

# National Association *of* Independent Schools



# International Travel Risk Management & Data

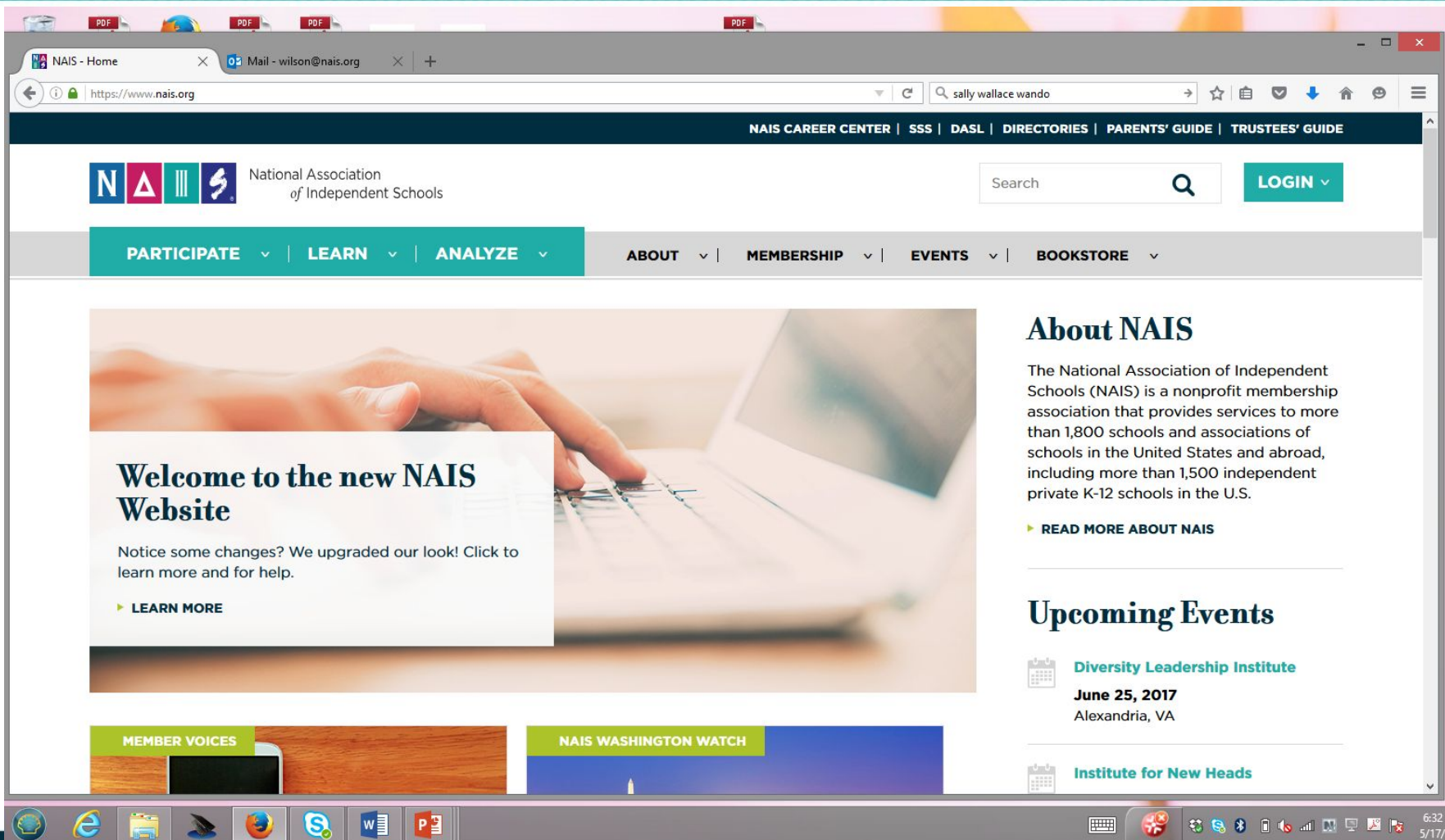
# Introductions

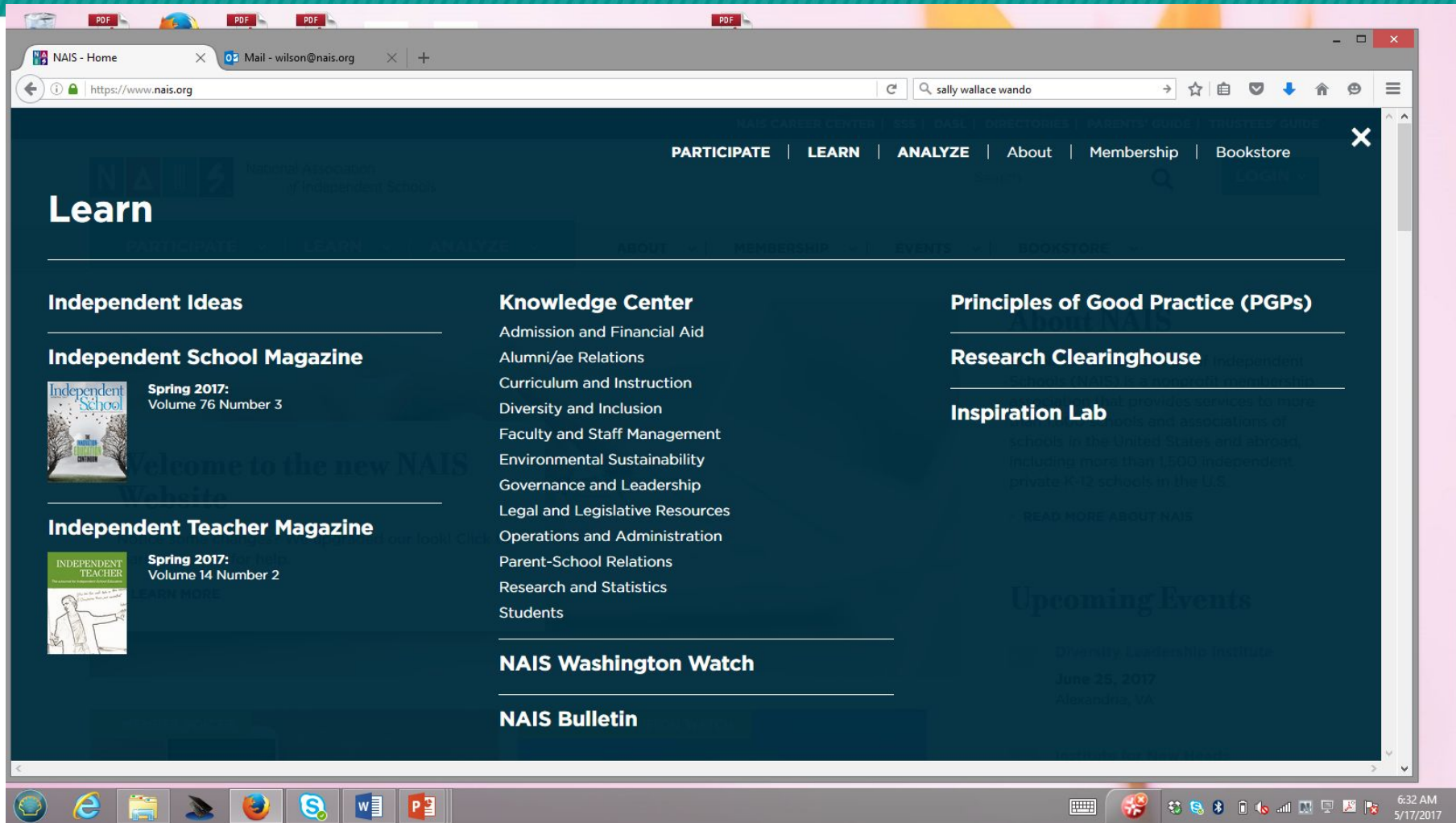
- Debra Wilson, General Counsel
  - [wilson@nais.org](mailto:wilson@nais.org), 202.973.9716
  - twitter - debra\_p\_wilson
- What do I do?
  - Legal, GR, Governance, and angry parents!
- A word on being an attorney...
- July 1... [debra@sais.org](mailto:debra@sais.org)

# Where are we going

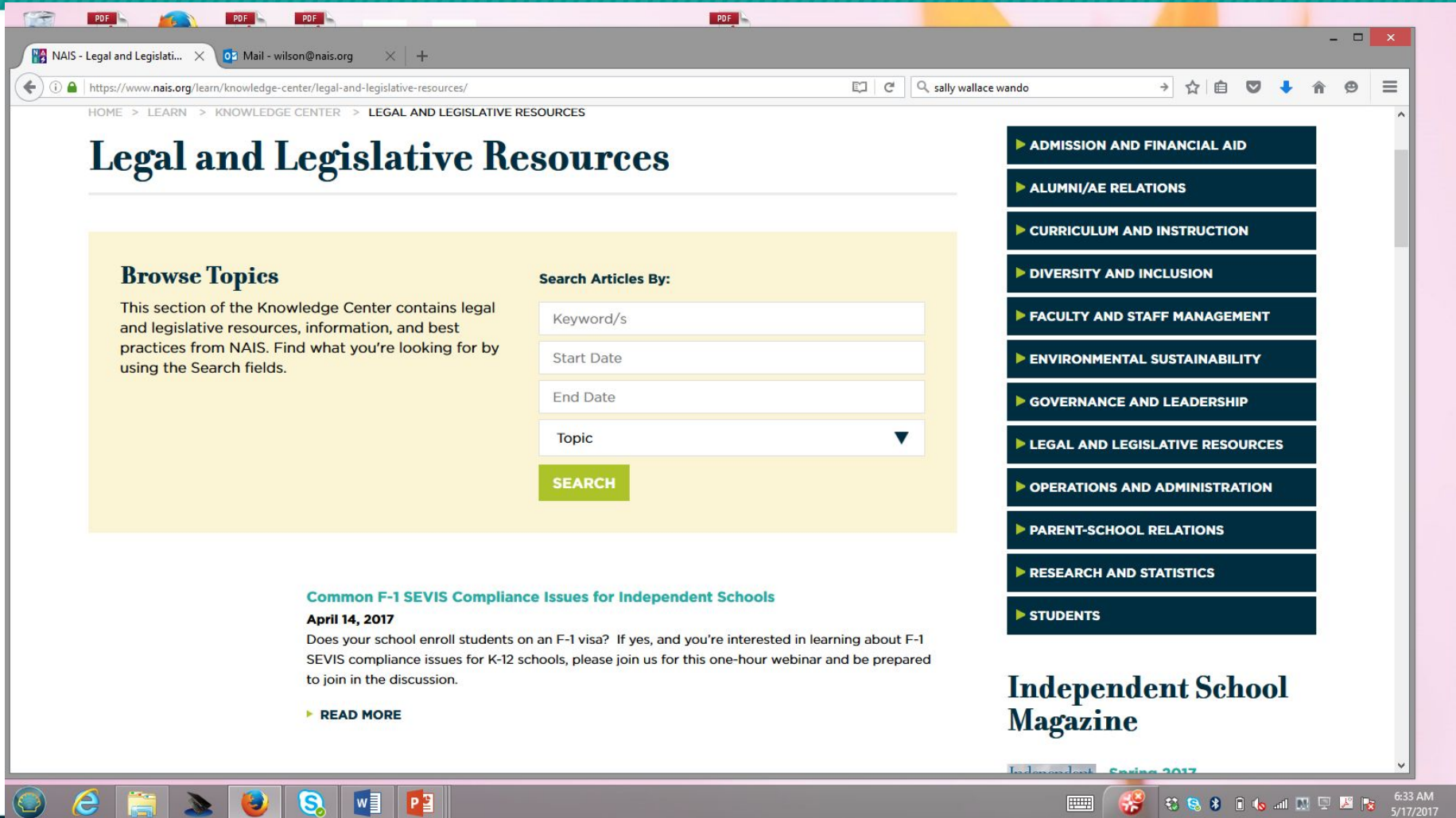
- Where to Find Things..
- Risk Management Overview
- Data
- Some q&as











