

# Memorandum

**TO:** Vocational Rehabilitation Counselors and Job Placement Specialists  
**CC:** Vocational Rehabilitation Specialists, Nancy Sedlacek  
**FROM:** Glenn Morton  
**DATE:** May 27, 2015  
**SUBJECT:** Meeting Announcement & Results of April 17, 2015 Meeting

The next informal meeting between court staff and certified vocational rehabilitation service providers is tentatively scheduled for Friday, July 31, 2014, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln. Regular meetings are typically held on a quarterly basis, with the final meeting for this year tentatively scheduled for October 23, 2015.

The following are the results from the April 17, 2015 meeting. Please bring any questions or concerns regarding the discussions or decisions to the attention of court's Vocational Rehabilitation Section and they will be considered at the next meeting.

**1. Identification of Other Counselors/Job Placement Specialists Providing Services:** There was a reminder by the court's specialists that in preparing a vocational rehabilitation plan the counselor of record must identify (by name) any other counselor or job placement specialist who will be working with the injured employee and what duties each will perform. Should the need for services by another counselor or specialist be identified after the plan is in progress, then the counselor of record must provide the above information in writing to the employee and all parties. This must occur before the other provider begins working with client.

## **2. Reporting of Grades and Class Schedules:**

The court's specialists noted that there has been an increase in late submissions of term grade point averages, cumulative grade point averages, and class schedules, as well as an increase in deviation of classes from the approved plan of study with no explanation given to the specialist.

Problems regarding the reporting of grades and class schedules have been extensively and thoroughly addressed at quarterly meetings beginning on April 17, 2009. Those discussions resulted in a revised court policy on the reporting of grades and class schedules, which is available on the court's website at:

[http://www.wcc.ne.gov/vr/reporting\\_grades\\_class\\_schedules\\_20100416.pdf](http://www.wcc.ne.gov/vr/reporting_grades_class_schedules_20100416.pdf).

Continuing problems in these areas will result in reimplementation of the measures described in the policy.

**3. Out-of-State Counselors:** Concerns were expressed by a Nebraska counselor regarding the court's recently implemented practice of appointing an out-of-state counselor to perform a loss of earning power (LOEP) evaluation in some cases when the client resides in another state. The

concerns were with the quality of evaluations performed by such counselors and their ability to understand and apply Nebraska law regarding such evaluations. However, it was agreed after discussion that the issue is competence of the counselor to provide LOEP evaluations under Nebraska law, and not whether the counselor resides in-state or out-of-state.

The quality of LOEP evaluations performed by certified counselors in general, and not just out-of-state counselors, has been extensively and thoroughly discussed in previous quarterly meetings beginning as early as June 23, 2006. Various options for improving the quality of such evaluations were considered over the following years, including requiring a separate certification to perform such evaluations, developing a training program, and requiring a set number of CEU hours. Most such suggestions were rejected for various reasons. Nevertheless, as a result of those discussions the court developed a fact sheet on LOEP evaluations and began sending an email blast to all certified providers regarding any new appellate court case impacting LOEP evaluations. The email blasts continue when appropriate and the fact sheet is updated on a regular basis by the court's Legal section. The fact sheet is available on the court's website at: [http://www.wcc.ne.gov/vr/loss\\_of\\_earning\\_power\\_fact\\_sheet.pdf](http://www.wcc.ne.gov/vr/loss_of_earning_power_fact_sheet.pdf).

In the absence of any further resolution on this issue, it was announced at the April 18, 2014 meeting that the decision as to whether a particular counselor is qualified for appointment to perform a LOEP evaluation would likely remain a case by case decision by court management. However, it was also agreed that some screening should occur in determining whether a counselor is qualified to perform such evaluations. Options discussed at the meeting included (1) whether the counselor has experience in doing LOEP evaluations, (2) whether the counselor knows or is willing to learn Nebraska law on LOEP evaluations, and (3) whether the counselor is interested in doing LOEP evaluations. Following that meeting the court revised its two application for certification forms, VR-39 and VR-39A, to request input from the applicant in these three areas.

Given the above history, and lacking any further resolution at this meeting, the decision as to whether a particular counselor is qualified for appointment to perform a LOEP evaluation under Nebraska law will continue to be made by court management on a case-by-case basis. The fact that a counselor resides out-of-state will not be sufficient, in and of itself, to deem a counselor unqualified to perform such an evaluation. Rather, the court will continue to consider the three factors identified at the April 18, 2014 meeting and repeated in the preceding paragraph. In considering a counselor's previous experience in providing LOEP evaluations, the court will look not only to experience in providing such evaluations under Nebraska law, but also to the counselor's experience in providing similar evaluations under other state or federal laws.

As also noted at the April 18, 2014 meeting, factors supporting the appointment of qualified out-of-state counselors in appropriate cases include the following:

- a. It cannot automatically be assumed that an out-of-state counselor does not know, or cannot learn, Nebraska law on LOEP evaluations. Counselors are frequently responsible for providing services in multiple states, and as a result must know and be able to apply the laws of different states.

b. The out-of-state counselor may have better knowledge of the hub community and the labor market in the area where the client resides.

c. The client could benefit from having only one counselor when both vocational rehabilitation services and an LOEP evaluation are being provided. Duplication of services could also be avoided in such circumstances.

**4. Future meeting agenda items:** No additional agenda items are currently identified for future meetings. Suggestions are welcome.