

Aiding members in crises

By Allen McQuarrie & Terry Livorsi

A paraprofessional with multiple sclerosis finds she can no longer stand and requires use of a wheelchair.

A teacher with diabetes grows progressively blind and can't see the blackboard.

A maintenance worker with a heart ailment can't lift heavy items.

A custodian, plagued by alcoholism, comes cheerfully to work reeking of alcohol.

What is going to happen to these school staff members?

Employers and associations must now comply with the Americans With Disabilities Act (ADA) of 1990, which prohibits discrimination against people with disabilities in employment. Included among those protected by the law are employees with physical or mental impairment or a record of such impairment., which can include a stress-related or addictive illness.

Representation includes gaining treatment

In many cases, disabled employees need association assistance to establish the existence of a disability or to support claims that they can perform their jobs adequately.

Behind every "war story" about an association member in crisis is a distress call for help that may go beyond a simple case of legal representation. The member might be suffering from a treatable illness protected by the ADA.

The association's duty to fairly represent impaired members could entail helping them gain access to treatment as a condition of returning to work, saving a job, or purging negative evaluations from a personnel file.

Members whose careers are in jeopardy often are facing personal crises that form the root of their performance problems.

And they don't just have job problems. They may be suffering from a variety of treatable mental health conditions, addictive diseases and stress-related illnesses that impair not only performance, but also their interaction with co-workers, family members, and others.

Look for cause behind job problems

The causes and effects of impaired performance take many forms.

- A custodian accused of assault actually suffered from acute depression. Once the depression was treated, the employee returned to work and from then on received outstanding evaluations.
- An apparently hopelessly alcoholic teacher was about to be dismissed after the administration documented absenteeism, tardiness, temper tantrums, and parent and student complaints. A planned intervention resulted in a treatment plan instead of disciplinary action. The teacher is currently employed in good standing, and the administration is grateful for the help received to save an outstanding educator.
- A bus driver accused of assault was actually acting out a post-traumatic stress disorder. The episode led to a court appearance. The judge recommended leniency, and the school district suspended discipline pending treatment.

Such success stories do not happen every day or in every case. The cases cited involved cooperative members who accepted the need for treatment, as well as school districts, which recognize that pursuing punitive action was not the solution.

Risks of denial, refusing treatment

Impaired members sometimes deny they need treatment, and disciplinary measures are applied because the employee refuses to deal with the disability or addiction. If the job performance problem continues and the disabled member foolishly exhausts all legal remedies short of entering a treatment program, discipline is all but certain.

Those who balk at accepting treatment are not only at risk on the job. They may excessively burden the association advocate. Unable to “find a solution” to their employment problem, impaired members besiege their association representatives, filling their schedules with meetings, conferences, and phone calls.

Need for intervention

Associations may find it necessary to refer the individual to a crisis intervention specialist or a member assistance program expert to confront the member and help the individual move into a treatment plan.

The reluctant member needs strong intervention by a skilled member/employee assistance program counselor. The association representative becomes part of the team to help motivate the member who resists treatment. Otherwise, today’s acute problem will become a chronic representation problem for the association. This is an expensive approach for the school district, the association, and the member.

The gratitude of the recovering members is a deep source of satisfaction to those who do the representation work, and the results are measurable:

- Restored health
- An increment spared
- A job saved
- A file full of reprimands expunged
- Reduced cost to the district, the association, the member, and the health care plan
- Improved job performance

Timing is important when disabled members need help. Health must be restored before the impairment becomes severe enough to prevent successful intervention.

Administrative actions might become irretrievable. Some disciplinary measures are difficult, if not impossible, to reverse. Do not wait until brains are damaged, careers ruined, reputations destroyed, or jobs terminated to act. If we fail to act, we have not only failed our duty to fairly represent another member, we may also lose that member.

It is difficult to seek reasonable accommodation with the administration if we lack a viable alternative. Cases are won because we are able to offer the school district a wise solution that benefits all.

Common sense dictates that the employee seek treatment and return fit to work in exchange for administrative restraint of discipline. When the employee has proven his or her ability to return to work, the treatment option stands as proof of good faith. The problems evidenced by the employee are modified sufficiently to warrant restoration without prejudice. Discipline is halted.

If you or anyone you know faces disciplinary action or other career-threatening possibilities, contact your local association.

If the situation results from a physical or mental disability or an addiction, discuss with the local association gaining access to medical assistance and being able to work closely with expert resources.

Working with your local association and the NJEA-NEA UniServ office, a member assistance program representative can discuss remedies available to you. Working together, this team may be able to accomplish corrective action such as reinstatement, increment restoration, and reassignment.

One case dramatically demonstrates how the combined efforts of a treatment facility and strong advocacy brought a successful conclusion to this teacher's problem.

An educator in good standing with 20 years of experience suffers from the effects of Lupus Disease. She experienced a blackout in a store while shopping and inadvertently wandered out the door with retail items in her hand for which she had not paid. She was arrested for shoplifting, and her case was printed in the newspaper. Her principal read about the case in the press and, pending tenure charges, suspended her. Her advocate was

able to prove her illness affected her behavior. She was cleared by the courts and restored to her job by the administration.

These and similar cases demonstrate the effectiveness of combining sound representation with treatment to retrieve health, to protect jobs, to save lives, and to restore professional reputations.

Allen McQuarrie is a retired NJEA field representative for leadership development. Terry Livorsi is a member assistance counselor. They both work with Healthcare Options Inc., a Willow Grove, PA firm that provides counseling and helps set up member/employee assistance programs.

As seen in November 1995/NJEA Review Magazine