# Why ERM/IRM?

- Definition: Process to identify, assess, manage, and monitor risks that potentially impact school's ability to execute its mission.
- Pro-Active Approach – thoughtful rather than reactive
- Benefits – transparency, peace of mind, collective responsibility, consistency, knowledgeable risk taking.
- Additional Benefit – Can be used as a system to address “concerns” rather than just “risks”

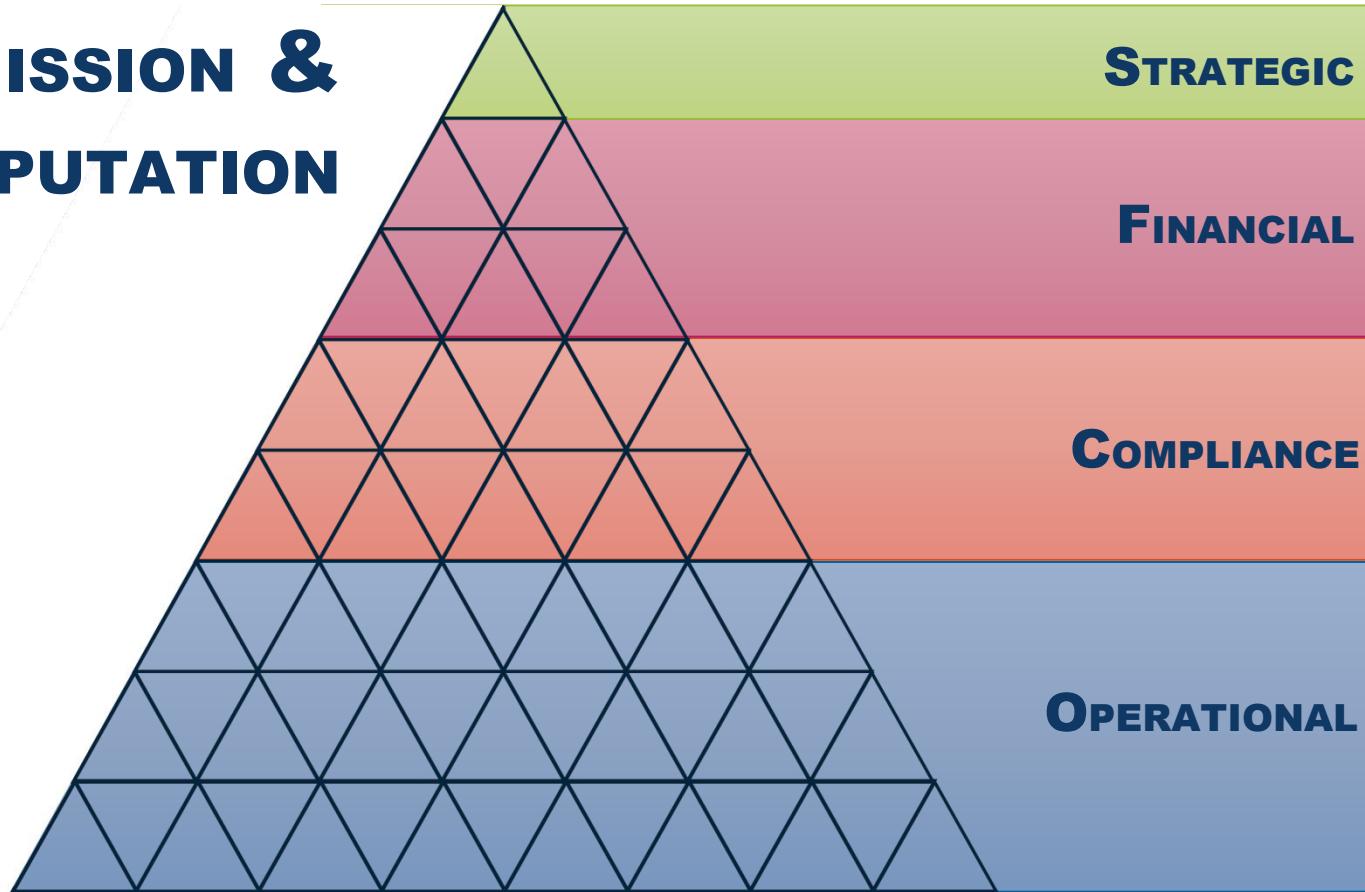


# Key Players

- Board of Trustees
  - Audit Committee / Individuals / Larger board
- Head of School
- Senior Leadership
  - CFO or Business Officer
- Risk Owners
- Risk Management Committee

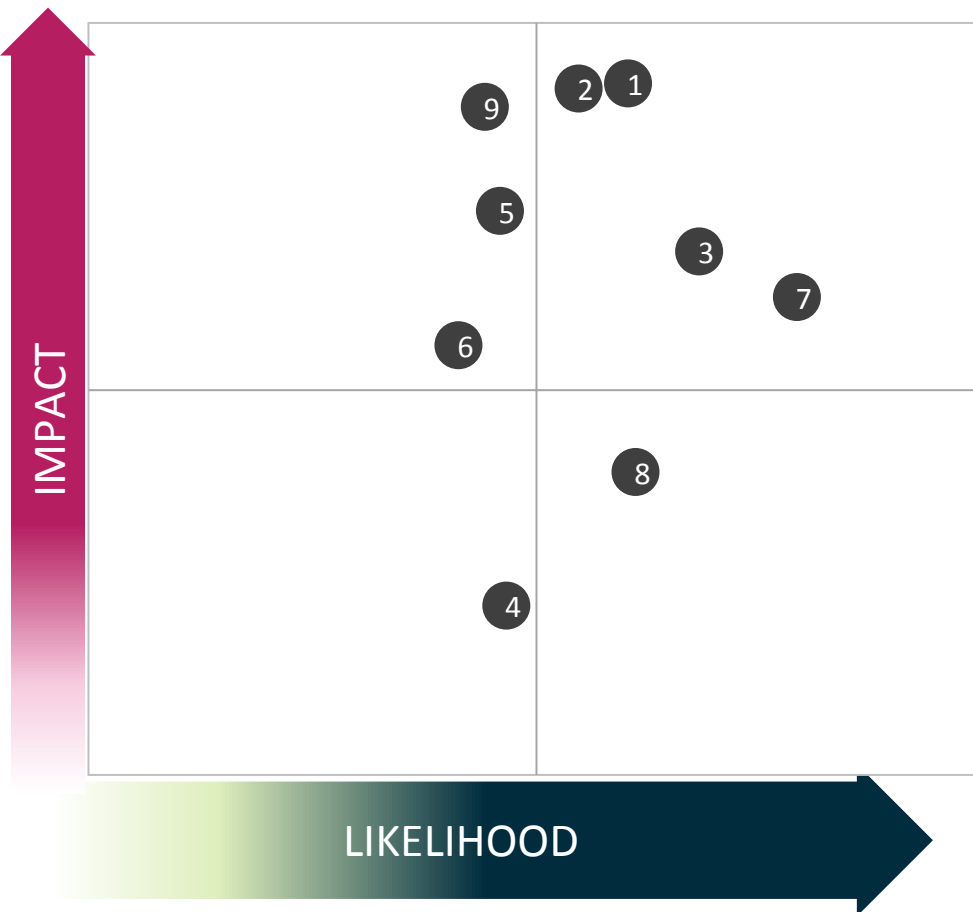
# Risk Hierarchy

**MISSION &  
REPUTATION**



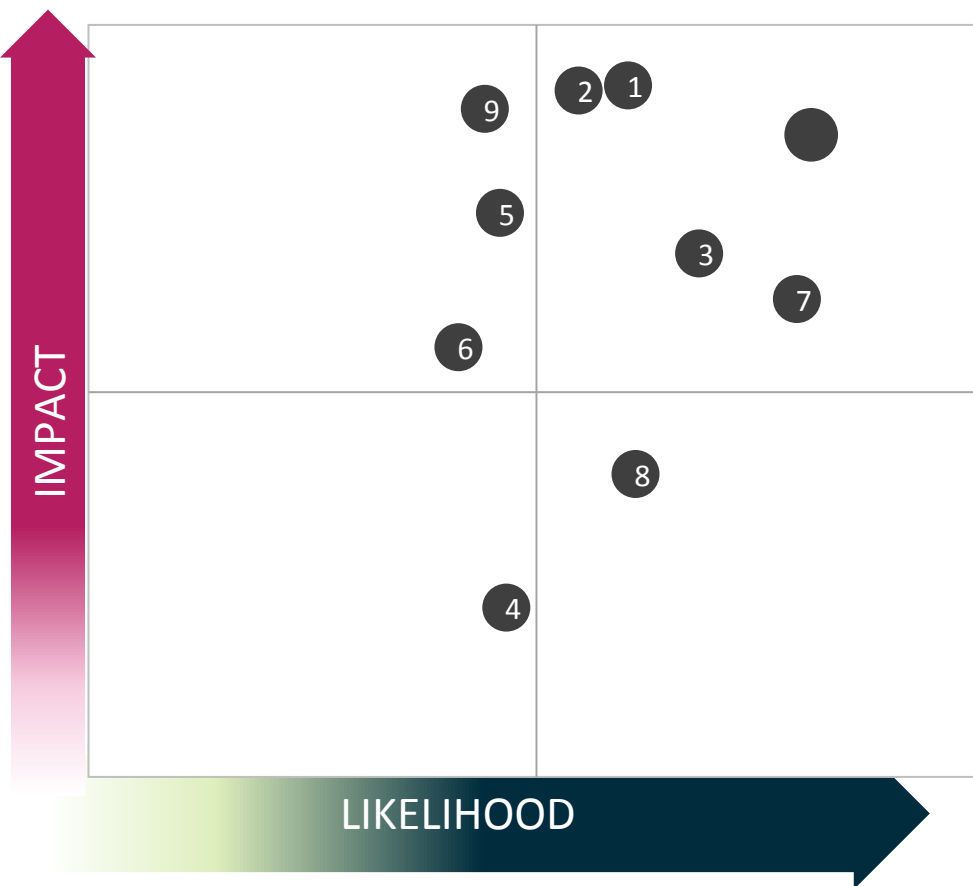


# Sample Heat Map: More Qualitative



1. Downward trend in students
2. Abuse of Students
3. Student Mental Health Issues
4. Crisis Response
5. Financial Viability
6. Student Risk Behaviors
7. Sexual Assault
8. Campus Safety
9. Transportation Issues

# Sample Heat Map: Travel Programs



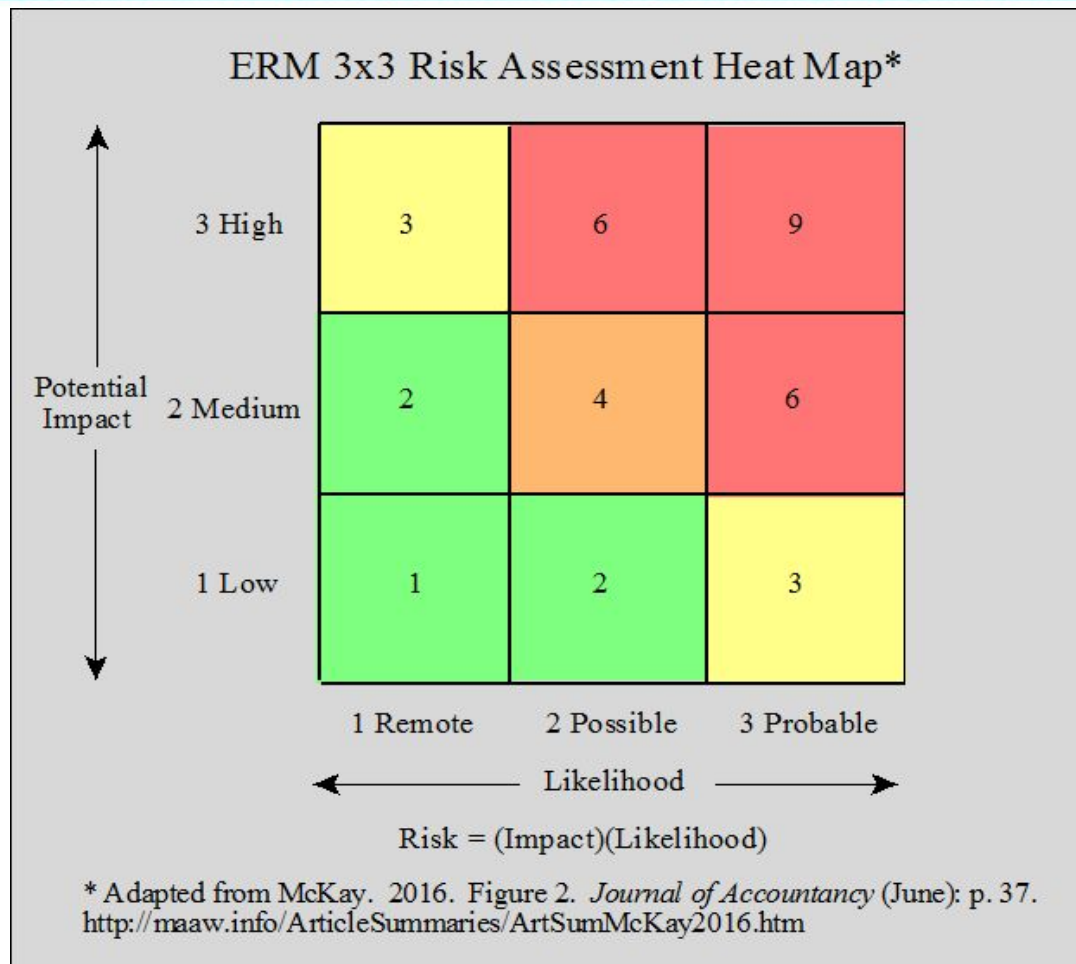
1. Home Stays
2. Abuse of Students
3. Student Mental Health Issues
4. Trip Cancellations
5. Crisis Response
6. Financial Viability
7. Student Risk Behaviors
8. Sexual Assault
9. Inconsistent Practices
10. Higher Risk Experiences



