



## **Sycamore County School Board**

### **Sycamore's Superintendent Looks Down A Dark Path**

The annual spring sports banquet was about to begin when Patience Pettigrew, principal of Sycamore County elementary School, informed Ed Ukates, Sycamore County Division Superintendent, that she had a personnel problem she needed to discuss with him immediately. Ed assured Patience that he would talk with her after the banquet and set off to the head table to yet another “rubber chicken” dinner. After the awards ceremony, Ed excuses himself and motioned for Patience to meet him in the hallway.

Patience got right to the point, “Ed, I’ve got a teacher that has some mental problems and I think it is starting to affect her performance in the classroom.” Patience continued, “Rita Book, one of my second grade teachers, claims to be suffering from chronic depression, anxiety, and stress. She has been a wonderful teacher, the parents, children and staff like her and she has gotten good results from her students. She also serves on several school and division curriculum committees. I wasn’t aware she was having problems other than I noticed a decline in her energy level lately and she seems to be having a few classroom management problems that she has never had in the eight years she has taught for me.” Patience explained that Rita recently told her that she was suffering from these disorders and she needed some accommodations on the job. “She’s a good teacher, but I can’t let her problems interfere with the children’s needs. What should I do?” Patience asked.

Suffering from the effects of his dinner and wishing for a Tums, Ed rubbed his stomach. “Do you think we should dismiss her?” Ed asked. Is Ed going down the wrong path?

Ed is heading down a dark path straight to court and more stomach pain. Prior to taking any employment action, Ed needs to consult with his school board attorney, Justine Justice. Increasingly, school divisions are confronted with an employee who reports a mental disability. This puts the employer in a vulnerable position since mental disabilities may involve conditions that challenge the understanding and empathy of employers. Unlike physical disabilities, mental disabilities are not easily observable. This can cause an employer to treat the alleged disability as suspect or to be at a loss as to what types of accommodations to offer the employee.

The Americans with Disabilities Act prohibits discrimination against a qualified individual with a disability. An “*individual with a disability*” is one who has a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or is regarded as having such an impairment. A “*qualified individual with a disability*” is an individual who, with or without reasonable accommodations, can perform the essential functions of the employment position that he or she holds or desires.

Rita Book, or any other Sycamore County School Board employee, would fall under the protection of the Americans with Disabilities Act if he or she suffers from a condition that impairs their ability to care for themselves, perform manual tasks, see, hear, eat, sleep, walk, stand, lift, bend, speak, breath, learn, read, concentrate, think, communicate, or work. In addition, employees can also fall under the protection of the Americans with Disabilities Act if they suffer from a condition that impairs a major bodily function such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, or reproductive functions.

Generally, it is the responsibility of the individual with the disability to inform the employer that an accommodation is needed. The employer can request that the employee provide documentation of the disability and the limitation(s) that cause the need for an accommodation. If Rita Book provides such documentation, Ed will need to discuss possible accommodations with her. To protect the school division, Ed must document Rita's request and his offers to accommodate her and her response to those offers of accommodations. An employer is not required to accommodate an employee with a disability in exactly the way she wants as long as the accommodations offered by the employer are reasonable. Furthermore, an employer is not required to implement an accommodation that is an undue hardship on the employer. However, this is not an easy defense for an employer to prove. Ed, Patience and Rita have the opportunity to explore a variety of options. Reasonable accommodations may include, but are not limited to, modification of facilities, job restructuring, part-time or modified work schedules, deleting some responsibilities that are not essential to the job (such as serving on committees in the case at hand), the use of paid leave, the use of unpaid leave under the Family and Medical Leave Act, providing personal assistants, providing equipment, or even reassignment to a vacant position that he or she is qualified to do.

Complying with the Americans with Disabilities Act can be complex at times. School divisions must take such compliance seriously since the consequences of not complying can be severe and expensive. School administrators should receive training on this area of the law and should consult their school board attorney before terminating an employee with a disability.