



BON VOYAGE!

A Legal and Policy Making
Guide for School Boards On
International Student Travel

MARCH 2014 | VERSION 1.0

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Hundreds of thousands of U.S. students travel abroad each year in groups touring and learning about the various countries and cultures of the world. These tours offer a variety of educational opportunities. They can be focused on traditional academic interests such as history, art, religion, and architecture, as well as on language immersion, the performing arts, and cultural exposure. Because of this enriching experience, and because some tours offer students the opportunity to earn academic credit, public schools are often at the center of these travel events. As a result, school teachers often sponsor tours, sometimes by themselves or working with a few other teachers.

With more than 250 tour companies operating in the United States, both international and domestic and of varying sizes and offerings, the possibilities for experiencing international travel firsthand are great. These possibilities raise many questions for public schools.

This publication is intended to answer some of those questions. Its purpose is to raise awareness of legal and policy concerns that will help school boards and district leaders to spot the major issues, and ask the right questions. This knowledge will lead to making informed choices and developing sound policies around student travel. The guide provides general information on the kinds of International Student Travel (IST) school boards may experience, identifies questions school leaders should be asking about each, and explains how school boards may develop policies to anticipate and address potential challenges. This guide is not intended as a substitute for appropriate legal counsel. School boards will be well served by seeking the advice of a school lawyer member of the NSBA Council of School Attorneys (COSA).¹



¹ The National School Boards Association Council of School Attorneys is the professional network of school lawyers representing k-12 public schools. To find a COSA lawyer, or to learn more about COSA, go to: www.nsba.org/cosa

1. What are the top international tour destinations?

1. Italy
2. Spain
3. Great Britain
4. France
5. Austria
6. China
7. Germany
8. Costa Rica
9. Czech Republic
10. Australia

2. What are major things to consider in sponsoring a student tour?

➔ There are numerous aspects of IST, which are discussed in this document, but prominent considerations are:

- Does the tour offer educational value to students?
- Does your school board have a policy on IST? And, if so, is the tour being conducted in accordance with the school board's policy?
- Is the tour school sponsored or non-school sponsored, and is that clear to the participants and especially the parents?
- Is there high quality planning and supervision?
- Is there adequate liability insurance? Who provides coverage: District or tour operator or both?
- Are there potential safety/security risks at the destination?
- Is there a risk/crisis management plan in place?
- Was the tour company's contract reviewed by your school board attorney to ensure the school board's policy and liability protection requirements are met?



3. Is there a difference between IST and domestic travel programs?

➔ There is, although there are many common points that school districts can consider. This document addresses the broader set of requirements applicable to international travel.

4. Does our district need a policy on IST?

➔ Absolutely. Whether your school board sponsors IST or not, you need a policy. A school district that sponsors IST or endorses a tour company that provides IST needs a policy to ensure that the planning and management of the tour will be done with the requisite degree of professionalism and due diligence. This is necessary whether or not you use a tour company. If your school district does not sponsor IST, it is still important to have a policy. That policy is your first step in giving notice to staff and parents that any foreign travel will not be school sponsored. It also should provide procedures to employees who are considering sponsoring a private tour to minimize the chance that students and parents will presume the tour to be school sponsored.

5. Is the tour school-sponsored or not? Do you know?

➔ Every trip involving children who are students in the district should be thought of as either school sponsored or non-school sponsored. School district liability will hinge on this distinction. The answer should be very clear to the district, and most importantly, to the parents. The issue is complex, sometimes, because the answer is the result of a variety of factors—not one single fact—and they do not always have equal weight. What may seem to one person clearly to be a non-school-sponsored trip may appear differently to another.

For example, high school foreign language teacher Ms. Jones has for years taken six to eight students to France and Germany for 10 days in the summer. The school board has a policy stating it does not sponsor foreign travel. Ms. Jones hands out informational fliers and all subsequent documents about the trip to her students in class. All the literature states that the students will be travelling with Ms. Jones. The parents send their checks and signed agreements back to Ms. Jones at the school via their children. Ms. Jones' informational meeting with the parents is held in her classroom. She never mentions or distributes

the board policy, but it is posted on the district's website. The only children who ever go on Ms. Jones' trips are students from her class, and she makes no effort to recruit elsewhere.