# Risk Score

|                  |            |  |   |  | Score |
|------------------|------------|--|---|--|-------|
| Risk             |            | 1-2 Insignificant/Mid  | 3 Moderate  | 4-5 Significant/Catastrophic   |       |
|                  | IMPACT     | Minimal impact on annual operations, reputation or financial condition.  | Could delay plans in place, short-term programs affected, and require moderate management effort; 1-6 months' recovery. | Long-term and significant effect on ability to recruit students, faculty, financial support; material breach of confidence & reputation. |       |
|                  |            |  |   |  | X     |
|                  |            |  |   |  |       |
|                  | LIKELIHOOD | 1-2 Unlikely   | 3 More Likely   | 4-5 High Probability   |       |
|                  |            | Unlikely to happen in the near future and no immediate action is needed. | More an likely to occur and management should begin to mitigate.  | High probability event/risk will occur within a year; immediate action plans needed.   |       |
|                  |            |  |   |  | =     |
| TOTAL RISK SCORE |            |  |   |  |       |

# And if you can't make up your mind...





# Top Risks

- Public Safety (33%) (active shooters, assaults, violence, theft, vandalism)
- Institution Sponsored Travel (26%) (exchange programs, field trips)
- General Employment Practices (17%) (employee discrimination, retaliation, recruitment)
- Student Health and Safety (17%) (counseling, PTSD, student safety and wellness, suicide)
- Transportation (16%) (vehicle safety, golf carts, road conditions, fleet safety)
- Sexual Misconduct (15%) (employee and student on student)
- Crisis Management (13%) (bomb threats, evacuation drills, natural disaster responses)

# Risk Id Pit Falls

- Must commit to managing the risk – if identified, documented, then ignored, potential liability.
- 3-5 High level risks per year
- Most US independent schools identify roughly 80 risks overall

# Pick a topic

- Pick over-arching topic
- Choose an area to drill into
- Consider:
  - Management, acceptance, transfer of risks
  - Physical
  - Policies
  - Procedures
  - Personnel (including if you need a consultant)
  - Practice (training – for staff, students, parents)
  - Insurance



# Risk Management Plan/Report

- School philosophy / culture
- Date
- Name of Risk
- Owner
- Description of Risk
- Risk Score (low, med, high)
- Goal Plan Implementation
- Action steps/Treatment (Management, acceptance, transfer, cultural issues, policies, procedures, other steps to patch up holes)

# Example

- School philosophy / culture: What is it???
- Date
- Name of Concern: Homestay Safety
- Owner: Director of Global Programming
- Description of Risk: Potential risks associated with students staying in personal homes abroad
- Risk Score (low, med, high): Likelihood Medium, Ramifications: High
- Goal Plan Implementation: Roll-Out
- Action steps/Treatment: Home visits, student check-ins, training for staff and students, etc.

## Risk & Control Self Assessment- Human Resource

Uncertainty as to the school's ability to attract, develop and retain the talent needed to meet its objectives; the risk that people do not follow the organization's procedures, practices and/or rules; Risk that the organization may incur losses due to drain or loss of personnel, deterioration of morale, inadequate development of human resources, inappropriate work and safety environment, inequality or inequity in human resource management or discriminatory conduct.

[illegible]



# Liability

“Our job descriptions and handbooks outline the things we generally can control and manage. We are graded by our community on how we manage what we cannot control or predict.”

Steve Piltch, Shipley School

# How it all fits together

- Federal
  - Constitution
  - Legislation
  - Regulations
  - Case Law – admin and federal courts
- State
  - Same
  - May raise the floor on federal law
  - Examples . . .



# Other Standards

- What about other sources?
  - UE / NAIS Survey and Summit
  - GEBG Standards
  - Incident database
  - School Policies and Practices

- What is the main liability?
- Negligence... what does that mean?
  - Duty to act (exercise such care as a parent of ordinary prudence would in comparable circumstances)
  - Breach of the duty
  - Harm
  - Caused by failure to perform duty and the failure was a “proximate cause” to that duty (“but for” test).

- So then what?
- Defenses:
  - Assumption of risk
  - Not reasonably foreseeable
  - Waivers, Releases
  - Third party vendors / partners
  - Third party intervention



# Pool Party

Four of the third grade teachers are chaperoning an end of the year party at a local pool. There are 60 students in all, 6 lifeguards, and 5 parent chaperones. If students attend, parents must sign two releases. One waives claims of liability against the school and chaperones, the other waives claims against the club.

At the party, quite unexpectedly, Joey does a triple back flip off the diving board and hits his head on the board because Sam runs up the at the last minute and startles him. An ambulance is called and Joey is taken to the ER for 15 stitches. What are the issues?

## •Negligence... what does that mean?

- Duty to act (exercise such care as a parent of ordinary prudence would in comparable circumstances)
- Breach of the duty
- Harm
- Caused by failure to perform duty and the failure was a “proximate cause” to that duty (“but for” test).

Essentially have a duty to work to prevent foreseeable harm



# Happy Place

“...schools are under a duty to adequately supervise students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision, they are not insurers of safety of their students for they cannot be reasonably expected to continuously supervise and control all of the students’ movements and activities.”

# What About Defense?

- Assumption of risk on behalf of plaintiff?
  - Can't make this argument when compelled to attend – class requirement - “Inherent compulsion”
  - Duty to use ordinary and reasonable care to protect students voluntarily involved from unassumed, concealed, or unreasonably increased risks.
  - Did defendants do anything to increase the risk?

# Sudden action on behalf of Joey?

- Would more supervision have helped here?  
Spontaneous injury. What facts would help or hurt here?
- “... plaintiff must show that the school had sufficiently specific knowledge or notice of the dangerous conduct which caused the injury and the that third party acts could reasonably have been anticipated.”



# What about the third party? (Club)

- Question of whether they own and operate the facilities.
- Words of caution?
- Warnings from lifeguards?

# Releases

- Voluntarily, intelligently, and with full knowledge of the consequences
- Four (to six) part test – key areas being:
  - Does not adversely affect public interest
  - Exculpated party not under legal duty to perform
  - Contract does not grow out of unequal bargaining power or otherwise unconscionable.

- So should you ditch releases?
  - Make sure they are readable (font).
  - Make sure they are reasonable (don't try to get them to waive everything)
  - Be clear in the risks in writing and in orientations / training.
  - Arbitration
  - General deterrent effect
  - [Resource](#)



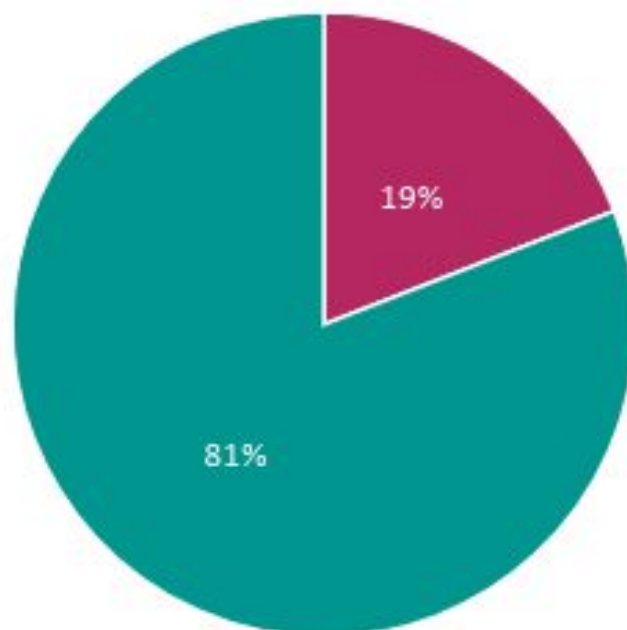
# Tick Bites...



- Hotchkiss Case
- Student in China...
- Jury verdict \$41.5 million
- Appeals...
- CT state law: Releases, foreseeability, and policies

# Data

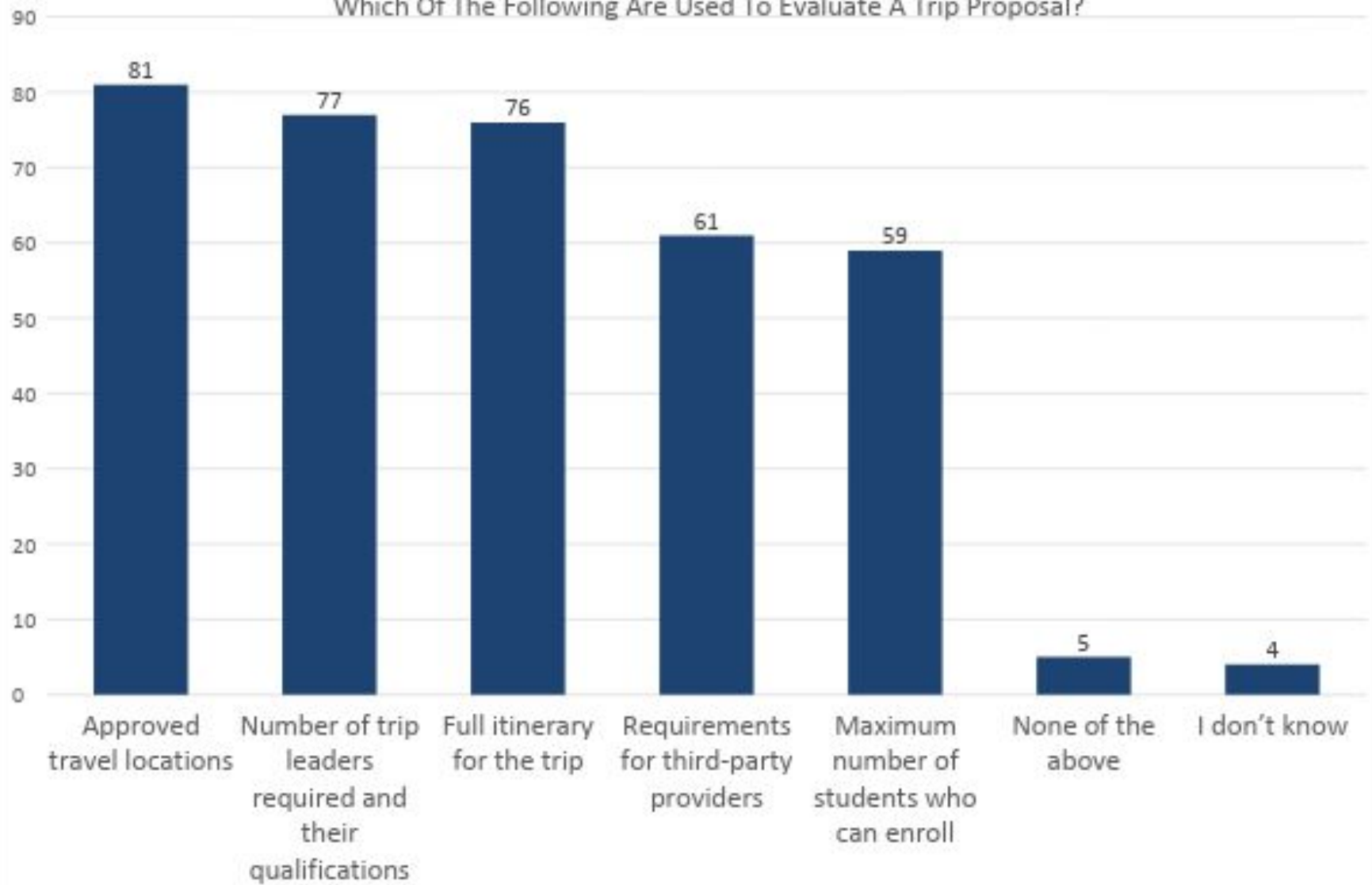
Does Your School Follow A Formal Approval Process For Newly-Proposed Study Abroad Programs?



