by the institution from vendors is prohibited, except for philanthropic purposes.
2. Revenue sharing between the institution and the vendor is prohibited.
3. Acceptance of remuneration for participation on boards is prohibited.
4. Preferred vendor lists must be reviewed regularly and must be set by criteria that is transparent and in the students' interests.
5. Staff must be trained annually regarding ethical behavior.

Several members asked questions:

Question: Which institutions signed this agreement?

DePaul: About 12 public institutions have signed agreements with the Texas Attorney General to avoid further investigation.

Question: How does the issue of revenue sharing affect agreements for rental space for vendors?

DePaul: Space rental is regulated and is contracted within the law. On the other hand, relationships with study abroad providers are not regulated, which makes the issue one of ethics, not legality.

Question: Should staff participate on boards?

DePaul: Ethical concerns could be mitigated by an approval process to prove no conflict of interest. Absence of a vendor relationship would remove the question altogether. The main issues with board participation are whether the participation negatively affects services and whether participation can be perceived as a personal benefit in exchange for an agreement to use the vendor.

Institutional leadership may find it in their best interest to be more restrictive and will take ethical concerns over real benefits of some practices to ensure a positive perception.

Whalen introduced Joseph Brockington, Kalamazoo College, who summarized the current work of the NAFSA Task Force on Institutional Management of Study Abroad of which he is a member. The focus of the task force is on institutional management of study abroad with the purpose of producing core principles, practices and behaviors for senior campus administrators by using a modified Delphi survey method. The task force hopes to have results by the end of the year. The four core principles, as well as other information about the task force can be found on the NAFSA website

(http://www.nafsa.org/publication.sec/nafsa.news/nafsa.news_vol.12_no.33/task_force_on_institutional).

The task force does not address provider issues. It is driven by the idea that study abroad offices need more support from senior administrators.

A member asked Mr. Brockington: Is it right for our field to allow more restrictions?

Brockington: It may be necessary and can be helpful by getting out in front of the issue.

A short discussion ensued between members about the importance of having guidelines and a code, as well as increasing cooperation and professionalism. Also, a range of options should be written in the code to allow for the diversity of institutions.

The meeting then moved to small group discussions. Participants divided up into the breakout working groups to discuss and propose approaches to the following topics: Transparency, Focus on Students, Incentives, Conflicts of Interest, Appropriate use of Financial Aid, Approving Programs.

Tuesday, September 25

President Brian Whalen opened the meeting. He thanked colleagues for their work the previous day, and reviewed how the day's meeting would proceed: each of the previous day's topic breakout groups would report on their discussions, and present proposed language for the code of ethics for each topic. He noted that this discussion was not for precise crafting of the language of the Code of Ethics, but to bring forth topics and issues for broader discussion that had been discussed in the topic breakout sessions.

Each breakout group then reported, in order of the list of proposed topics for the code of ethics; each topic was opened to the entire assembled group for substantive discussion. The following notes summarize the main points of the topic breakout groups' reporting and full-group discussion as they relate to the development of a code of ethics.

Topic 1: Transparency

Transparency runs through every proposed topic. The overriding concept is that education abroad practices should be open and clear and that decision-making processes should be disclosed and reviewed periodically. Information should be easily accessible and communicated clearly. The group felt that some policies and procedures relating to program recommendations, as well as certain program characteristics, should be listed in the code of ethics because of their particular importance. It was noted that transparency does not involve disclosing every detail of office operations such as salaries, budgets or privileged trade information.

The need for confidentiality in the decision-making processes involving information about individuals was noted. It is good to be sensitive to the issue while being consistent and keeping documentation.

Topic 2: Focus on Students

The topic group saw this issue as one of advising and how to help the student make an informed decision about choosing a study abroad program. A suggestion was made that this understanding of the section of the code focused on approved lists instead of student needs and is not fully relevant to many public universities. Members offered that this section overall covers the obligation to prepare students and that student needs are dealt with throughout the document.

Topic 3: Incentives

The topic group was of the opinion that the term “incentives” has negative connotations in relation to specific practices such as evaluative site visits. Study abroad offices do need resources to provide essential services to students, and as a resource site visits are important for program assessment and to provide background for student advising. However, site visits, volume discounts, and other financial support by programs should not be tied to minimum participation rates or exclusive arrangements. All site travel must be for program development or assessment, and study abroad professionals should not use their position for any personal advantage. The group discussed creating an alternative system for study abroad professionals to organize site visits, such as through a neutral body.

It was also noted that there is an overlap between the interests of students and providers.

There was further discussion on the relationship between incentives and minimum participation numbers. The practice of tying the two together creates a perception that advisors are changing their advice to students inappropriately. Site visits should be conducted in order to increase student numbers rather than the other way around. Again, transparency and honesty are the ethical components for this topic.

