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2 **RULES AND PROCEDURES**
3

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23
24
25

1 (ii) a statement of the statutory or other authority under which the rule
2 is to be promulgated; and

3
4 (iii) the public benefits anticipated as a result of adopting the rule or the
5 anticipated implications that could result from the failure to adopt
6 the proposed rule.

7
8 (B) Agency staff reviews the requests and present recommendations to the
9 Commission for action.

10
11 *The provisions of this §850.4 adopted to be effective March 12, 2012, 37 TexReg 1713;*
12 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
13 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*

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17 **§850.5. Complaints.**

18
19 (a) Complaints may be filed with the Agency either in writing through mail, e-mail, or
20 facsimile or by videotape for individuals who use sign language to communicate.
21 Complaints should be directed to the customer's local VR office or may be submitted
22 via email to customers@twc.state.tx.us.

23
24 (b) For the purpose of directing complaints to the Agency, the Agency may notify
25 customers and service recipients of its name, mailing address, and telephone number
26 by including the information:

27
28 (1) on each registration form, application, or written contract relating to
29 participation in a program that is funded in any part by money derived from or
30 through the Agency;

31
32 (2) on a sign that is prominently displayed in the place of business of each
33 individual or entity engaging in a program that is funded in any part by money
34 derived from or through the Agency;

35
36 (3) in a bill for service provided by an individual or entity engaging in a program
37 that is funded in any part by money derived from or through the Agency; or

38
39 (4) in other media for dissemination of information as determined by the Agency.

40
41 (c) Ordinarily, the Agency resolves complaints within 60 days.

42
43 *The provisions of this §850.5 adopted to be effective March 12, 2012, 37 TexReg 1713;*
44 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
45 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*

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2
3 **§850.6. Cooperation with Other Public Agencies.**

4
5 The Agency enters into appropriate cooperative arrangements with, and uses the services
6 and facilities of, other federal, state, and local public agencies providing services related to
7 rehabilitation of individuals with disabilities. The Agency also works toward maximum
8 coordination and consultation with programs for and relating to rehabilitation of veterans
9 with disabilities.

10
11 *The provisions of this §850.6 adopted to be effective March 12, 2012, 37 TexReg 1713;*
12 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
13 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*

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17 **§850.11. Qualified Vocational Rehabilitation Counselor.**

18
19 (a) The Vocational Rehabilitation Division (VRD) helps counselors to meet the
20 Comprehensive System of Personnel Development (CSPD) standard by making
21 funds available through the Qualified Vocational Rehabilitation Counselor (QVRC)
22 program for the required graduate education except when:

- 23
24 (1) unforeseen circumstances occur that may restrict or prohibit the funding;
25 or
26
27 (2) management discontinues a counselor's participation in the program in
28 the best interests of the division.

29
30 (b) The VRD director or designee must approve QVRC financial assistance. This
31 financial assistance is contingent on:

- 32
33 (1) funding;
34
35 (2) management approval; and
36
37 (3) compliance with qualifications for participation.

38
39 (c) Qualifications for participation in the QVRC program require that vocational
40 rehabilitation counselors and transition vocational rehabilitation counselors applying
41 for assistance must:

- 42
43 (1) have completed the initial training year;
44
45 (2) be meeting or exceeding job performance expectations;
46

- 1 (3) obtain the appropriate approvals to pursue a graduate degree or prescribed
2 coursework;
3
4 (4) apply for Rehabilitation Services Administration (RSA) scholarship and
5 university stipend funding; and
6
7 (5) be accepted by the appropriate institution of higher education.
8
9 (d) A counselor who meets the CSPD standard is considered a Qualified Vocational
10 Rehabilitation Counselor.
11
12 (e) A counselor is expected to meet the CSPD standard within seven years from
13 completion of the initial training year. Divisions must conduct transcript reviews
14 and/or confirm certifications to determine compliance with standards or to outline
15 coursework to be completed by the counselor.
16
17 (f) A counselor is expected to pay all costs or expenses:
18
19 (1) associated with the college application and admission except one GRE fee;
20
21 (2) related to tuition, fees, and books for any coursework that must be repeated
22 because of failure to successfully complete; and
23
24 (3) related to completing work necessary to remove any grade of "I" (Incomplete)
25 within three months, unless there are valid reasons (for example, serious
26 illness, or university regulations to the contrary).
27

28 *The provisions of this §850.11 adopted to be effective March 12, 2012, 37 TexReg 1713;*
29 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
30 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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34 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

35 **§850.32. Definitions.**

36
37
38 The following words and terms, when used in this division, have the following meanings,
39 unless the context clearly indicates otherwise:
40

- 41 (1) Agency--The Texas Workforce Commission.

1
2 (2) RCT--The Rehabilitation Council of Texas.
3

4 *The provisions of this §850.32 adopted to be effective March 12, 2012, 37 TexReg 1706;*
5 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
6 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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10 **§850.33. Tasks.**

11
12 Tasks. The RCT shall:

- 13
14 (1) review, analyze, and advise the VRD about their performance of
15 responsibilities, particularly those relating to:
16
17 (A) eligibility determination (including order of selection);
18
19 (B) the extent, scope, and effectiveness of services provided; and
20
21 (C) functions performed by VRD that potentially affect the ability of
22 individuals with disabilities to achieve rehabilitation goals and
23 objectives;
24
25 (2) advise the Vocational Rehabilitation Division (VRD) and, at its discretion,
26 help prepare the State Plan for Vocational Rehabilitation Services;
27 amendments to the plan; and applications, reports, needs assessments, and
28 evaluations required;
29
30 (3) to the extent feasible, review and analyze the effectiveness of, and customer
31 satisfaction with:
32
33 (A) the functions performed by state agencies and other public and private
34 entities responsible for performing functions for individuals with
35 disabilities; and
36
37 (B) vocational rehabilitation services:
38
39 (i) provided, or paid for from funds made available, under 29 USC
40 §725, or through other public or private sources; and
41
42 (ii) provided by state agencies and other public and private entities
43 responsible for providing vocational rehabilitation services to
44 individuals with disabilities; and
45

1 (C) the employment outcomes achieved by individuals who receive services
2 under 29 USC §725, including the availability of health and other
3 employment benefits in connection with those employment outcomes;
4

5 (4) coordinate with other councils in the state, including the State Independent
6 Living Council established under 29 USC §796d; the advisory panel
7 established under §612(a)(20) of the Individuals with Disabilities Education
8 Act 20 USC §1412(a)(21); the State Council on Developmental Disabilities
9 described in 42 USC §15025; the State Mental Health Planning Council
10 established under 42 USC §300x-3(a); and the state workforce investment
11 board;
12