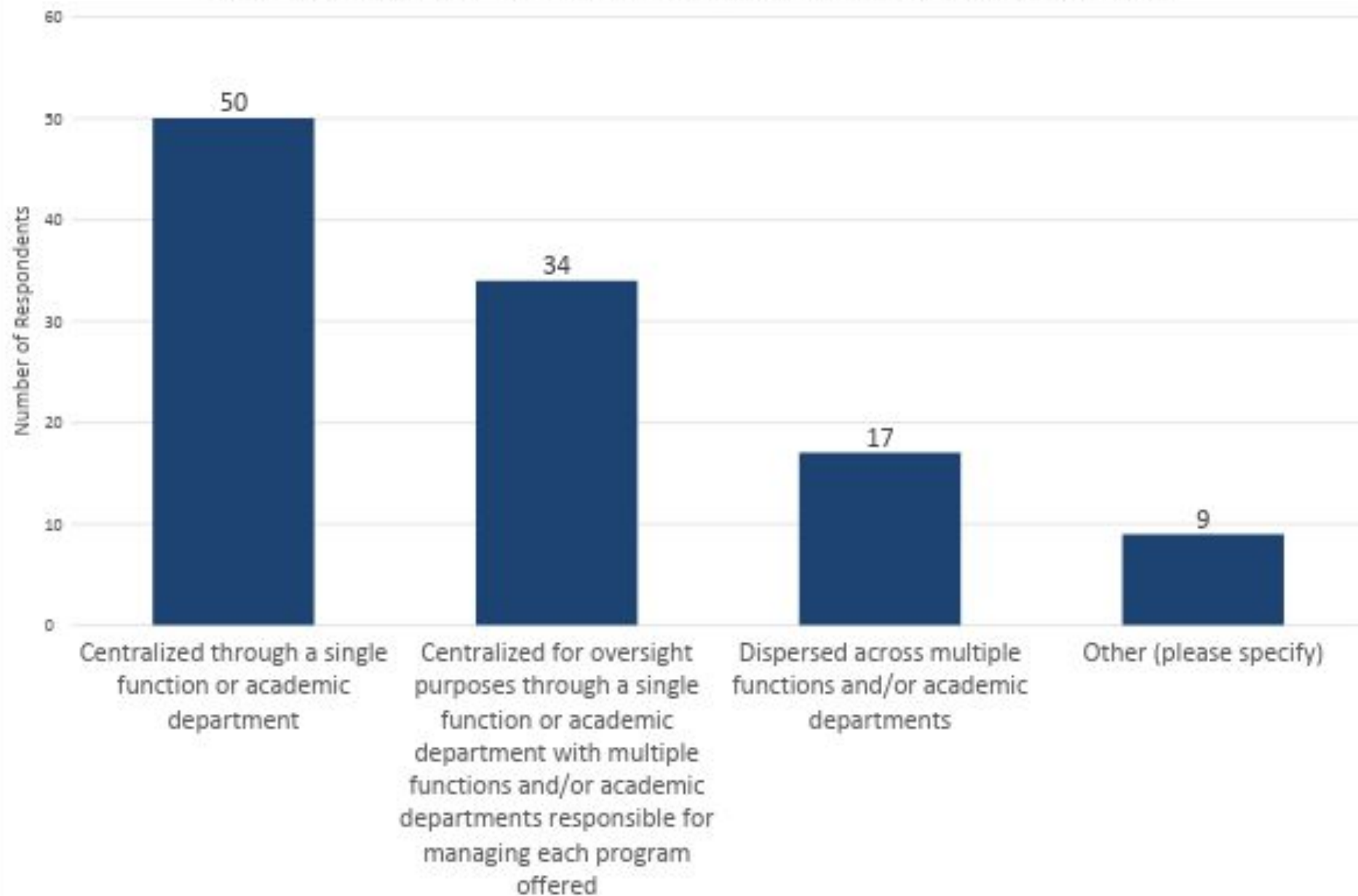
■ No ■ Yes



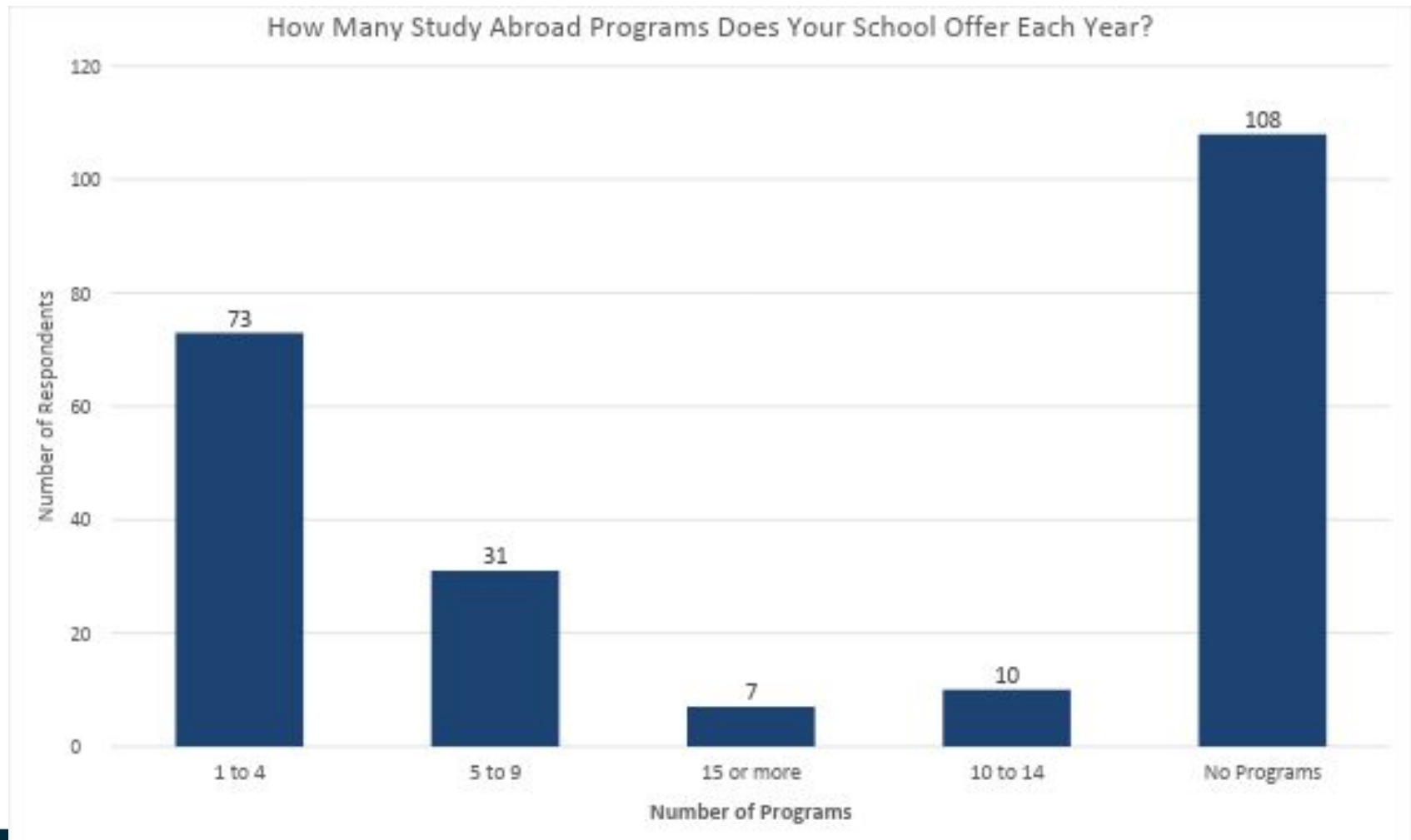
Which Of The Following Are Used To Evaluate A Trip Proposal?



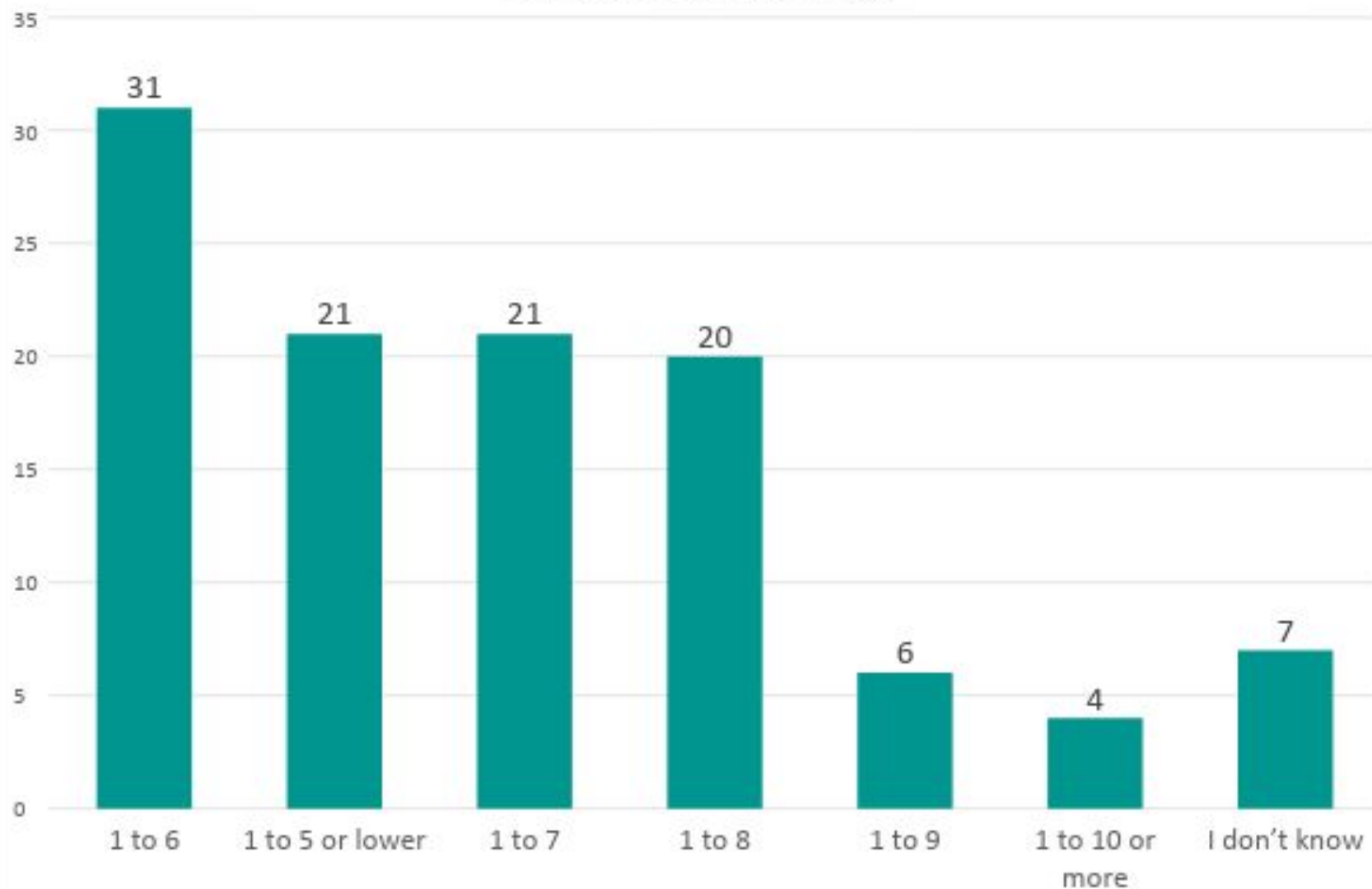
## What Approach Does Your School Use To Oversee And Manage Study Abroad Programs?