Topic 4: Conflicts of Interest

Discussion included participation on advisory boards, participation on governing boards, and acceptance of gifts and hospitality. Providers with advisory boards should be transparent about the purpose and criteria for membership on the board and should rotate membership. College officials should disclose any relationships with providers and should involve a third party when making decisions regarding a provider with which a relationship exists. The group did not want the code to focus on restrictions, but instead recommended thoughtful scrutiny of relationships with vendors in order to eliminate or manage conflicts of interest. The final language of the code should cover foreign institutions as well.

Question: Where does one draw the line between a relationship and a conflict of interest?

A member suggested that the key is in disclosing the relationships. This could be made clearer in the code.

A member said that there are always conflicts of interest in business and suggested language be added to encourage participation on boards and increase personal involvement because study abroad cannot grow without building relationships. This led a member to suggest that a preamble to the code could express the

value of some practices that are viewed externally as questionable. Different opinions were expressed about the appropriateness of relationships between institutions and providers and the extent to which restricting relationships will negatively affect the ability for the U.S. to send the number of students abroad envisioned by the Simon Act.

A question was asked of the group: Did the topic group discuss the difference between participation on a board as an individual and as an institutional representative? The topic group did not discuss the issue specifically but it follows that all participation and criteria should be disclosed.

A member cautioned about drawing analogies between study abroad and other business/industry because it leads people to think of students as commodities.

A member suggested looking to other codes of ethics within higher education for guidance. Since participation on boards is a common practice in higher education, it may be covered elsewhere and therefore may not be an issue for this code to address.

A member noted that there is a difference between advisory boards and governing boards. There was a suggestion to propose language that participation on governing boards “raises different ethical issues” than participation on advisory boards.

Topic 5: Appropriate Use of Financial Aid

Most financial aid issues are regulated by federal code. For the purposes of the Forum’s code of ethics, the topic group considered student financial aid as aid specifically tied to an individual student.. The main points focus on transparency, proactive assistance, staff training, and application of aid directly to the student’s charges. Federal and state financial aid should transfer to programs sanctioned by the organization, but organizations should set their own policies in regards to institutional financial aid.

Since the transfer of federal and state financial aid to study abroad varies, even within institutions, it is important to disclose policies and give proactive advice.

A member suggested that the code be very specific that some grants do not fall under the purview of financial aid and should not negatively affect important grants, such as for airfare.

Since guidelines for financial aid already exist in Title IV, there was a question of whether this section is necessary in the code. It was offered that these policies in particular may be scrutinized and therefore should be included.

The implementation of these policies was raised as an issue. Some institutions do not fully follow policies due to factors that are not controlled by study abroad offices, such as inadequate staffing of the financial aid office.

The point was re-emphasized that the code should not be too prescriptive but should focus on the need for institutions and education abroad organizations to disclose information.

Topic 6: Program Development

The topic group started from the premise that academic quality, and student safety and security, are the core requirements for any program approval. Criteria and processes should be clear and transparent and should incorporate views from all campus constituents. Institutions should be prepared, through implementation of clearly defined processes, to explain the approval or rejection/discontinuation of a program. The topic group included guidelines for site visits in this section, but this may be moved to another section.

A member suggested that the language be amended to include cultural quality and curriculum integration as important criteria for approving programs. Also, program cost and credit transfer could be mentioned.

A member suggested that marketing be included in this section.

Relevance to all institutions was discussed, as most schools do not have an approved program list. A suggestion was made to change the topic heading to “Program Development” to be more inclusive.

Topic 7: Truthfulness

Truthfulness should be pervasive in all matters and relationships to the extent allowed by law (within FERPA/HIPAA regulations). While it is impossible to know all risks, it is important for study abroad advisors to be as knowledgeable as possible. Students and their parents also have a responsibility to disclose information that could affect the student’s participation in study abroad.

Topic 8: Protection of Rights and Privacy

The topic group discussed the balance of the needs and rights of the student, federal law and institutional policies, and the realities of the local culture, with transparency and informed consent as guiding principles. In-country providers should comply with U.S. laws and students should follow institutional policy. Records, including electronic ones, should be regulated by policy. Organizations should require students to sign a statement of student rights and responsibilities. The group noted one exception to a student’s right to privacy is if a student is a threat to him/herself or others.

Question: Does the group intend for U.S. law to trump in-country laws?

A member stated that U.S. law does not trump all laws, but host institutions and program providers should be expected to respect U.S. laws since they are admitting U.S. students. A member pointed out that the host university cannot control some aspects of foreign systems, such as grade posting. The issue was raised that this section deals with personal information about students, not academic issues such as grade posting.

A suggestion was made to change the use of “must” in these guidelines to “should” and “to the extent possible.” It was offered that the guidelines should not make value statements.

A member offered a point for the preamble – institutions should notify students of exceptions and explain why some exceptions are necessary.

A member suggested the language state that providers “should take into account” U.S. policies and notify students of differences in the program country.

Topic 9: Observance of Law and Good Practice

The topic group presented language proposing that all individuals and organizations involved in study abroad will comply with local, state, national and international laws, and legal counsel should be consulted to ensure the legality of agreements. Programs should not inappropriately discriminate against individuals. Values of the home institution should be considered, and students should be informed if there is dissonance between those values and the program. The guidelines outlined in this section may be more appropriate for the Standards of Good Practice than for the code.