From, say, the principal's perspective, Ms. Jones' trip is not school sponsored. The principal never signed or approved anything, and of course there is a policy prohibiting foreign travel. A parent's perspective, though, may be that the school is sponsoring the trip, since the trip is organized and managed by Ms. Jones (an employee of the school), and the school is the source of information (in the person of Ms. Jones). They sent their paperwork and money back to the school, and the trip meeting was held at the school.

This question can be reasonably debated, which exposes the issue: School board policy and implementation should ensure that the school district's sponsorship of a foreign trip cannot be reasonably debated. Why? Because lack of clarity creates liability. If a parent of a student harmed on a trip has a legitimate expectation that the school sponsored the trip—through its employees—the school district faces the costs of litigation, possible settlement, and judgment, in addition to adverse publicity.

Lack of clarity creates liability. Clear policies can protect school districts and help them make informed choices.

This example is not intended to suggest that school districts should automatically ban IST because of concerns over liability. Rather, it is intended to illustrate how clear policies can protect school districts and help them make informed choices. Understanding and communicating when a school district is sponsoring an IST means your schools

are not held responsible for something about which a school district had no role in planning and managing.

Of course, it's a different situation when a school district intentionally sponsors a trip, planned in compliance with a comprehensive school board policy and supervised by competent staff. The IST should provide a unique and unparalleled educational opportunity for students and not create unforeseen liability for the district.

6. Types of IST and school district involvement.

➔ IST can fall into three categories:

A. School sponsored and school district managed. The tour is school sponsored, and the school district manages the tour. The school district arranges all aspects of the trip—itinerary, travel arrangements, lodging, tours, restaurants, local guides, ground transportation, etc.

B. School sponsored and tour company managed. The tour is school sponsored, and the school district contracts with a tour company to manage the trip.

C. Non-school sponsored. A tour takes place involving students of the district, perhaps even with a teacher serving as the host, but the trip is not sponsored by the district. These are purely private trips.

7. A comprehensive IST policy permitting school-sponsored trips should:

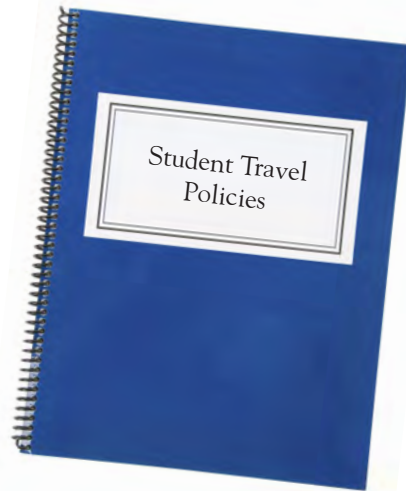
- ➔ A. Include a procedure for administrative approval within the school system, which should be based in part on educational relevancy.
- B. Ensure district insurance is adequate.
- C. Establish chaperone selection process, criteria, and ratio.
- D. Require checking and rechecking of U.S. State Department travel advisories, available at travel.state.gov and the Centers for Disease Control and Prevention (CDC) at cdc.gov.
- E. Require registration of the trip with the local U.S. Embassy via the State Department's Smart Traveler Enrollment Program (STEP).
- F. Establish a code of conduct policy, address foreign alcohol and drug laws, and provide for return of a student for disciplinary reasons.
- G. Establish appropriate safety, crisis, and risk management plans.
- H. Require mandatory information meeting with students and parents.
- I. Provide for training of chaperones.
- J. Require retention of trip documents, signed medical disclosures and releases, etc., at least until the expiration of the statute of limitations for filing a claim.
- K. Specify the elements of permission, release, waiver, and medical history forms with advice from a member of COSA. A COSA attorney can provide valuable assistance in drafting permission forms that provide adequate notice, releases and waivers that are neither too narrow nor too broad, and medical forms that comply with confidentiality laws.

