

# Memorandum

**TO:** Vocational Rehabilitation Counselors and Job Placement Specialists  
**CC:** Vocational Rehabilitation Specialists, Kris Peterson  
**FROM:** Glenn Morton  
**DATE:** August 27, 2010  
**SUBJECT:** Meeting Announcement & Results of July 30, 2010 Meeting

The next informal meeting between court staff and certified vocational rehabilitation service providers is scheduled for Friday, September 17, 2010, at 2:00 pm. This will be a special meeting to continue discussions on how plans for injured workers with limited ability to communicate in English can be focused on return to work. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln. (Note: The building is now owned by Great Western Bank, and is no longer called the TierOne Center). Meetings are also held on a quarterly basis, with the final meeting for this year scheduled for October 22, 2010. Tentative dates for 2010 quarterly meetings will be determined at the October 22, 2010 meeting.

The following are the results from the July 30, 2010 meeting. If you have questions or concerns about any of the discussions or decisions, please notify the court's Vocational Rehabilitation Section prior to the next meeting and they will be considered at that meeting.

**1. Research on ESL Plans and ESL in Other States:** There was discussion at the April 16, 2010 meeting that it might be helpful to know how other jurisdictions are approaching ESL. The results of the court staff's research on this issue are shown on the attached "Summary of other States responses to Questions Re: VR and ESL" which was available at the meeting.

The court staff also analyzed our own vocational rehabilitation cases opened on and after July 1, 2005 that had one or more ESL plans implemented. The data was current as of mid-May 2010. There were forty seven cases which involved sixty six plans, as some cases had more than one plan. In fact, that number of plans is most likely low as plans for an extension with no lapse of time in between constitute a single plan. Twenty eight of those forty seven cases are closed. Closure information reveals two individuals out of the twenty eight were reported to be working at the time of closure. Ten cases were closed by lump sum settlement or release of liability. One person was determined to be permanently totally disabled. Three cases were closed after a plan was denied, including a plan for nine more months of ESL denied by the court, a plan for three and a half months additional ESL denied by the carrier, and a plan for an additional year of ESL denied by the court.

Total costs to the Workers' Compensation Trust Fund for these ESL cases (all forty seven) through mid-May were \$217,089.57. Of that amount, \$108,602.53 was for private tutors and \$59,308.52 was for mileage reimbursement. On seventeen of the closed cases, vocational

rehabilitation counselors reported fees totaling \$227,240.

A spreadsheet briefly analyzing ESL cases closed during the last fiscal year is also attached and was available at the meeting.

2. **ESL Plans:** It was suggested following the April 16, 2010 quarterly meeting that efforts toward resolving problems relating to ESL may be more productive if directed internally, toward what is within our control and what can be done within the workers' compensation system. To that end, the court staff suggested that consideration be given to developing plan justification requirements and instructions specific to ESL plans, and to developing requirements for tutors and appointment of tutors in ESL plans. A rough draft of instructions for completing ESL plans was then prepared by the staff and circulated for discussion at this meeting.

The discussions initially focused on that draft and the proposed requirement that a vocational goal be required for an ESL plan. However, attention quickly shifted to the broader question of what could be done to have a greater level of success for injured workers with limited ability to communicate in English. There was general agreement that English training for such employees should focus more directly on return to work, rather than just teaching the employee to speak English. In other words, English as a second language is not what we should be training for. Instead we should be training for the ability to communicate in English sufficient to allow the employee to return to work within his or her physical restrictions.

Discussion continued on how this could be accomplished. It was suggested that perhaps the focus on ESL training and ESL plans has been misplaced, and instead plans should be directed to job placement or on-the-job training, with English training as a supportive service. In appropriate cases a GED or other formal training plan may also be appropriate, again supported or supplemented with English training necessary to allow the employee to successfully complete the plan. It was noted that such an approach would be more consistent with how English deficiency is handled in other states. Most other states do not approve English training as a separate plan, but instead consider such training as an adjunct to another plan.

It was recognized that such an approach would require changes in the court's administrative requirements regarding plans and payment for services under a plan, and perhaps even rule changes. For example, what justification would be required for a job placement or other plan which also called for supplemental English training? Would mileage be allowed for supplemental English training approved as part of a job placement plan? What level of English competency would be required for different classes or categories of jobs?

Also on the agenda for this meeting was a discussion regarding tutors and appointment of tutors in ESL plans, and whether "hybrid" plans may be permissible in some circumstances. With regard to tutors, it was suggested that perhaps we have been asking tutors to do the wrong thing. That is, rather than telling tutors to support ESL classes, perhaps we should be telling them to assist the employee to communicate sufficiently in English to do the types of jobs he or she is otherwise capable of doing. As for hybrid plans, it was suggested that the concepts discussed above would allow for combining English training with return-to-work efforts without

inappropriately “mixing” the statutory priorities.

Consideration of the ideas, concepts, and questions discussed at this meeting will continue at the September 17, 2010 meeting.

**3. Next meeting agenda items.** At the next meeting on September 17, 2010 the following will be addressed as time permits:

a. ESL Plans and Return-To-Work: Continuing consideration of the ideas, concepts, and questions discussed at the September 17, 2010 meeting, as described above in this memorandum.

b. General Issues: Discussion of any other issues of ongoing concern to the counselors or court specialists.

**4. Future meeting agenda items.** Suggestions for future meeting agenda items are welcome.