It was suggested that topics 8 and 9 could be combined.

A member noted that agreements should adhere to U.S. and in-country laws and that students should adhere to in-country laws.

A member suggested a change in language to include “gender” in the list of reasons a student may not be discriminated against.

Topic 10: Fair Competition

The topic group emphasized that program staff should focus on highlighting their own program without denigrating other programs. Electronic media is bringing new issues to ethical behavior; intellectual property should be respected and cyber-ethics should be followed. The group stresses caution when hosting student blogs because of the issue of controlling content. Also, there are “co-branding” issues in ensuring fair competition. The group discussed using verbiage from NAFSA documents as related to marketing. Guidelines produced by the group include addressing the issues of incentives and exclusivity.

A member questioned whether marketing should be included in the code.

Exclusivity was discussed at length. It was suggested that there should be a process to measure non-approved programs. A member expressed difficulty for small offices to spend time assessing all programs. There was disagreement on whether or not a process should be prescribed. It was offered that an “aspirational code” would allow for the needs of different institutions, but that programs should be reviewed regularly to address changes.

The issue was raised about discussing programs by competing providers. It was noted that there is a difference between ethical and civil behavior. One would not want to establish rule about communication, such as communication about other programs, because one would not want to restrict communication.

Topic 11: Disclosure of Rules and Procedures

The topic group defined this topic as disclosure to students. The main focus of the discussion was accessibility to information. The group felt that organizations have a responsibility to disclose information about admissions, academic issues, cost issues, student conduct, procedures for approving/establishing programs, as well as a crisis management plan. However, the group felt that organizations should not be expected to disclose all operational details, such as details on emergency procedures and exact arrangements in agreements with other organizations. Also, the stated point on disclosure of “criteria for program approvals” could be reworded.

A member questioned why details of agreements should not be disclosed. Members responded that it is not customary to disclose certain business practices and that such disclosure would be subject to each institution’s policies. A member suggested that there is a difference between disclosing information and responding to specific questions when asked.

Topic 12: Obligations to Host Societies

The topic group discussed whether this section should be called “Relationships with Host Societies.” The group spent much of their time discussing the responsibility of advising students to help them understand the host society. Relating to the topic of law, organizations should know how to act when facing legal difficulties. Organizations should be sensitive to the host culture but must follow applicable laws. The group also discussed sustainability.

A member questioned why fair wages was not included in this section. In response, it was noted that topic 13 deals directly with employee wages.

It was stated that individual schools should decide how to address their own particular problems. This includes the issue of reciprocity, which the topic group felt was too complex to address in detail in the code.

Topic 13: Responsibilities to Employees

The topic group pointed out that the code is meant to include employees in the U.S. and abroad. In cases where U.S. and local laws conflict regarding employment, “organizations should strive to apply the higher standard.” The topic group felt the code should be aspirational because some practices may not be

feasible in every case. The group addressed issues of training, discrimination, and the work environment. Per an earlier meeting discussion point, gender should be mentioned in the point about discrimination.

A meeting member suggested that this section should address brain drain from host countries due to higher U.S. salaries. Another member noted that this is already covered by a statement that host countries should not be negatively affected.

General Discussion of the Code of Ethics

During the discussion, the issue was raised of how the code will appear and whether it will focus on processes or more specific guidelines. Michael Steinberg was asked to talk about the format of the code. He stated that points from this meeting will be included as ethical guidelines and some aspects may be added to the existing Standards of Good Practice.

Further discussion ensued about the format and whether processes should be included in the code. The next stage of developing the code will be to extract the central ideas as general ethical statements.

Meeting members also discussed including a preamble as a method to put the rest of the document into context. It was suggested that a preamble could present a positive vision and focus on the goals of study abroad to avoid the perception of this code as a defensive document. The preamble should be aspirational in nature. It could include a mention of student responsibility.

A member noted that the overriding principle for the code to advance students' best interests and that the code should be checked to see that it encompasses all types of study abroad entities.

Regarding further communication and development of the code, the minutes of this meeting will be published, and the Standards Committee will follow up on the proposed points from the meeting. Mr. Steinberg noted that the code will focus on general ethical guidelines, and he invited the present group to work with the Standards Committee. The Ethics Working Group resource site can be used for this group's continued discussion. The suggested work-plan is to follow the format of the Standards and to formulate the suggested ethical guidelines into queries and to support those queries with examples of applicable practices. A member suggested that a tool such as the Rotary Questions mentioned in Ms. Vila's presentation could be very useful. Members expressed that development of the code should proceed quickly and that any guidelines presented should be attainable. The present working group was invited to meet at the CIEE conference in Toronto. The goal of that meeting will be to take the work accomplished at this meeting, together with refinements, and bring forth an acceptable draft of the Code of Ethics that then would be shared with the membership at large.

The meeting adjourned at 12:00 pm.