- L. Establish procedures for collecting pertinent health information including medical/prescription needs and for addressing students' health needs and any constraints (including food allergies) that might impact a student's ability to fully participate or keep up with the group's planned activities.
- M. Remain up-to-date on state and local requirements.
- N. Apply these same requirements to school district endorsement of a tour operator or individual's IST.
- O. Require a tour company's contract to be reviewed by the school board attorney in advance of signing to ensure that it satisfies the school board's policy and provides sufficient protection against liability.

8. Elements of the policy relating to non-school-sponsored IST.

➔ A policy permitting school-sponsored IST should also address non-school-sponsored IST, because private trips by teachers and others may take place. Although the requirements and concerns of the district are quite different in the case of non-school-sponsored IST, there are several critical elements that should be included:

- A. Clear notice to staff and parents that some IST in which students might engage will not be school sponsored.
- B. A requirement that any materials for such trips expressly and prominently state that the trip is not school sponsored or endorsed.
- C. A requirement that the tour operator or individual teacher acknowledges to the district that the trip is not school sponsored or endorsed.
- D. A prohibition on the use of school resources, including student databases



and communication vehicles, in the planning, promotion, or administration of a private trip.

- E. A prohibition against employee use of school time to promote, discuss, or manage a private trip.
- F. Procedures for employees who are considering sponsoring a private tour to minimize the chance that students and parents will presume the tour to be school sponsored and to follow local rules regarding use of school facilities.²

9. Elements of a policy prohibiting school-sponsored IST

➔ If your school board elects to prohibit school-sponsored IST, that decision should be formalized in a written board policy, and the policy should be publicized to the students and parents. Publication should include more than placing it in the standard online collection of board policies. The board's policy should be given visibility on the website and in regular school communications. The policy should also provide procedures

² Many districts, for instance, promulgate rules about use of school facilities and websites. Others require written acknowledgements from participants that the tour is not school-sponsored. Yet others undertake reviews of materials in advance to confirm the presence of disclaimers.

to staff who under take private trips to eliminate any suggestion or implication that the school is sponsoring the trip. See item 8 for suggested provisions.

10. Avoid appearing to sponsor non-school-sponsored trips.

➔ One of the most important things for a school district to do is to ensure that students and parents participating in a non-school-sponsored trip know that it is not school sponsored.

From a parent's perspective, a tour can appear to be school sponsored by one or more of the following:

- Tour information distributed by school staff in class
- Tour materials and money returned to the teacher at school
- Materials that give only the teacher's name, with no company or organization
- Fundraising through the school
- Stating that class credit will be provided
- Holding tour-related meetings on school property
- Publicizing the tour in school-generated media either before or after the trip

These actions by staff may cause a parent to think the staff member is acting in their capacity as an employee of the school district, or, in legal terms, as an agent of the school district. A school district should prohibit these types of activities to preempt the possibility of an erroneous impression of school sponsorship.

The best approach is to always insist on an express disclaimer of school sponsorship. The list above is not inclusive of every reason a parent might

believe the school district is sponsoring the tour; it would be impossible to anticipate every possible reason. And even with policy provisions prohibiting certain activities in place, human error occurs. A conspicuous written disclaimer should always be included to provide the parents with unambiguous notice that the tour is not school sponsored, regardless of any other circumstance they cite. The disclaimer should state that the tour is not school sponsored and appear on each item of tour literature. In addition, the sponsoring teacher should obtain an acknowledgement signed by the student and both parents/guardians that the tour is not school sponsored.

11. Should my school district use a tour company to manage IST?

➔ That decision is up to the individual school board through the policies it adopts. Your school district should, of course, shop wisely as practices and operations differ from vendor to vendor. In general, though, you may wish to consider that a tour company offers the opportunity for greater liability protection, because of the expertise that comes with professional management. A tour company will likely think of and understand details around IST that your school staff might miss. Many tour companies will have established safety protocols and crisis/risk management procedures. As a general rule tour operators may practice a higher standard of care in the industry, precisely because they are experienced in this arena. They may carry liability insurance that can help your school district spread potential risk. The exact terms of insurance should be reviewed, with professional assistance if necessary, prior to selecting a tour company to ensure the company's insurance meets your needs and expectations.