13 (5) advise VRD and coordinate working relationships between the divisions and
14 the State Independent Living Council and centers for independent living within
15 the state; and
16

17 (6) perform other comparable functions consistent with the Rehabilitation Act of
18 1973, as amended, that the RCT determines to be appropriate.
19

20 *The provisions of this §850.33 adopted to be effective March 12, 2012, 37 TexReg 1706;*
21 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
22 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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26 **§850.34. Reports.**

27
28 The RCT shall:
29

- 30 (1) prepare and submit an annual report to the governor or appropriate state entity
31 and the Commission on the status of vocational rehabilitation programs
32 operated within the state, and make the report available to the public; and
33
- 34 (2) submit to the commissioner of the Rehabilitation Services Administration,
35 United States Department of Education, periodic reports that the commissioner
36 may reasonably request, and keep records that the commissioner finds
37 necessary to verify those reports.
38

39 *The provisions of this §850.34 adopted to be effective March 12, 2012, 37 TexReg 1706;*
40 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
41 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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1 **§850.35. Funding.**
2

3 The Rehabilitation Council of Texas (RCT) is funded primarily by federal funds, and its
4 existence is required in order for the Agency to receive and expend federal funds.
5

6 *The provisions of this §850.35 adopted to be effective March 12, 2012, 37 TexReg 1706;*
7 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
8 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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12 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**
13

14 **§850.50. Privacy Policies.**
15

16 In accordance with Chapter 559, Government Code, the Agency adheres to the following
17 privacy policies.
18

- 19 (1) Right to be informed about information collected. An individual has the right
20 to be informed about information that the Agency collects about the individual
21 unless the Agency is allowed to withhold the information from the individual
22 under Government Code, §552.023(b).
23
- 24 (2) Right to receive notice about certain information laws and practices.
25
- 26 (A) When the Agency collects information about an individual by means of a
27 form that the individual completes and files with the Agency, the Agency
28 informs the individual of his or her rights related to the information
29 collected. If the form is in a paper format, the Agency posts a prominent
30 notice of the individual's rights on the form. Or if the form is in an
31 electronic format on an Internet site, the Agency prominently posts the
32 notice on the Internet site in connection with the electronic form. The
33 notice states that:
34
- 35 (i) with few exceptions, the individual is entitled on request to be
36 informed about the information that the Agency collects about the
37 individual;
38
- 39 (ii) under the Government Code, §552.021 and §552.023, the individual
40 may receive and review the information; and
41
- 42 (iii) under the Government Code, §559.004, the individual may have the
43 Agency correct information about the individual that is incorrect.
44
- 45 (B) When Agency staff uses an Internet site to collect information about an
46 individual or about the computer network location or identity of a user of

1 the site, the Agency prominently posts on the site what information the
2 Agency is collecting, including such information being collected by
3 means that are not obvious.
4

- 5 (3) Right to correction of incorrect information. The Agency has established a
6 procedure under which an individual may have the Agency correct information
7 that the Agency possesses about the individual and that is incorrect. The
8 individual should send a written request to the Agency, including his or her full
9 name and mailing address; identify the incorrect information; and provide the
10 correct information. If the information to be corrected is related to a vocational
11 rehabilitation case, or to an Agency personnel or employment record,
12 documentation establishing the individual's identity should be included. The
13 individual should attach to the request any additional material needed to
14 identify the incorrect information or verify the correct information. The
15 individual should include with the request contact information such as address,
16 a daytime telephone number and an email address in case the Agency needs to
17 clarify the request. The individual must sign and mail the request to Records
18 Management Center, ATTN: Records Management Officer, 4405A Springdale
19 Road, Austin, Texas 78723-6050. The Agency will acknowledge receipt of the
20 request, and will notify the individual of final action taken.
21
- 22 (4) Applicability of Public Information Law. Government Code, Chapter 552,
23 governs the charges that the Agency may impose on an individual who
24 requests information that the Agency collects about himself or herself.
25 However, the Agency does not charge an individual to correct information
26 about the individual.
27

28 *The provisions of this §850.50 adopted to be effective March 12, 2012, 37 TexReg 1706;*
29 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
30 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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34 **§850.51. Confidentiality of Customer Information in Vocational Rehabilitation**
35 **Services Program.**
36

- 37 (a) Customer records.
38
- 39 (1) All personal information available to Agency employees as they administer
40 rehabilitation services programs, including names, addresses, and records of
41 customer evaluations, is confidential.
42
- 43 (2) The Agency may use such information and records only for purposes directly
44 connected with administering the vocational rehabilitation programs.
45

- 1 (3) The Agency may directly or indirectly disclose information only in
2 administering the rehabilitation programs, except with the customer's written
3 consent, in compliance with a court order, or in accordance with a federal or
4 state law or regulation. The Agency may not share information containing
5 identifiable personal information with advisory or other bodies that do not have
6 official responsibilities for administration of the programs.
7
8 (4) Upon a customer's request, the Agency releases information to the customer or,
9 as appropriate, his or her parent, guardian, or other representative. If, in the
10 opinion of the counselor, release to the customer of a particular document in
11 the customer case file will have a harmful effect on the customer, the customer
12 will be notified that there is information in the case file that can be released
13 only to an appropriate representative designated in writing by the customer.
14
15 (5) All customer information is the property of the Agency.

16
17 (b) Other records.

- 18
19 (1) Release of customer records must be made in accordance with federal law and
20 regulations.
21
22 (2) The Agency may provide to and receive from any state agency other
23 nonconfidential information for the purpose of increasing and enhancing
24 services to customers and improving agency operations.
25

26 *The provisions of this §850.51 adopted to be effective March 12, 2012, 37 TexReg 1706;*
27 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
28 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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32 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
33 **HEARING PROCEDURES**

34
35 **§850.60. Scope.**

- 36
37 (a) The following statutes and regulations authorize the procedures established by this
38 chapter:
39
40 (1) The Rehabilitation Act of 1973, as amended, 29 USC §701 et seq. and
41 regulations of the U.S. Department of Education, Rehabilitation Services
42 Administration, 34 CFR Part 361, as amended, relating to State Vocational
43 Rehabilitation Services;
44
45 (2) 34 CFR Part 395, as amended, relating to Vending Facility Program for the
46 Blind on Federal and Other Property; and

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- (3) 34 CFR Part 367, as amended, relating to Independent Living Services for Older Individuals Who Are Blind (ILS-OIB).