# More than half offer trips...

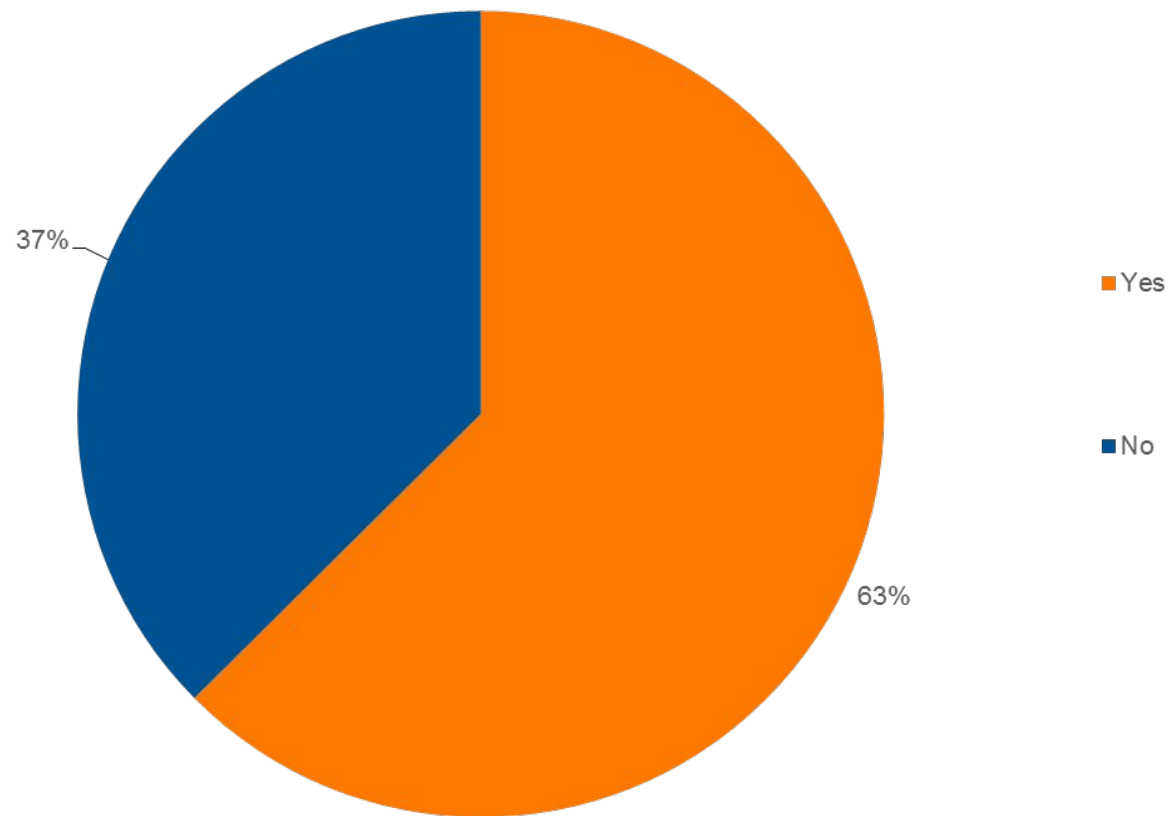


# What Is The Average Trip Leader To Student Ratio Required For Your School's Study Abroad Program(s)?





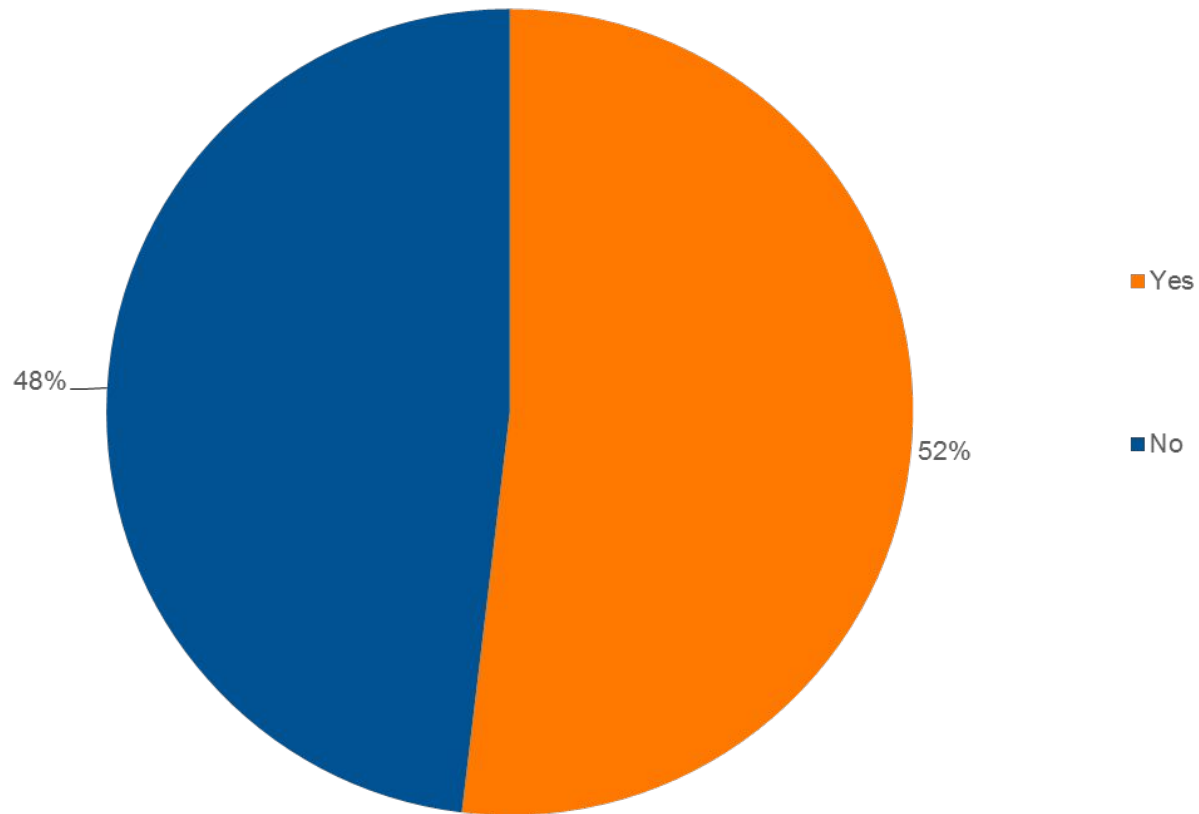
# Student criteria for participation



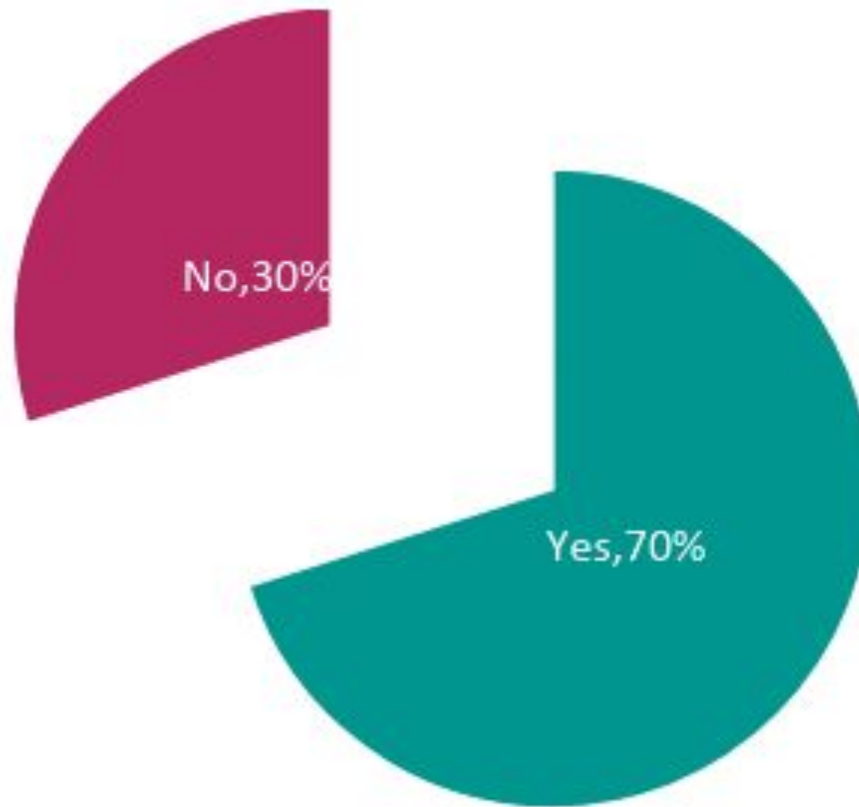
# GEBG Draft Standard

- All staff and participants exchange appropriate medical information prior to the start of the activity, and appropriate personnel review the information. Additional individual medical and health concerns for international travel are specifically addressed. The information is properly managed and secured.
- *Good idea to be very clear about limitations in this area from the get-go. Advisor input, school counselor input, etc. Manage the expectations of the participants and parents from the beginning.*

# Crisis Plan for Trips – Older Data



Does Your School Have A Crisis Management Plan (Including An Evacuation Plan and a Plan To Communicate With Parents) For Each Study Abroad Program?





