

# **NEWSLETTER -- ISU Office of General Counsel/Risk Management**

**November 2010**

## **BULLYING AND HARASSMENT GUIDELINES**

The Office of General Counsel would like to inform ISU's Administration, Faculty, Staff, and Students of the U.S. Dept. of Education Office of Civil Rights' anti-bullying and harassment guidelines and the resulting obligations which apply to higher education institutions.

From: U. S. Department of Education, Office for Civil Rights Assistant Secretary

Date: Tue, Oct 26, 2010 at 7:40 AM

Subject: Dear Colleague: Bullying and Harassment

Recently, the Office for Civil Rights (OCR) in the U.S. Department of Education issued the attached Dear Colleague letter concerning recipients' obligations to protect students from student-on-student harassment on the basis of sex (Title IX of the Education Amendments of 1972), race, color, and national origin (Title VI of the Civil Rights Act of 1964), and disability (Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990). The letter clarifies the relationship between bullying and discriminatory harassment, provides examples of harassment, and illustrates how a school should respond in each case. While the examples provided by OCR are taken from the K12 setting, the letter specifically states that, "the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR. We encourage you to share the information in this letter widely with your staff.

The Dear Colleague letter and other relevant information are available on OCR's website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

This letter is also available on ISU's Office of General Counsel website at:

<http://www.isu.edu/departments/ucounsel/>. Go to Policies, Changes, & News: U.S. Dept. of Ed./OCR Anti-Bullying Obligations.

## **ADAAA & IMPLEMENTING REGULATIONS**

Bradley H. Hall  
General Counsel

Congress enacted the Americans with Disabilities Act Amendments Act (ADAAA) effective January, 2009. The EEOC issued proposed implementing regulations about a year ago, but has yet to finalize them. Nonetheless, the ADAAA is now law and a summary of some of the significant changes is provided here.

The ADAAA was intended to override certain U.S. Supreme Court decisions which had narrowly interpreted the requirements for qualifying as disabled. While the definition of "disability" essentially remained, ("a physical or mental impairment that substantially limits one or more major life activities of [an] individual"), the definition of "major life activities" was expanded to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working," as well as "the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." However, "impairments that are transitory and minor" in nature, defined as "an impairment with an actual or expected duration of 6 months or less" are not included. (*Congressional Record*, H8286, 9/17/08).

The Act also provides that “[t]he determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures” such as prescriptions, prosthetics, assistive technology, reasonable accommodations or auxiliary aids or services, etc., except that “[t]he ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.” (*Id.* at H8387).

If a disability exists as defined, and an accommodation is needed to enable the individual to perform a major life activity, then the parties should engage in the “interactive process” to determine whether a *reasonable accommodation* is available. Contact the ADA & Disabilities Resource Center for guidance.

### **OFFICE OF TECHNOLOGY TRANSFER**

Darlene Gerry  
Associate General Counsel

Recently, Dr. Pamela Crowell, ISU’s Vice President of Research, hired Dr. Richard Jacobsen to be ISU’s Technology Transfer Officer. Dick will be assisting ISU in partnering with governments, industry, and other institutions in: creating and sharing knowledge, technologies and facilities; developing new products, processes, applications, materials and services and licensing intellectual property.

Mechanisms that might be used to facilitate technology transfer include: cooperative research; licensing intellectual property created at ISU; helping startup companies; establishing personnel exchanges among universities, laboratories and the private sector; technical assistance in the areas of knowledge, specialized equipment, and/or facilities; participation in collegial exchange opportunities such as conferences and publications; obtaining grants and other funding agreements to advance research and intellectual property creation; and entering into educational partnership agreements and alliance agreements with universities and the private sector to enhance education and research.

If you have any questions about technology transfer or if you would like more information, you can contact Dick Jacobsen at [jacorich@isu.edu](mailto:jacorich@isu.edu) or at 282-4191.

### **RETURN TO WORK**

Susan Hengel-Morris  
Assistant Risk Manager

ISU’s “return-to-work” program is a viable mechanism that allows and encourages employees to return to work as soon as possible after injury. The “return-to-work” program is specifically designed for employees who sustain job-related injuries and illnesses that are receiving workers’ compensation benefits.

The primary benefit of a “return-to-work” program is to facilitate the earliest possible return of injured workers to the workplace to perform meaningful, productive work within their physical capabilities. This program emphasizes employer/employee efforts to quickly return the employee to the productive workforce. It emphasizes the employee’s ability to return to the same or similar duties and tasks performed prior to the injury or to perform light duty tasks. The employee’s return to the job enhances productivity, reduces employee turnover, and reduces employee-related costs associated with workers’ compensation. Medical research has shown that people recover more quickly if they remain active and return to their normal routine as soon as possible, avoiding isolation and the mind-set of disability.

If you have questions or would like more information regarding ISU’s Return-to-Work Program, contact Risk Management at 282-5741.