- (b) The procedures in this subchapter apply to those determinations made by Agency personnel that affect the provision of vocational rehabilitation (VR) services, independent living services for older individuals who are blind, and the Business Enterprises of Texas program.
 - (1) Unless the determination concerns the denial, reduction, suspension, or termination of VR services, independent living services for older individuals who are blind, or comprehensive rehabilitation services by the Agency, it is not subject to review under the procedures of this subchapter.
 - (2) The following decisions or determinations are not subject to review under this subchapter:
 - (A) administrative decisions that are made by Agency supervisors or managers without reference to any specific applicant or customer and that apply generally to the provision of VR services to applicants or customers, including to decisions concerning the assignment of personnel;
 - (B) decisions, diagnoses, judgments, actions, or omissions of third-party vendors or service providers;
 - (C) decisions concerning the content of an applicant's or customer's record of service for which remedies are provided under 34 CFR §361.38(c)(4) and §361.47(a)(12); and
 - (D) decisions allegedly violating any state or federal antidiscrimination or civil rights statute (as amended), including the provisions of Texas Labor Code, Chapter 21; the Rehabilitation Act of 1973, as amended; Section 504, the Americans with Disabilities Act; or the Age Discrimination in Employment Act.

- (c) Ineligibility. The following may challenge a determination of ineligibility through the procedures of this division:
 - (1) applicants who are found not to be eligible for VR services; and
 - (2) previously eligible individuals who have been determined no longer eligible for VR services under 34 CFR §361.43.

- 1 (d) An individual's decision to seek an informal resolution of matters about which the
2 individual is dissatisfied shall not prevent, compromise, or delay the individual's
3 access to formal resolution procedures in this division.
4
- 5 (e) The Agency shall not suspend, reduce, or terminate VR services being provided to an
6 applicant or customer, including evaluation and assessment services and the
7 development of an Individualized Plan for Employment, pending a resolution of the
8 applicant's or customer's appeal by mediation or hearing, unless:
9
- 10 (1) the applicant or customer requests a suspension, reduction, or termination of
11 services; or
12
- 13 (2) the Agency has evidence that the applicant or customer obtained the services
14 through misrepresentation, fraud, collusion, or criminal conduct.
15

16 *The provisions of this §850.60 adopted to be effective May 13, 2019, 44 TexReg 2364*
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20 **§850.61. Definitions.**
21

22 The following words and terms, when used in this subchapter, have the following
23 meanings unless the context clearly indicates otherwise. The use of the singular or plural
24 case is not meant to be limiting unless the context clearly indicates otherwise.
25

- 26 (1) Act--The Rehabilitation Act of 1973 as amended, 29 USC §701, et seq.
27
- 28 (2) Appellant--An applicant, eligible individual, authorized representative, or
29 parent who has initiated formal procedures under this subchapter.
30
- 31 (3) Applicant--An individual who submits an application for VR services in
32 accordance with 34 CFR Part 361.
33
- 34 (4) Authorized representative--An attorney authorized to practice law in the State
35 of Texas, or an individual designated by a party to represent the party in
36 hearing procedures. The term includes a parent or an individual made legally
37 responsible for a child by a court of competent jurisdiction.
38
- 39 (5) Counselor--An Agency employee who is trained to provide vocational
40 guidance and counseling and meets the minimum qualifications designated in a
41 functional job description.
42
- 43 (6) Customer--An applicant or an individual with a disability who is receiving VR
44 services.
45

- 1 (7) Discovery--The process by which a party, before any final hearing on the
2 merits, may obtain evidence and other information that is relevant to a claim or
3 defense in the appeal.
4
- 5 (8) Eligible individual--Any individual with a disability determined to be eligible
6 to receive VR services.
7
- 8 (9) Hearing--A formal review conducted under this chapter. This term includes
9 prehearing conferences.
10
- 11 (10) Impartial hearing officer (IHO)--An individual who is appointed to conduct a
12 hearing under this chapter.
13
- 14 (11) Individualized Plan for Employment--A plan developed for each individual
15 determined to be eligible for VR services, in accordance with 34 CFR Part 361.
16
- 17 (12) Parent--The term "parent," whether singular or plural, means a minor child's
18 natural or adoptive parent, the spouse of the minor child's natural or adoptive
19 parent, the minor child's surrogate or foster parent, the spouse of the surrogate
20 or foster parent, or other individual made legally responsible for the minor
21 child by a court.
22
- 23 (13) Party--An individual or agency named or admitted to participate in a formal
24 hearing.
25
- 26 (14) Record--The official record of a hearing, including all arguments, briefs,
27 pleadings, motions, intermediate rulings, orders, evidence received or
28 considered, statements of matters officially noticed, questions and offers of
29 proof, objections and rulings on objections, proposed findings of fact,
30 conclusions of law, and hearing officer decision; any other decision, opinion,
31 or report by the hearing officer or Commission; and all memoranda or data,
32 including customer and applicant files, submitted to or considered by the
33 impartial hearing officer.
34
- 35 (15) State Plan--The plan for VR services submitted by the Agency's Vocational
36 Rehabilitation Division in compliance with the Act.
37

38 *The provisions of this §850.61 adopted to be effective May 13, 2019, 44 TexReg 2364*
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42 **§850.62. Filing a Request for Review.**
43

- 44 (a) Any applicant or eligible individual who is dissatisfied with a determination made by
45 the Agency, as described in §850.60 of this subchapter (relating to Scope), may
46 request, or, if appropriate, may request through the individual's authorized

1 representative, a review of the determination. Although no prescribed form is
2 required to file a request, preprinted forms for this purpose are available on request at
3 any Agency VR office.
4

5 (b) The request for a review shall be filed in writing with the hearings coordinator within
6 the Agency's Office of General Counsel.
7

8 (1) A request shall be considered filed on the day that it is received by the hearings
9 coordinator within the Agency's Office of General Counsel.
10

11 (2) Preprinted forms for this purpose are available on request from the hearings
12 coordinator within the Agency's Office of General Counsel or any Agency VR
13 office.
14

15 (c) On receiving a request for review, the hearings coordinator within the Agency's
16 Office of General Counsel shall, within five working days, mail the appellant:
17

18 (1) the name, address, and telephone number of the Client Assistance Program
19 established under federal law;
20

21 (2) the name of the IHO appointed to hear the appeal, and the date, time, and place
22 of any prehearing;
23

24 (3) a copy of applicable hearing procedures; and
25

26 (4) notice that the appellant has the right to request mediation procedures.
27

28 *The provisions of this §850.62 adopted to be effective May 13, 2019, 44 TexReg 2364*
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32 **§850.63. Informal Dispute Resolution.**
33

34 (a) The Agency shall provide an opportunity for informal resolution of an appeal.
35

36 (b) Informal resolution may include, but is not limited to:
37

38 (1) informal meetings with VR counselors or their supervisors;
39

40 (2) second reviews of the case file and case decisions by VR management;
41

42 (3) telephone calls to or conference calls that include the affected parties; or
43

44 (4) written explanations or summaries of the policies, laws, or regulations
45 involved in the complaint.
46

- 1 (c) If the informal resolution procedure results in a final agreement between the parties,
2 no hearing shall be held.
3
- 4 (d) If no final informal resolution is reached, the Agency shall provide an opportunity
5 for a hearing to resolve an appeal.
6
- 7 (e) Either a final agreement resulting from informal resolution or a hearing and impartial
8 hearing officer decision shall be completed within 60 calendar days of the original
9 filing of the appeal, unless the parties agree to a specific extension of time.