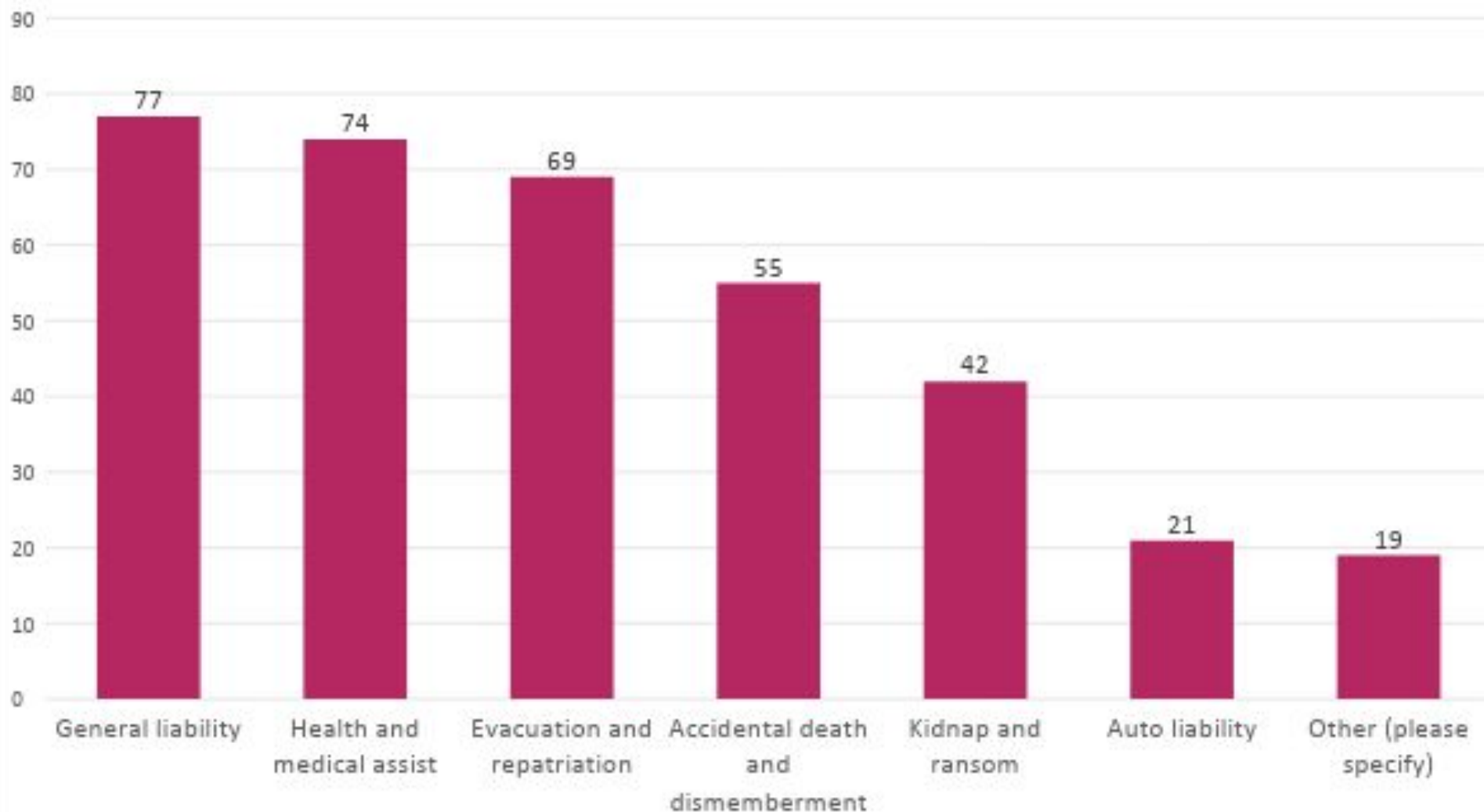
# Crisis Prep

- For school leaders, trip leaders, parents, and students (might be pretty involved depending on trip). Scenarios.
- Briefing students daily of particular risks of days
- Phone policies – cell phone trees of trip participants
- Phone trees for those back home
- Plan of all official resources for every step of trip (embassies, hospitals, police, etc.)
- Trip notebook and guide on various crisis situations. This information should include the various trip specific risks and resources, all key school information, insurance information, student forms and health information, and other protocols. One school used the Michigan State manual as a basis

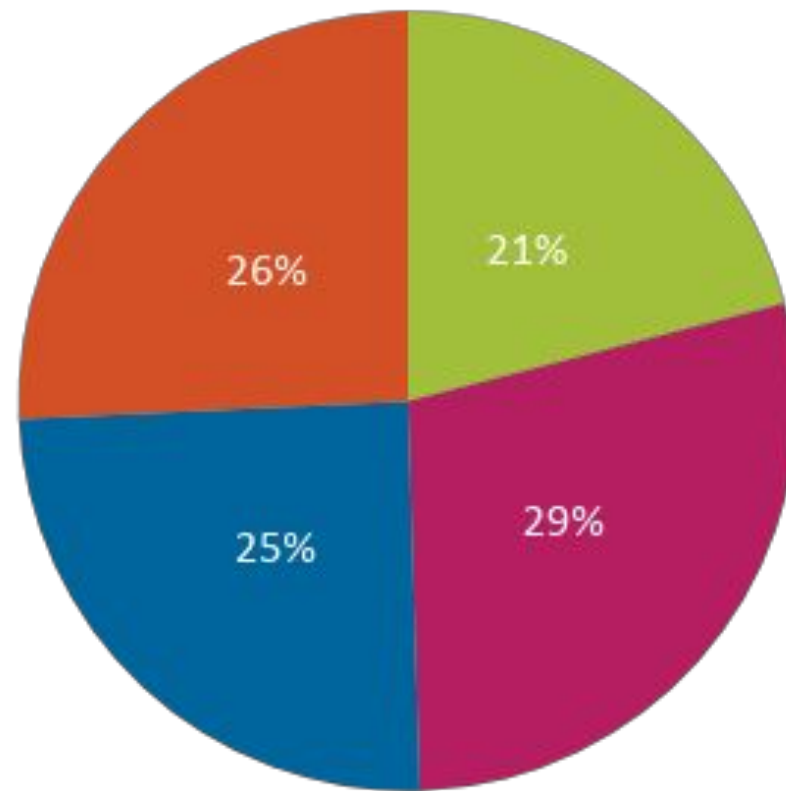
# Insurance

- Insurance is an important part of crisis prep.
- Schools and trip leaders should understand the insurance the school has as well as the resources available to them through the insurance
- Travel insurance for all participants, particularly medical and the ability to evacuate if needed, is a good idea. Especially in remote countries / areas

## What Types Of Insurance Does The School Purchase For Study Abroad Programs?



## Vetting Host Families and Foreign Staff Members Who Have Unsupervised Contact With Students Participating In Study Abroad Programs?



■ Yes ■ No ■ Other (please specify) ■ N/A



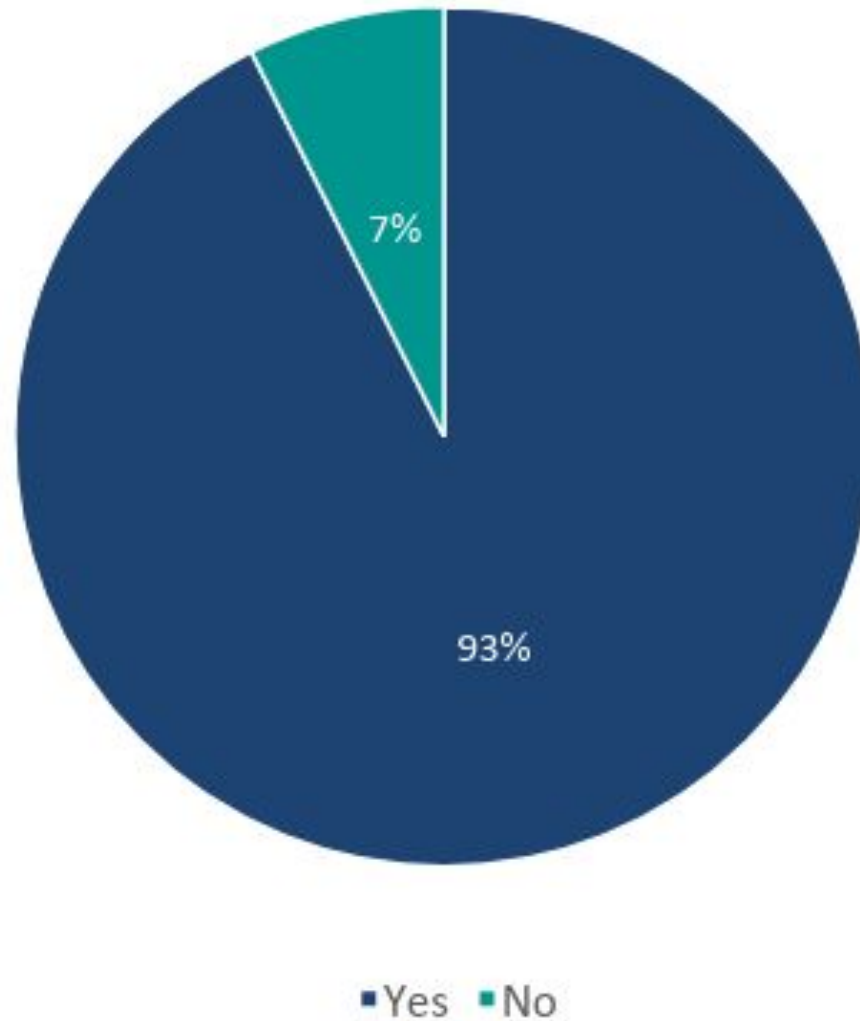
# From Last Data Set...

- 28% did background checks of some kind
- References from partner schools or local NGO
- Pre-visit to host families
- During longer stays – visiting students in homes
- More than one student
- List or other documentation of expectations
- Study the purpose of the host family stay and determine worth relative to risk
- Note on UE claims study 40% of sexual misconduct claims host family

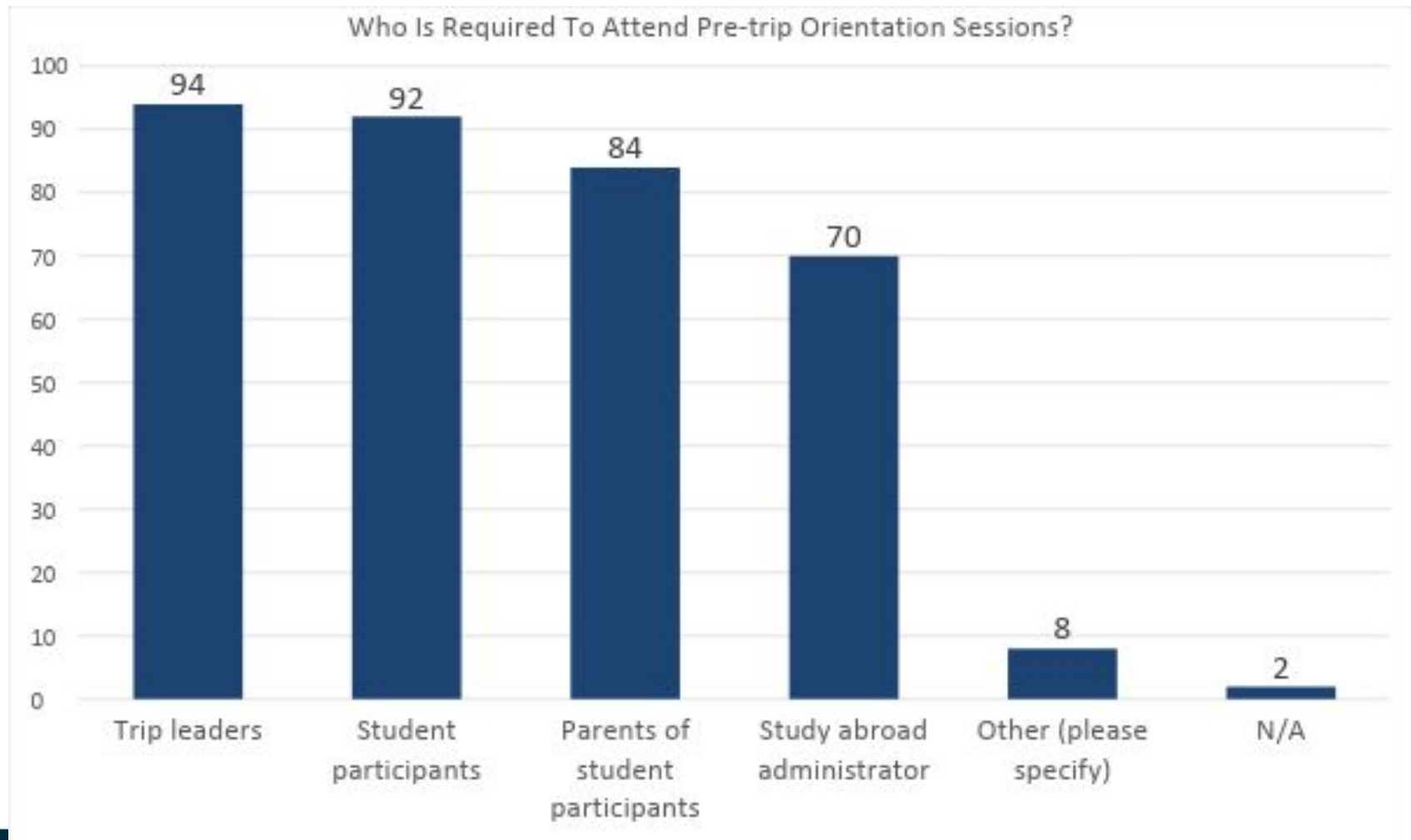
# GEBG Draft Standard

- The program has written expectations for the host family which are communicated prior homestay placement. Host families are responsible for the physical and emotional well being of their homestay guests. They should be oriented to the program's mission and expectations prior to accepting there responsibility as hosts. All homes must be inspected for health and safety provisions by program staff or partner organizations to ensure that they have adequate health and safety standards for the local region and students basic health and well being are provided for.