12. Selecting a tour company

➔ Factors to consider in selecting a tour company include:



- A. Company's prior experience operating in that destination.
- B. Safety history of the tour operator.
- C. Alignment between the tour company's itinerary and the district's curriculum.
- D. Amount and coverage of liability insurance. Is it primary?
- E. Safety guidelines employed by the tour operator.
- F. Selection of chaperones, training, and ratio. Some tour companies let the sponsoring teacher select whomever they like, providing the teacher with a paid slot for every X number of students registered. The teacher can use those slots to bring guests, who may become the chaperones.
- G. If academic credit is offered, the process for earning credit and whether the entity providing the credit is recognized by the school district's own accrediting body.
- H. Training of hosts, tour guides, and supervisory staff.
- I. Medical emergency procedures and the competence of the staff that will be called upon in case of a medical emergency. Means by which the company is aware of health risks in the localities where the IST will occur, including following guidelines of the CDC and other knowledgeable public health bodies.
- J. Crisis management procedures and the extent to which the company maintains procedures to be alert to and able to respond to developing situations of all kinds in the foreign localities where the IST is planned.
- K. The tour company's procedures for selecting and monitoring local guides and travel companies, and their safety record, that the tour company will use.

13. Liability Insurance

➔ There are several types of insurance to consider in planning for an IST. The most significant, for the district, is liability insurance. Check with your insurance agent or risk management staff to see if your district's general liability policy covers IST, and the dollar

amount of your liability coverage.

You may want to increase your coverage for foreign travel. One million dollars in coverage may seem like a lot, but in the context of the risk associated with foreign travel for a group of students, it may be woefully inadequate. Many tour operators are increasing their limits after a 2013 jury award against a private school in excess of \$40 million to a student injured on a foreign tour³. Some tour companies will agree to name the school board and its participating employees as additional insureds under its policy.

If you are considering a tour company, review its coverages, exclusions, and liability limits carefully before making a selection. Tour companies will typically limit their risk by disclaiming liability under certain circumstances. Tour companies vary, however, in the degree to which they immunize themselves for damages due to the negligence of the tour hosts, operators, chaperones, and subcontractors. This is a critical area, as it is where most damages, and hence most claims, will arise. The tour company's insurance limits should also be researched and considered with the advice of your insurance advisor.

14. Other important insurance

➔ It is advisable for travelers to purchase medical insurance (including repatriation and overseas medical case management coverage), lost or delayed baggage insurance, and cancellation insurance. As with any insurance decision, review the terms and coverages carefully, and get professional assistance as needed. Clearly describe the coverages and exclusions to students and parents. Trip cancellation insurance, for example, will normally not cover a trip cancelled because the school district cancels all field trips for fiscal or safety reasons. Many kinds of cancellation insurance

advertised as “Cancel For Any Reason” (CFAR) will only reimburse parents for 75 percent of the trip cost and will themselves have certain exclusions. Medical coverage also should be reviewed to see whether the coverage is primary or secondary. Primary coverage is preferable to ensure uniform and timely coverage, especially when overseas travel is involved.

15. Academic Credit

➔ Some tour companies offer students academic credit for some trips. To offer academic credit, a tour company must be specifically accredited under the authority of the same regional accrediting agency that accredits your schools. Most tour companies are accredited as travel agents but very few also have academic accreditation. Receiving credit usually requires a student to perform additional work and to pass a course-specific student assessment.

16. Review school district ethics policy

➔ Tour companies typically give a free trip to a sponsoring teacher, and additional trips for the teacher to use at his/her discretion based on the number of students registered. Some companies also offer “loyalty” benefits to teachers for sponsoring multiple tours in the form of points, goods, or cash. It is advisable to check the school district's ethics policy to see if the receipt of these trips and or benefits constitutes a prohibited gift or benefit.

17. State laws

➔ State legislative interest in student travel is growing.⁴ Be sure to check your state law to ensure that your school board policy and sponsored trips comply with any statutory requirements.

If you are considering a tour company, review its insurance coverages, exclusions, and liability limits carefully before making a selection.

³ *Munn v. The Hotchkiss School*, 933 F.Supp.2d 343 (D. Conn. 2013)

⁴ See California AB 1575