10
11 *The provisions of this §850.63 adopted to be effective May 13, 2019, 44 TexReg 2364*

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14
15 **§850.64. Time for Hearing.**

16
17 A hearing conducted under this chapter by an IHO selected in accordance with §850.65
18 of this subchapter (relating to Mediation Procedures), will be held within 60 days of an
19 applicant's or eligible individual's request for review of an Agency determination that
20 affects the provision of VR services to the individual, unless informal resolution or a
21 mediation agreement is achieved before the 60th day or the parties agree to a specific
22 extension of time.

23
24 *The provisions of this §850.64 adopted to be effective May 13, 2019, 44 TexReg 2364*

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28 **§850.65. Mediation Procedures.**

- 29
- 30 (a) An applicant or eligible individual who has initiated a proceeding under this
31 subchapter, may request, or may request through the individual's authorized
32 representative, mediation to resolve the dispute. The Agency, with the consent of the
33 applicant, eligible individual, or the authorized representative, as appropriate, may
34 also originate the request for mediation.
35
- 36 (b) Mediation is voluntary on the part of the parties. At any point during the mediation
37 process, either party or the mediator may elect to terminate the mediation. In the
38 event that mediation is terminated, either party may pursue resolution through an
39 impartial hearing. Mediation shall not be used to deny or delay the right of an
40 individual to a hearing under this subchapter, or to deny any other right afforded by
41 the Act. Mediation shall be conducted by a qualified and impartial mediator who is
42 trained in effective mediation techniques.
43
- 44 (c) The Agency shall bear all costs related to the mediation process, consistent with this
45 subchapter.
46

- 1 (d) The request for mediation shall be filed in writing with the hearings coordinator
2 within the Agency's Office of General Counsel. On receiving a request for mediation
3 from the parties, the hearings coordinator shall randomly select an individual from a
4 list of qualified mediators who are knowledgeable in laws and regulations relating to
5 the provision of VR services, ILS-OIB, or the Business Enterprises of Texas
6 program, whichever may apply to the dispute.
7
- 8 (e) Sessions in the mediation process shall be coordinated by the mediator in a timely
9 manner at a location convenient to both parties in the dispute. Parties shall be
10 provided an opportunity to submit evidence and other information that supports their
11 positions.
12
- 13 (f) All discussions that occur during the mediation sessions are confidential and shall
14 not be used as evidence in any subsequent due process hearing or civil proceeding.
15 The mediator may require the parties to sign a confidentiality pledge before the start
16 of the mediation process.
17
- 18 (g) Any agreement reached through the mediation process shall be documented in a
19 written mediation agreement and signed by the parties to the dispute. Copies shall be
20 provided to both parties. The agreement then becomes a part of the customer record.
21

22 *The provisions of this §850.65 adopted to be effective May 13, 2019, 44 TexReg 2364*
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26 **§850.66. Assignment of Impartial Hearing Officer.**
27

- 28 (a) The hearings coordinator, as described in §850.62 of this subchapter (relating to
29 Filing a Request for Review), shall select, on a random basis, or by agreement
30 between the Agency and the appellant, or if appropriate, the appellant's authorized
31 representative or a parent, an IHO from a list of qualified IHOs maintained by the
32 Agency.
33
- 34 (b) The IHO shall be an individual who:
35
- 36 (1) is not an employee of a public agency (other than an administrative law judge,
37 hearing examiner, or employee of an institution of higher education);
 - 38 (2) has knowledge of the delivery of VR services, the state plan, and the federal
39 and state regulations governing appeals under this chapter;
 - 40 (3) has received training specified by the Agency with respect to the performance
41 of official duties; and
 - 42 (4) has no personal, professional, or financial interest that would conflict with his
43 or her objectivity in the hearing.
44
45
46

1
2 (c) An individual is not considered to be an employee of a public agency for the
3 purposes of subsection (b) of this section solely because the individual is paid by the
4 Agency to serve as a hearing officer.
5

6 (d) Despite the provisions in subsection (a) of this section, if in a subsequent appeal, the
7 appellant raises factual issues or claims that were previously adjudicated or could
8 have been adjudicated in a prior appeal:
9

10 (1) the hearings coordinator may appoint the same IHO that heard the prior appeal
11 to hear the subsequent appeal; or
12

13 (2) the IHO, on Agency motion, reassigns the appeal to the IHO who heard the
14 prior appeal.
15

16 *The provisions of this §850.66 adopted to be effective May 13, 2019, 44 TexReg 2364*
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20 **§850.67. Powers and Duties of Impartial Hearing Officer.**
21

22 (a) The IHO has the authority and duty to:
23

24 (1) conduct a full and impartial hearing;
25

26 (2) take action to avoid unnecessary delay in the disposition of the proceeding; and
27

28 (3) maintain order.
29

30 (b) The IHO has the power to regulate the course of the hearing, including the power to:
31

32 (1) administer oaths;
33

34 (2) take testimony;
35

36 (3) rule on questions of evidence;
37

38 (4) rule on discovery issues;
39

40 (5) issue orders relating to hearing and prehearing matters, including orders
41 granting motions to subpoena witnesses and imposing nonmonetary sanctions
42 regarding discovery;
43

44 (6) admit or deny party status;
45

1 (7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably
2 limit the time for presentations;

3
4 (8) grant continuances;

5
6 (9) request parties to submit legal memoranda, proposed findings of fact, and
7 conclusions of law; and

8
9 (10) issue decisions based on findings of fact and conclusions of law.

10
11 (c) Unless required for the disposition of ex parte matters authorized by law, the IHO
12 shall not directly or indirectly communicate in connection with any issue of fact or
13 law with any party or a party's authorized representative, except on notice and
14 opportunity for each party to participate.

15
16 (d) Discovery conducted under subsection (b) of this section is subject to these rules and
17 the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001,
18 Subchapter D.