## Does Your School Conduct A Formal Pre-Trip Orientation For Each Study Abroad Program?

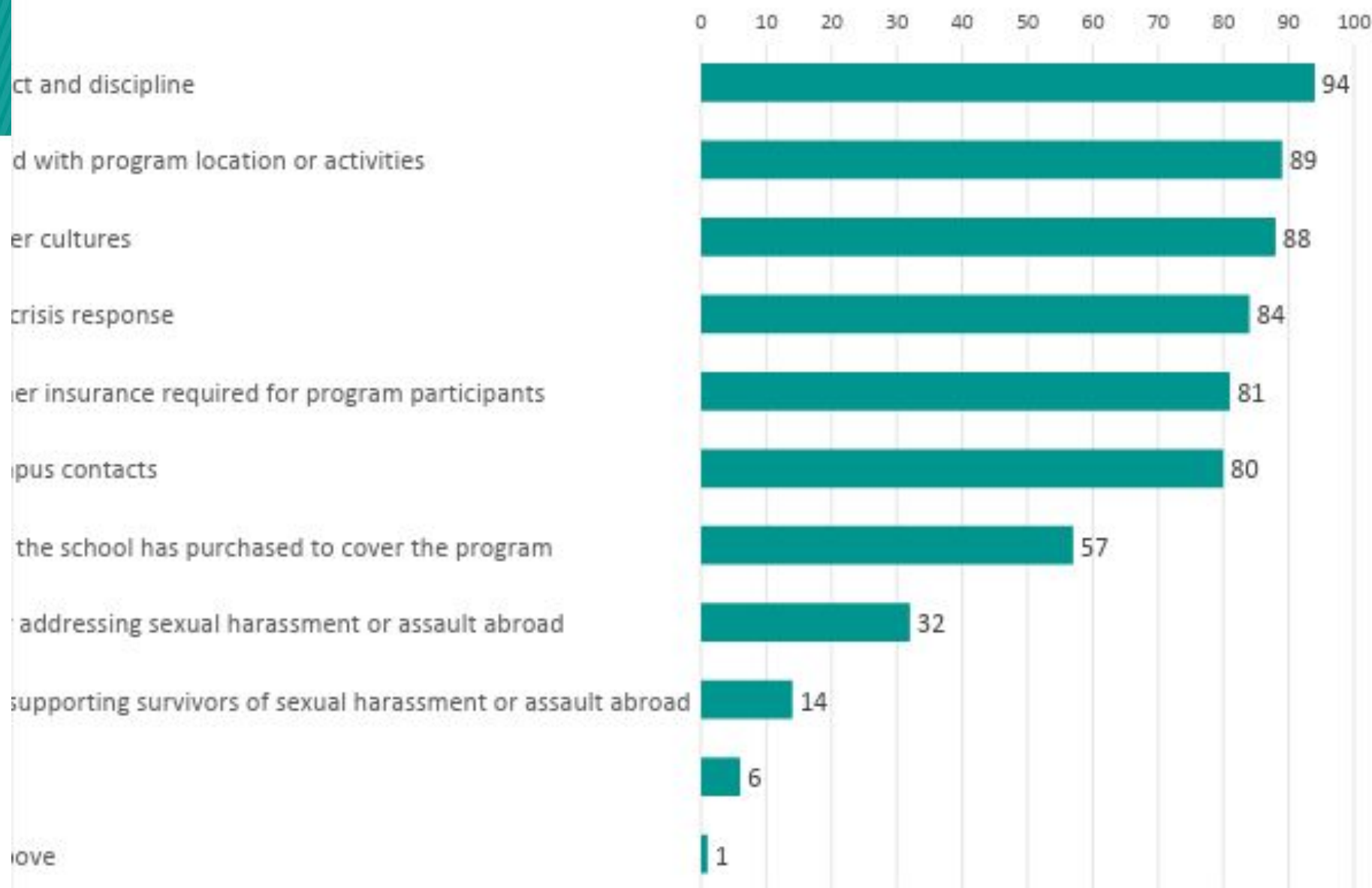


# Pre-Trip Orientation





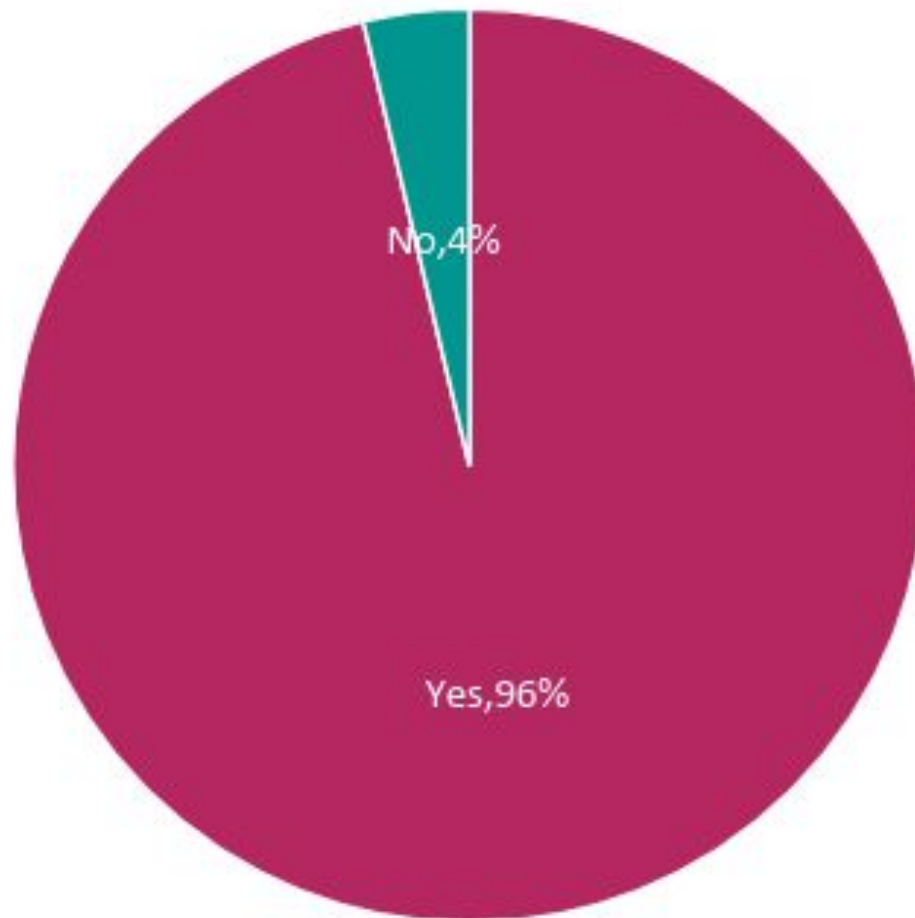
Which Of The Following Topics Are Addressed During The Pre-trip Orientation?



- If students get caught breaking the rules, what happens?
- Do they know what will happen?
- Do the parents know what will happen?
- What did you do on the front-end?
- What steps do you take in this scenario?

- Orientation and documentation is the time to lay it out all out there.
- Another place to manage the expectations on food, housing, conditions, risks, school policies, etc.

Does Your School Require Parents Of Student Participants To Sign A Release Or Waiver of Liability?



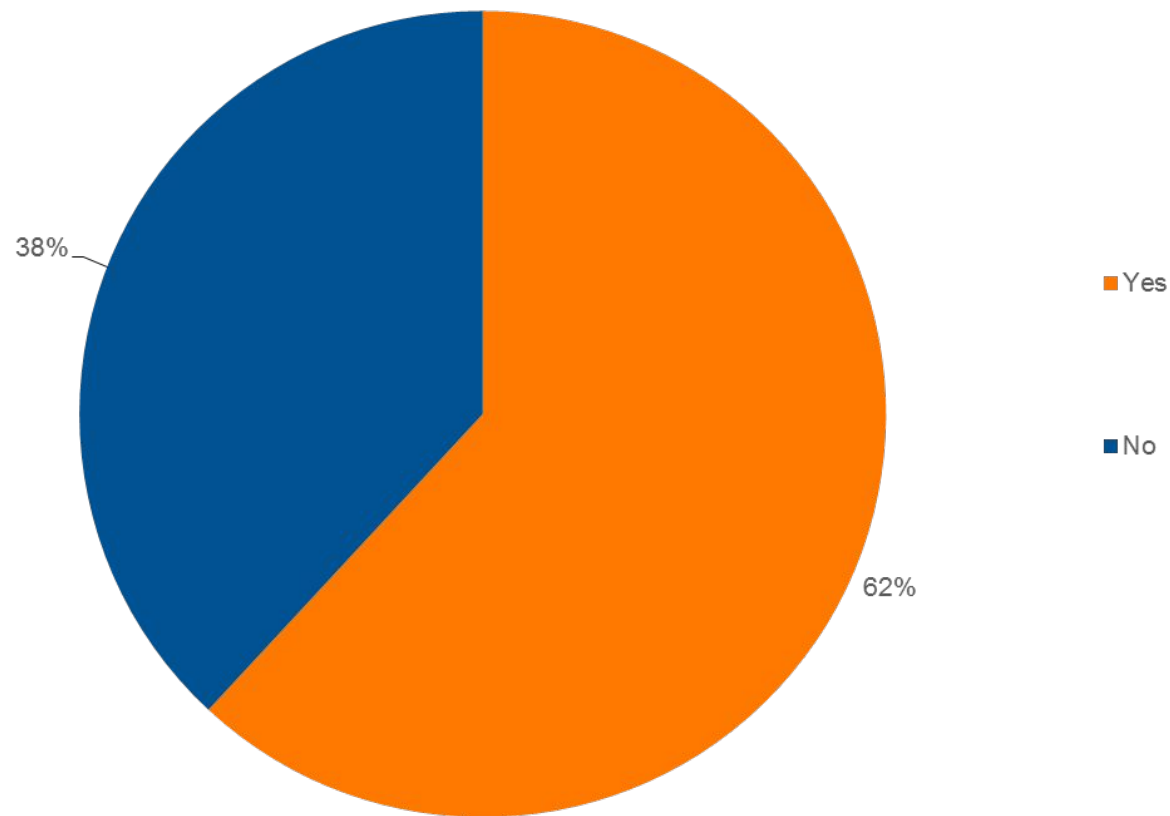


# Releases

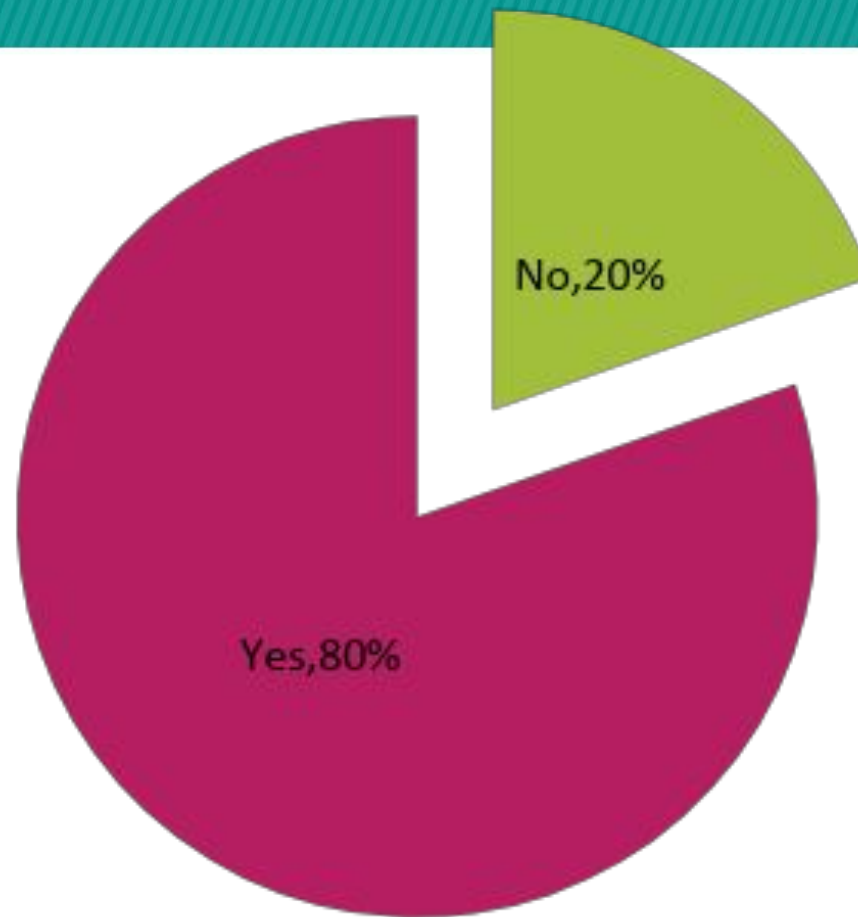
- Voluntarily, intelligently, and with full knowledge of the consequences. Mandatory programs can undermine enforceability (alternatives to requirement?)
- Four to six part test:
  - Does not adversely affect public interest
  - Exculpated party not under legal duty to perform
  - Not a public utility or common carrier
  - Contract does not grow out of unequal bargaining power or otherwise unconscionable (this is important for informed consent).