19
20 *The provisions of this §850.67 adopted to be effective May 13, 2019, 44 TexReg 2364*

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23
24 **§850.68. Substitution of Impartial Hearing Officer.**

25
26 (a) If for any reason an IHO is unable to continue presiding over a pending hearing, or
27 issue a decision after the conclusion of the hearing, another IHO shall be designated
28 as a substitute to complete the hearing and render a decision in accordance with these
29 rules. Reasons may include, but are not limited to, withdrawal or reassignment to
30 avoid the appearance of impropriety or partiality.

31
32 (b) The substitute IHO may use the existing record and may conduct further proceedings
33 as necessary and proper to conclude the hearing and render a decision.

34
35 *The provisions of this §850.68 adopted to be effective May 13, 2019, 44 TexReg 2364*

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39 **§850.69. Reasonable Accommodations.**

40
41 (a) Any hearing or proceedings conducted under this subchapter shall be held, whenever
42 feasible, by telephone (directly or by relay), at a time and place reasonably accessible
43 to the appellant and any witnesses, and convenient for parties. In considering the
44 physical location of a hearing or proceeding, the IHO shall consider, among other
45 factors:

- 1 (1) the suitability of any proposed facilities for a hearing, including the ability of
2 the appellant and any witnesses to gain physical access to the proceedings and
3 facilities; and
4
5 (2) the comparative distances and times required to travel from places of work or
6 residence to a proposed hearing location by parties and witnesses.
7
8 (b) The Agency shall, upon reasonable notice, provide the appellant with readers or
9 interpreters. Reasonable notice shall be considered to be no fewer than five working
10 days prior to the proceeding, unless good cause for a shorter period exists in the
11 judgment of the IHO.
12
13 (c) A copy of a transcript prepared during hearing proceedings and all notices and
14 documents shall be provided to the appellant in an accessible format on request.
15

16 *The provisions of this §850.69 adopted to be effective May 13, 2019, 44 TexReg 2364*
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20 **§850.70. Appearance of Parties at Hearings: Representation.**
21

- 22 (a) An individual may represent himself or herself.
23
24 (b) A party may be represented by an attorney authorized to practice law in Texas or by
25 any other representative authorized by the party to represent the party.
26
27 (c) A party's authorized representative shall be copied on all notices, pleadings, and
28 other correspondence.
29
30 (d) A party's authorized representative remains the representative of record in absence of
31 a formal request to withdraw and an order approving such withdrawal issued by the
32 IHO.
33
34 (e) The Agency is not responsible for expenses incurred by appellants seeking remedy
35 under this subchapter and representation and attorney fees and related expenses are
36 the responsibility of the individual parties.
37

38 *The provisions of this §850.70 adopted to be effective May 13, 2019, 44 TexReg 2364*
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1
2 **§850.71. Failure to Attend Hearing and Default.**
3

4 If, after receiving notice of a hearing, a party or the party's authorized representative fails
5 to attend the hearing, the IHO may proceed and, when appropriate, issue a default
6 decision against the absent party.
7

8 *The provisions of this §850.71 adopted to be effective May 13, 2019, 44 TexReg 2364*
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12 **§850.72. Witness Fees.**
13

- 14 (a) Any witness or deponent who is not a party to, and who is subpoenaed or otherwise
15 appears at, any hearing or proceeding at the request of the Agency is entitled to
16 receive reimbursement as provided under Texas Government Code §2001.103.
17
18 (b) The Agency is not responsible for expenses incurred by any witness or deponent
19 who is not a party to, and who is subpoenaed or otherwise appears at, any hearing or
20 proceeding at the request of the appellant.
21
22 (c) The party calling or deposing an expert witness is responsible for all fees and
23 expenses charged by the expert witness.
24

25 *The provisions of this §850.72 adopted to be effective May 13, 2019, 44 TexReg 2364*
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29 **§850.73. Prehearing Conferences.**
30

- 31 (a) The IHO may hold a prehearing conference to resolve matters preliminary to the
32 hearing. At the discretion of the IHO, a prehearing conference may be held by
33 telephone (directly or by relay). A prehearing conference may be convened to
34 address any or all of the following matters:
35
36 (1) notice of jurisdiction or the IHO's authority;
37
38 (2) scope or party status;
39
40 (3) the date and location of the final hearing;
41
42 (4) factual and legal issues;
43
44 (5) motions;
45
46 (6) issuance of subpoenas;

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- (7) discovery disputes;
 - (8) scheduling;
 - (9) stipulations;
 - (10) settlement conferences;
 - (11) requests for official notice;
 - (12) identification and exchange of documentary evidence;
 - (13) admissibility of evidence;
 - (14) identification and qualification of witnesses;
 - (15) order of presentation; and
 - (16) other matters that promote the orderly and prompt conduct of the hearing.
- (b) Within five business days of the date on which the IHO receives the appellant's petition or request for review, the IHO shall notify the appellant in writing of any other matters that the IHO considers expedient for an orderly conduct of the prehearing, including the following:
- (1) the final or merits hearing will be held within 60 days after the date when the hearings coordinator received the petition or request for review;
 - (2) the appellant's right to request mediation;
 - (3) the reasons for the prehearing conference;
 - (4) the way the appellant might request a continuance of the prehearing conference;
 - (5) the effect of failing to participate in a prehearing conference; and

- 1
2 (6) the appellant's right to be represented.
3

4 *The provisions of this §850.73 adopted to be effective May 13, 2019, 44 TexReg 2364*
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8 **§850.74. Dismissal without Hearing.**
9

- 10 (a) The IHO may entertain motions for dismissal without a hearing for the following
11 reasons:

- 12
13 (1) failure to pursue the hearing;
14
15 (2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;
16
17 (3) withdrawal of the request for hearing;
18
19 (4) moot questions;
20
21 (5) lack of jurisdiction;
22
23 (6) failure to raise a material issue in the pleading;
24
25 (7) failure of a party or authorized representative to appear at a scheduled hearing;
26
27 (8) failure to respond to a discovery request; and
28
29 (9) failure to respond to any order by the IHO, including an order to disclose the
30 identities of witnesses and exhibits.
31

- 32 (b) If the IHO finds that a motion for dismissal should be granted, he or she may enter a
33 final order of dismissal.
34

35 *The provisions of this §850.74 adopted to be effective May 13, 2019, 44 TexReg 2364*
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39 **§850.75. Conduct of Hearing.**
40

- 41 (a) On a genuine issue in a contested case, each party or authorized representative is
42 entitled to:

- 43
44 (1) call witnesses, including other parties;
45
46 (2) offer evidence;

1
2 (3) cross-examine any witness called by another party; and

3
4 (4) make opening and closing statements.

5
6 (b) Once the hearing has begun, the parties and authorized representatives shall only be
7 off the record when the IHO permits. If the discussion off the record is pertinent,
8 then the IHO summarizes the discussion for the record.

9
10 (c) Objections shall be noted in the record in a timely manner.

11
12 (d) The IHO may continue a hearing from time to time and from place to place. If the
13 time and place for the hearing to reconvene are not announced at the hearing, a
14 notice shall be mailed stating the time and place of the hearing.

15
16 (e) The IHO may question witnesses and parties and/or direct the submission of
17 supplemental evidence.

18
19 *The provisions of this §850.75 adopted to be effective May 13, 2019, 44 TexReg 2364*

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22
23 **§850.76. Order of Proceedings.**

24
25 (a) A case shall be called to order by the IHO.

26
27 (b) Proceedings under this subchapter are conducted according to the following
28 provisions:

29
30 (1) The appellant may briefly state the nature of the claim or defense, what the
31 appellant expects to prove, and the relief sought. Immediately thereafter, the
32 Agency may make a similar statement, and any other parties are afforded
33 similar rights as determined by the IHO. The IHO may limit the time available
34 for each party or authorized representative with respect to such statement.

35
36 (2) Evidence is introduced by the appellant. The Agency, or its authorized
37 representative, and any other parties may cross-examine each of the appellant's
38 witnesses.

39
40 (3) Cross-examination is not limited solely to matters raised on direct
41 examination. Parties or authorized representatives are entitled to redirect and
42 recross-examination.

43
44 (4) Unless the statement has already been made, the Agency or its authorized
45 representative may briefly state the nature of the claim or defense, what the
46 Agency expects to prove, and the relief sought.

- 1
2 (5) Evidence, if any, is introduced by the Agency. The appellant and any other
3 parties may cross-examine each of the Agency's witnesses.
4
5 (6) Any other parties may make statements and introduce evidence. The appellant
6 and the Agency may cross-examine the other parties' witnesses.
7
8 (7) The parties may present rebuttal evidence.
9
10 (8) The parties may be allowed to make either oral or written closing statements at
11 the discretion of the IHO.
12
13 (9) The IHO may examine any witness and party.
14
15 (c) The IHO may permit deviations from this order of procedure in the interest of justice
16 or to expedite the proceedings.
17
18 (d) Parties shall provide four copies of each exhibit offered.
19
20 (e) Burden of proof. The party seeking affirmative relief, either on the case as a whole
21 or on an issue, bears the burden of proof to prove the affirmative of the issue, or the
22 party's case as a whole, by a preponderance of the evidence.
23

24 *The provisions of this §850.76 adopted to be effective May 13, 2019, 44 TexReg 2364*

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27
28 **§850.77. Rules of Evidence.**

- 29
30 (a) The rules of evidence as applied in nonjury civil cases by the district courts of the
31 State of Texas apply to a hearing under this subchapter.
32
33 (b) Exceptions--evidence inadmissible under the rules of evidence applied in nonjury
34 civil cases by the district courts of the State of Texas may be admitted:
35
36 (1) if it consists of any documents contained in any Agency file related to the
37 appellant; or
38
39 (2) if it is:
40
41 (A) necessary to ascertain the facts not reasonably susceptible of proof under
42 those rules;
43
44 (B) not precluded by statute; and
45

1 (C) of a type on which reasonably prudent individuals commonly rely in the
2 conduct of their affairs.

3
4 (c) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
5

6 *The provisions of this §850.77 adopted to be effective May 13, 2019, 44 TexReg 2364*
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10 **§850.78. Transcription of Proceedings.**
11

12 (a) Unless precluded by law, the hearing shall be recorded electronically by tape
13 recorder or similar device either by the IHO or by someone designated by the IHO.
14 The recording is the official record of the testimony offered as evidence during the
15 hearing. Any party, however, may request, at the party's expense, that the hearing be
16 recorded by a court reporter if the request is made no later than 10 days before the
17 date of the hearing.
18

19 (b) In lieu of a recording of the testimony electronically or of the reporting of testimony
20 by a court reporter, the parties to a hearing may agree upon a statement of the
21 evidence, agree to use recorded transcriptions as a statement of the testimonial
22 evidence, or agree to the summarization of testimony before the IHO, provided,
23 however, that proceedings or any part of them shall be transcribed on written request
24 of any party.
25

26 (c) Unless otherwise provided in this subchapter, the party requesting a transcription of
27 any electronic recording of the proceedings shall bear the cost for transcribing any
28 such electronically recorded testimony. Nothing provided for in this section limits
29 the Agency to a stenographic record of the proceedings.
30

31 *The provisions of this §850.78 adopted to be effective May 13, 2019, 44 TexReg 2364*
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34

35 **§850.79. Prepared Testimony.**
36

37 In all proceedings and after all parties of record have been given copies, the prepared
38 testimony of a witness on direct examination may be incorporated in the record as if read
39 or received as an exhibit. The prepared testimony may be in narrative or question-and-
40 answer form. The witness shall be sworn and shall identify the testimony. The witness is

1 subject to cross-examination, and the prepared testimony is subject to a motion to strike
2 in whole or in part.

3
4 *The provisions of this §850.79 adopted to be effective May 13, 2019, 44 TexReg 2364*

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8 **§850.80. Pleadings.**

- 9
10 (a) In a formal appeal, all pleadings, for which no other form is prescribed, shall
11 contain:
- 12 (1) the name of the party making the pleading;
 - 13 (2) the names of all other known parties;
 - 14 (3) a concise statement of the facts alleged and relied upon;
 - 15 (4) a request stating the type of relief, action, or order desired;
 - 16 (5) any other matter required by law;
 - 17 (6) a certificate of service, as required by these rules; and
 - 18 (7) the signature of the party or the party's authorized representative making the
19 pleading.
- 20
21 (b) Any pleading filed in a formal appeal may be amended up to 14 days before the date
22 of the hearing. Amendments filed after that time may be accepted at the discretion of
23 the IHO.
- 24
25 (c) Any pleading may adopt and incorporate, by specific reference, any part of any
26 document or entry in the official files and records of the Agency.
- 27
28 (d) All pleadings relating to any matter pending before the Agency shall be sent to
29 Texas Workforce Commission, Office of General Counsel, 101 E. 15th Street, Room
30 608, Austin, Texas 78778-0001, with the notation "Attention: Hearings
31 Coordinator," or delivered to the Agency at that address to be filed with the IHO and
32 all parties.
- 33
34 (e) All pleadings shall be in a format and medium reasonably calculated to provide the
35 required information and must be clear and legible.
- 36
37 (f) Pleadings shall contain the name, address, and telephone number of the party filing
38 the document or the name, telephone number, and business address of the authorized
39 representative.
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2 (g) A certificate of service shall be contained in or attached to all filings. The certificate
3 shall be signed by the individual making the filing, show the manner of service, state
4 that the filing has been served on all other parties, and identify those parties. The
5 certificate is prima facie evidence of service.
6