- So should you ditch releases?
  - Make sure they are readable (font).
  - Make sure they are reasonable (don't try to get them to waive everything)
  - Be clear in the risks in writing and in orientations / training.
  - Don't require immediate signatures
  - Arbitration
  - General deterrent effect
  - Over 18?

# Student Form (acknowledging risk)



# Student Form

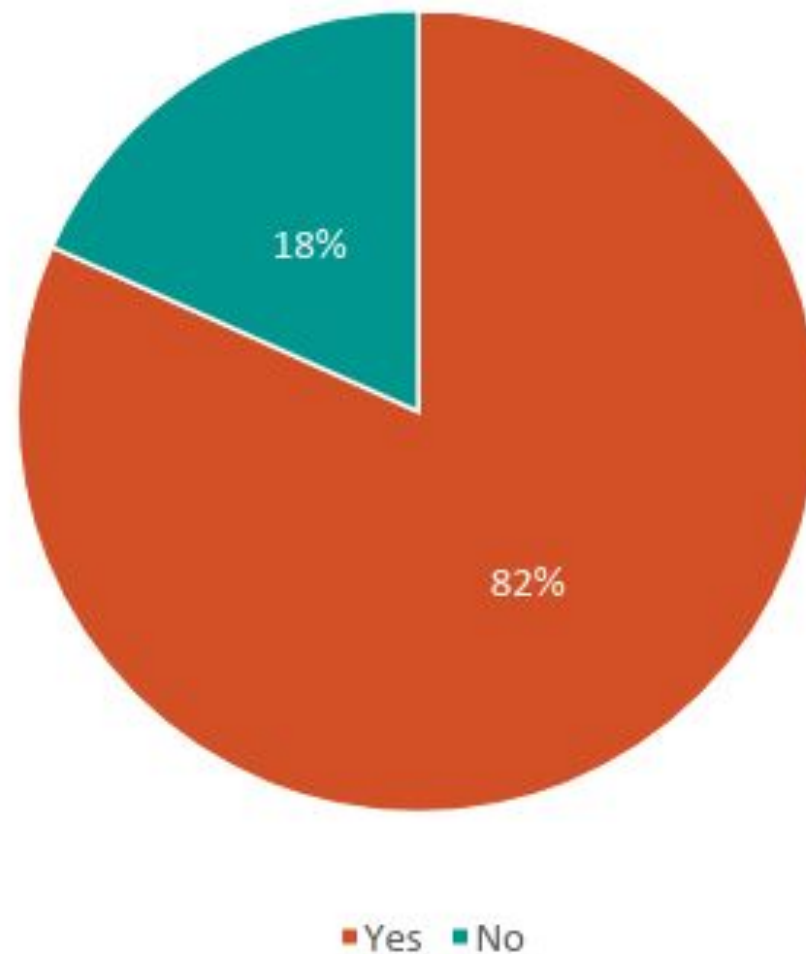




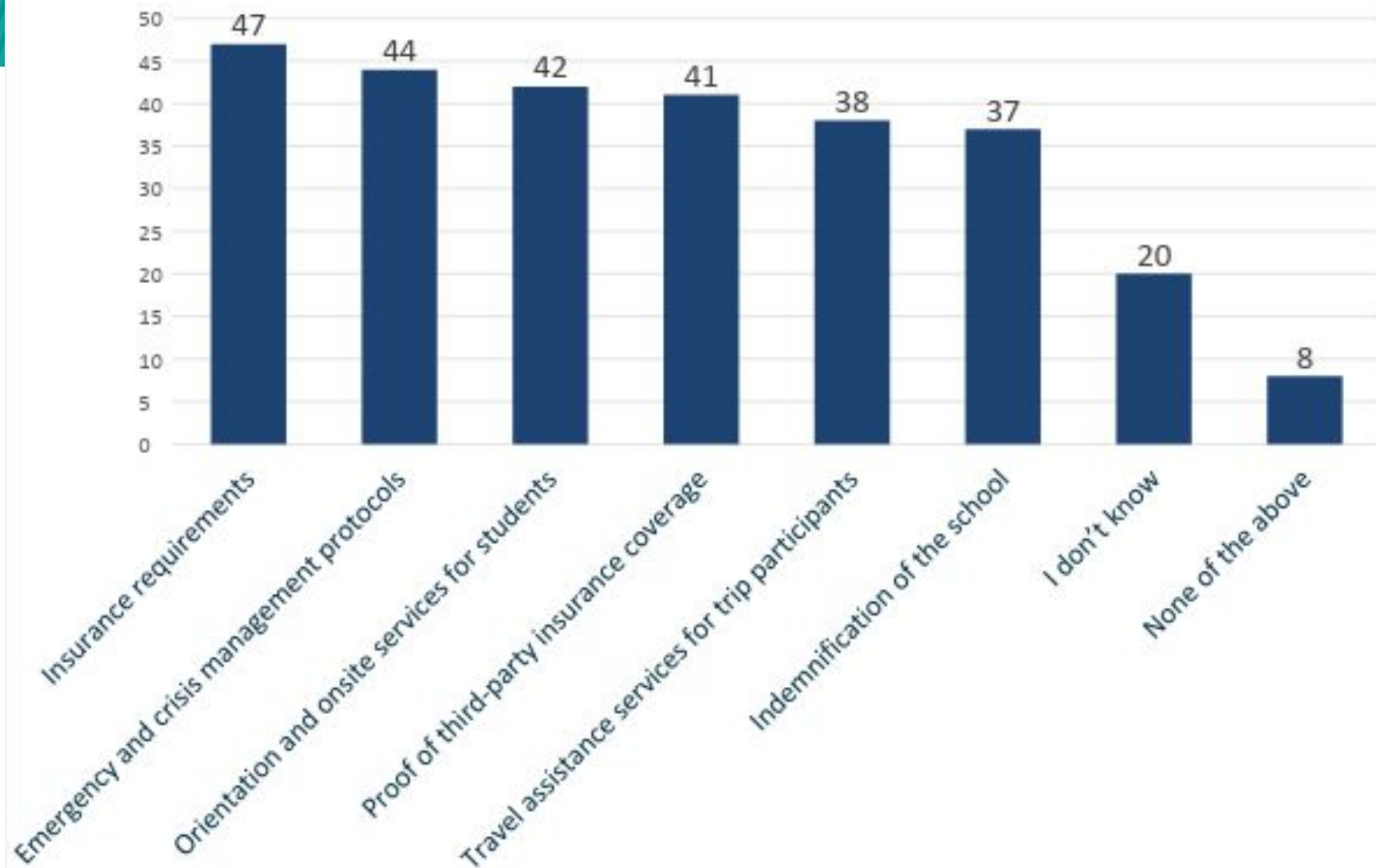
# Student Behavior / Assumption of Risk Forms

- Students, as minors, have limited ability to enter into agreements.
- However, they can agree to behaviors and their parents can acknowledge the same, in addition to the releases.
- Can also acknowledge assumption of risk on trips.
- You can take reasonable measures and present reasonable supervision, and things can still go wrong.
- Can get parent to sign as well.

## Does Your School Enter Into Written Contracts With Vendors Conducting Study Abroad Programs?



## Which Of The Following Are Included In Contracts With Vendors?

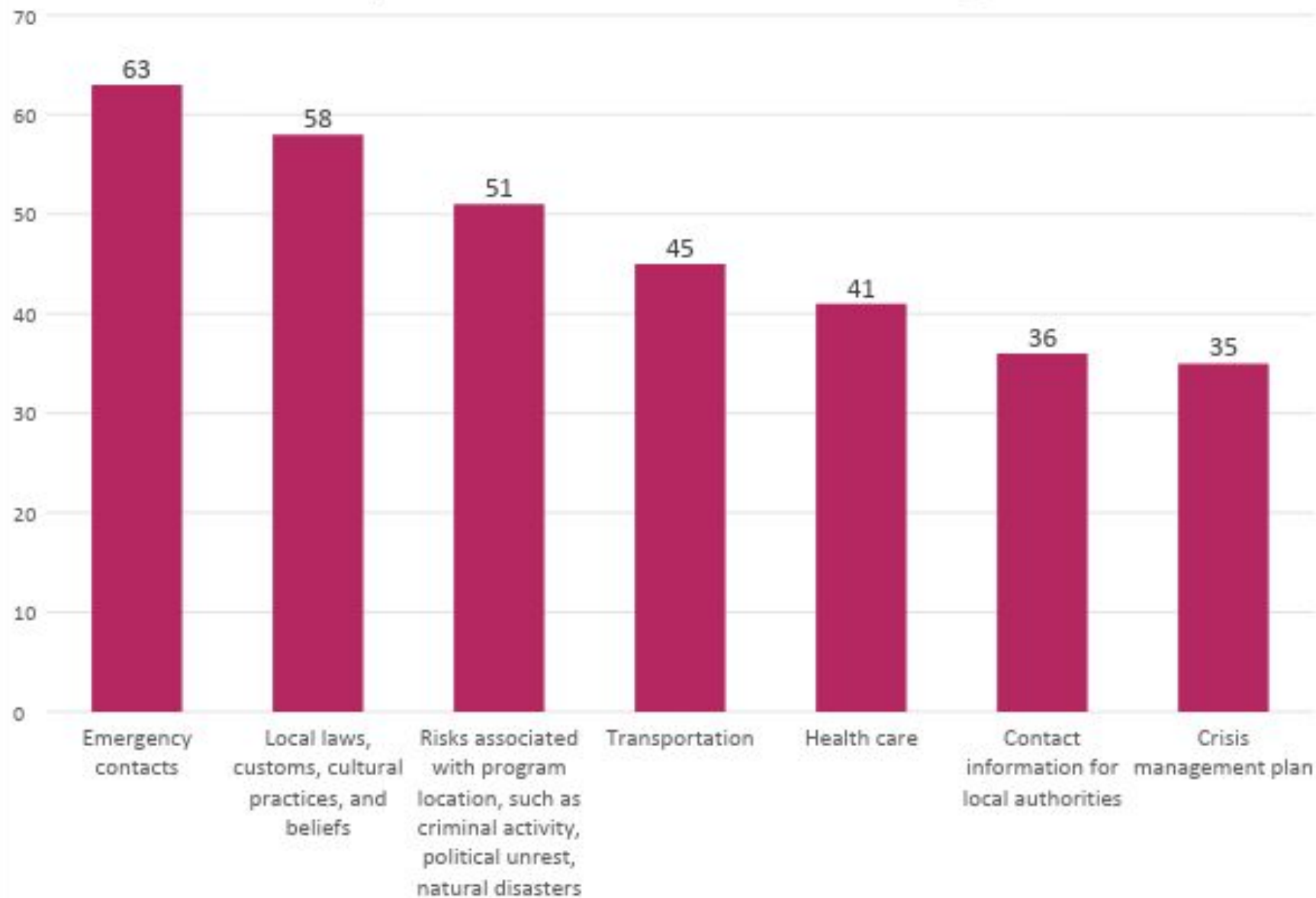


# Mobile Security

- How do you manage these moving trips?
- What check-in systems do you maintain while traveling?



## What Topics Are Addressed In Onsite Orientation Programs?



What Topics Are Addressed In The Post-Trip Survey?