7 *The provisions of this §850.80 adopted to be effective May 13, 2019, 44 TexReg 2364*
8

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10
11 **§850.81. Discovery and Mandatory Disclosures.**
12

- 13 (a) Written Discovery. Requests for disclosure of information shall be the only form of
14 written discovery that the parties are entitled to make. Unless a party is ordered by
15 the IHO during a pretrial conference to disclose other information in addition to the
16 items in this section, a party may request in writing that the other party disclose or
17 produce the following:
18
- 19 (1) the names, addresses, and telephone numbers of individuals having knowledge
20 of relevant facts, including those who might be called as witnesses and any
21 expert who might be called to testify;
22
 - 23 (2) for any testifying expert:
 - 24 (A) the subject matter on which the expert will testify;
 - 25 (B) the expert's summary; and
 - 26 (C) a brief summary of the substance of the expert's mental impressions and
27 opinions and the basis for them, along with all documents and tangible
28 items reflecting such information;
 - 29 (3) the issues and the factual basis for a party's claims and defenses in the appeal;
30 and
31 (4) information concerning the appellant's employment, including the appellant's
32 job application with the appellant's current employer and any personnel
33 evaluations.
34
- 35
- 36 (b) Subject to the provisions in this section, parties may obtain discovery regarding any
37 matter that is relevant to a claim or defense in the appeal.
38
- 39 (c) All discovery requests shall be directed to the party from which discovery is being
40 sought.
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- 1 (d) All disputes with respect to any discovery matter shall be filed with and resolved by
2 the IHO.
3
- 4 (e) All parties shall be afforded a reasonable opportunity to file objections and motions
5 to compel the IHO regarding any discovery requests.
6
- 7 (f) Copies of discovery requests and documents filed in response thereto shall be filed
8 on all parties, but should not be filed with the IHO or the hearings coordinator unless
9 directed to do so by the IHO or when in support of objections, motions to compel,
10 motions for protective order, or motions to quash.
11
- 12 (g) Any documents contained in any Agency file that are related to the appellant are
13 considered to be admissible. The Agency shall, without awaiting either an order or a
14 discovery request under subsection (a) of this section, provide to the appellant a
15 complete copy of the appellant's record of services, as described at 34 CFR §361.47,
16 including any electronically stored or preserved records, to the extent pertinent to the
17 determination that is the subject of the request for review.
18

19 *The provisions of this §850.81 adopted to be effective May 13, 2019, 44 TexReg 2364*
20

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23 **§850.82. Documentary Evidence and Official Notice.**
24

- 25 (a) Documentary evidence may be received in the form of copies or excerpts if the
26 original is not readily available. On request, parties shall be given an opportunity to
27 compare the original and the copy or excerpt.
28
- 29 (b) When numerous similar documents that are otherwise admissible are offered into
30 evidence, the IHO may limit the documents received to those that are typical and
31 representative. The IHO may also require that an abstract of relevant data from the
32 documents be presented in the form of an exhibit, provided that all parties are given
33 the right to examine the documents from which such abstracts were made.
34
- 35 (c) The following laws, rules, regulations, and policies are officially noticed:
36
- 37 (1) The Rehabilitation Act of 1973, as amended, 29 USC §701, et seq.;
 - 38 (2) U.S. Department of Education regulations, 34 CFR Parts 361, 367, and 395;
 - 39 (3) The Agency's State Plan for Vocational Rehabilitation Services;
 - 40 (4) The Agency's Vocational Rehabilitation, Independent Living for Older
41 Individuals Who Are Blind, and Rehabilitation policy manuals; and
42
 - 43 (5) Texas Administrative Code, Title 40, Part 20, Texas Workforce Commission.
44
45
46

1
2 (d) Official notice also may be taken of:

- 3
4 (1) all facts that are judicially cognizable; and
5
6 (2) generally recognized facts within the area of the Agency's specialized
7 knowledge.
8

9 *The provisions of this §850.82 adopted to be effective May 13, 2019, 44 TexReg 2364*

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13 **§850.83. Continuance.**

- 14
15 (a) The IHO, at his or her discretion, may grant a continuance to further the interests of
16 justice. No motion for continuance shall be granted, unless it is made in writing or
17 stated in the record, and the motion shall set forth the specific grounds upon which
18 the party seeks the continuance.
19
20 (b) Unless made during a prehearing or hearing, a party seeking a continuance,
21 cancellation of a scheduled proceeding, or extension of an established deadline shall
22 file such motion no later than 10 days before the date or deadline in question. A
23 motion filed fewer than 10 days before the date or deadline in question shall contain
24 a certification that the requestor contacted the other party or party's authorized
25 representative and whether the request is opposed by the party or party's authorized
26 representative. Further, if a continuance to a certain date is sought, the motion shall
27 include a proposed date or dates and must indicate whether the other party or party's
28 authorized representative contacted agrees on the proposed new date or dates.
29

30 *The provisions of this §850.83 adopted to be effective May 13, 2019, 44 TexReg 2364*

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34 **§850.84. Impartial Hearing Officer Decision.**

- 35
36 (a) Within 30 days of the hearing completion date, the IHO shall issue a decision that is
37 based on the evidence and consistent with the provisions of the approved state plan;
38 the Act, as amended; federal vocational rehabilitation regulations, state regulations,
39 and policies that are consistent with federal requirements, and shall provide to the
40 appellant or, if appropriate, the appellant's authorized representative, and the
41 Agency's authorized representative or the Agency's Office of General Counsel, as
42 appropriate, a full written report of the findings of fact, conclusions of law, and any
43 other grounds for the decision.
44

- 1 (b) The hearing completion date is the date upon which the IHO receives the transcript,
2 if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of
3 the adjournment of the hearing.
4
- 5 (c) The decision shall address each issue considered by the IHO.
6
- 7 (d) The IHO may prescribe such remedies as are appropriate within the scope of, and
8 permitted by, as applicable, Texas Labor Code, Chapters 352 and 355; the Act, as
9 amended; the regulations of the Rehabilitation Services Administration of the U.S.
10 Department of Education, 34 CFR Parts 361, 365, and 395; and the Agency's policies
11 and rules.
12
- 13 (1) The IHO shall not award restitutionary, compensatory, or monetary relief,
14 including monetary damages, to any party.
15
- 16 (2) The IHO shall not prescribe an action affecting the employment of an Agency
17 employee.
18

19 *The provisions of this §850.84 adopted to be effective May 13, 2019, 44 TexReg 2364*
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23 **§850.85. Finality of the Hearing Officer's Decision.**
24

25 The decision of the IHO is the final decision of the Agency, and, if no timely motion for
26 reconsideration is filed, becomes the final decision.
27

28 *The provisions of this §850.85 adopted to be effective May 13, 2019, 44 TexReg 2364*
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32 **§850.86. Implementation of Final Decision.**
33

34 If a party brings a civil action to challenge a final decision of an IHO, the final decision involved
35 shall be implemented pending review by the court.
36

37 *The provisions of this §850.86 adopted to be effective May 13, 2019, 44 TexReg 2364*
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41 **§850.87. Motion for Reconsideration.**
42

- 43 (a) Any party to a hearing may file a motion for reconsideration within 20 days after the
44 party is notified of the issuance of the IHO's decision. The motion shall be filed with
45 the hearings coordinator within the Agency's Office of General Counsel.

- 1 (b) The motion for reconsideration shall specify the matters in the IHO's decision that
2 the party considers to be erroneous. Any response to the motion for reconsideration
3 shall be filed no later than 30 days after a party, or a party's attorney or
4 representative, is notified of the IHO's issuance of the decision.
5
- 6 (c) The IHO shall rule on the motion for reconsideration no later than 15 days after
7 receipt of the motion for reconsideration, or after receipt of the response to the
8 motion for reconsideration, whichever comes later. If the motion for reconsideration
9 is granted, the IHO issues a decision upon reconsideration within an additional 15
10 days. If the IHO fails to rule on the motion for reconsideration within 15 days, the
11 motion for reconsideration is denied as a matter of law.
12
- 13 (d) Service. Service of the IHO's decision or of a motion for reconsideration or response
14 under this section shall be made by any of the following means to a party, a party's
15 attorney, or a party's representative:
16
- 17 (1) hand-delivery;
 - 18
 - 19 (2) courier-receipted delivery;
 - 20
 - 21 (3) regular first-class mail, certified mail, or registered mail;
 - 22
 - 23 (4) e-mail or facsimile transmission before 5:00 p.m. on a business day to the
24 recipient's current e-mail address or telecopier number; or
25
 - 26 (5) such other means as the IHO may direct.
27
- 28 (e) Date of service. The date of service is the date of hand-delivery, delivery by courier,
29 mailing, e-mailing, or facsimile transmission, unless otherwise required by law.
30 Unless the contrary is shown, a decision, motion, or response that is sent by regular
31 first-class mail is presumed to have been received within three days of the date of
32 postmark, if enclosed in a wrapper addressed to the recipient's last known address
33 with return address to the sender, stamped with the appropriate first-class postage,
34 and deposited with the US Postal Service on the date postmarked.
35

36 *The provisions of this §850.87 adopted to be effective May 13, 2019, 44 TexReg 2364*

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38 **§850.88. Civil Action.**

- 39
- 40
- 41
- 42 (a) Any party that disagrees with the findings and decision of an IHO has a right to
43 bring a civil action in any court of competent jurisdiction without regard to the
44 amount in controversy, consistent with 34 CFR §361.57(i).

- 1 (b) An individual must initiate a civil action for review of an IHO's decision by filing a
2 petition not later than the 30th day after the date on which the decision that is the
3 subject of complaint is final and appealable.
4

5 *The provisions of this §850.88 adopted to be effective May 13, 2019, 44 TexReg 2364*
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8

9 **§850.89. Computation of Time.**
10

- 11 (a) In computing any period of time prescribed or allowed by the rules in this
12 subchapter, by order of an IHO, or by any applicable statute, the day of the act,
13 event, or default after which the designated period of time begins to run is not
14 included.
15
16 (b) Unless otherwise provided by the rules in this subchapter, the last day of the period
17 so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which
18 event the period runs until the end of the next day that is not a Saturday, Sunday, or
19 legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any
20 purpose in any time period of five days or fewer.
21
22 (c) In computing the time periods required for filing a motion for reconsideration, as set
23 forth at §850.87 of this subchapter (relating to Motion for Reconsideration), and for
24 appealing a final decision of an IHO to a court, as set forth at §850.88 of this
25 subchapter (relating to Civil Action), Saturdays, Sundays, and legal holidays are
26 included.
27

28 *The provisions of this §850.89 adopted to be effective May 13, 2019, 44 TexReg 2364*
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31

32 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**
33

34 **§850.130. Memorandum of Understanding Regarding Continuity of Care for Physically**
35 **Disabled Inmates.**
36

- 37 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
38 the Texas Department of Criminal Justice, Texas Department of Aging and
39 Disability Services, and Texas Department of State Health Services. The MOU
40 contains the agreement required by Texas Health and Safety Code §§614.014 -
41 614.015 to establish the respective responsibilities of these agencies to institute a
42 continuity of care and service program for offenders in the criminal justice system
43 who are physically disabled, terminally ill, or significantly ill.

- 1
2 (b) The text of the MOU is in rule 37 TAC, Part 6, §159.19 (relating to Continuity of
3 Care and Services Program for Offenders who are Elderly, Terminally Ill,
4 Significantly Ill or with a Physical Disability or Having a Mental Illness).
5

6 *The provisions of this §850.130 adopted to be effective December 10, 2012, 37 TexReg 9643;*
7 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
8 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
9

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11
12 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**
13 **Public Awareness Information.**
14

- 15 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
16 the Texas Health and Human Services Commission, the Texas Department of Aging
17 and Disability Services, and the Texas Department of State Health Services.
18
19 (b) The MOU is the agreement required by Texas Human Resources Code §22.013,
20 which authorizes and requires the exchange and distribution among the agencies of
21 public awareness information relating to services provided by or through the
22 agencies.
23
24 (c) The text of the MOU is located in 40 TAC, Part 1, §72.301 (relating to Authorization
25 and Requirement to Exchange and Distribute Public Awareness Information).
26

27 *The provisions of this §850.131 adopted to be effective December 10, 2012, 37 TexReg 9643;*
28 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
29 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
30

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32
33 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
34 **Individuals with Disabilities.**
35

- 36 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
37 the Texas Health and Human Services Commission, the Texas Department of Aging
38 and Disability Services, the Texas Department of State Health Services, the Texas
39 Department of Family and Protective Services, and the Texas Education Agency.
40
41 (b) The MOU is the agreement required by Texas Human Resources Code §22.011, to
42 facilitate the coordination of services to individuals with disabilities by establishing
43 the respective responsibilities of the agencies regarding the coordination of services
44 to individuals with disabilities.

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(c) The text of the MOU is located in 40 TAC Part 1, §§72.201 - 72.212 (relating to Memorandum of Understanding Concerning Coordination of Services to Persons With Disabilities).

The provisions of this §850.132 adopted to be effective December 10, 2012, 37 TexReg 9643; duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364

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