

1 **CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE**  
2 **RULES AND PROCEDURES**

3  
4 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**  
5 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**  
6 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**  
7 **OF STATE.**

8  
9 **ON AUGUST 16, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**  
10 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

11  
12 Publication Date of the Proposal in the *Texas Register*: **September 2, 2022**  
13 End of Comment Period: **October 3, 2022**

14  
15 The Texas Workforce Commission (TWC) proposes amendments to the following sections of  
16 Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and  
17 Procedures:

- 18  
19 Subchapter A. Vocational Rehabilitation General Rules, §§850.3 - 850.5 and §850.11  
20 Subchapter C. Councils, Board, and Committees, §§850.33 - 850.35  
21 Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures,  
22 §§850.60 - 850.62, 850.69, 850.82, and 850.84  
23

24 TWC proposes the following new section to Chapter 850, relating to Vocational Rehabilitation  
25 Services Administrative Rules and Procedures:

- 26  
27 Subchapter A. Vocational Rehabilitation General Rules, §850.7  
28

29 TWC proposes the repeal of the following section of Chapter 850, relating to Vocational  
30 Rehabilitation Services Administrative Rules and Procedures:

- 31  
32 Subchapter C. Councils, Board, and Committees, §850.32  
33

34 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

35 Senate Bill (SB) 208, 84th Texas Legislature, Regular Session (2015), added Texas Labor Code,  
36 §351.002, which transferred the administration of vocational rehabilitation (VR) services from  
37 the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC effective  
38 September 1, 2016. The administrative rules relating to the VR Services Program were  
39 transferred from DARS to TWC and codified under 40 TAC Chapter 850. On May 13, 2019,  
40 TWC amended Chapter 850 to align the chapter with TWC's operation of the VR Services  
41 Program.  
42

43 The purpose of the proposed amendments to Chapter 850 is to address stakeholder comments,  
44 clarify existing rules, and improve program service delivery, consistency, and efficiency.  
45

1 Texas Government Code, §2001.039 requires that every four years each state agency review and  
2 consider for reoption, revision, or repeal each rule adopted by that agency. TWC reviewed the  
3 rules in Chapter 850 and proposes changes to clarify the rule language and improve consistency  
4 with the Texas Labor Code and federal regulations. Those changes are described in Part II of this  
5 preamble.

6  
7 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

8 (Note: Minor editorial changes are made that do not change the meaning of the rules and,  
9 therefore, are not discussed in the Explanation of Individual Provisions.)

10  
11 **SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES**

12 TWC proposes the following amendments to Subchapter A:

13  
14 **§850.3. Definitions**

15 Section 850.3 is amended to add the definition for "Agency" and to revise the term from  
16 "counselor" to "vocational rehabilitation counselor" for clarification. Throughout Chapter 850,  
17 the term "counselor" has been updated to "vocational rehabilitation counselor" or "VR  
18 counselor."

19  
20 **§850.4. Opportunities for Citizen Participation**

21 Section 850.4 is amended to clarify information regarding open meetings and add a reference to  
22 40 TAC Chapter 800, Subchapter G, relating to Petition for Adoption of Rules.

23  
24 **§850.5. Complaints**

25 Section 850.5 is amended to expand the methods for filing complaints.

26  
27 **§850.7. Monitoring and Oversight of Vocational Rehabilitation Counselor Performance**  
28 **and Decision Making.**

29 New §850.7 is added to establish an administrative rule for the monitoring and oversight of VR  
30 counselor performance and decision making in accordance with Texas Labor Code, §352.104,  
31 Training and Supervision of Counselors.

32  
33 **§850.11. Qualified Vocational Rehabilitation Counselor**

34 Section 850.11 is amended to include Vocational Rehabilitation Division acronym "VRD" in the  
35 references to "management" and in place of "division" for clarity.

36  
37 Section 850.11(f) is amended to clarify that reimbursement is allowed for one GRE exam.

38  
39 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

40 TWC proposes the following amendments to Subchapter C:

41  
42 **§850.32. Definitions**

43 Section 850.32 is repealed because the section is no longer needed. The definition for "Agency"  
44 and acronym "RCT" are defined elsewhere in Chapter 850.

1 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**  
2 **HEARING PROCEDURES**

3 TWC proposes the following amendments to Subchapter E:

4  
5 **§850.60. Scope**

6 Section 850.60 is amended to remove references to the Business Enterprises of Texas (BET)  
7 program because the program is addressed in 40 TAC Chapter 854; remove Comprehensive  
8 Rehabilitative Services (CRS) from the scope of services because CRS falls under Texas Health  
9 and Human Services Commission oversight; and add a reference to the Client Assistance  
10 Program (CAP).

11  
12 **§850.61. Definitions**

13 Section 850.61 is amended to remove the definitions of "counselor" and "State Plan" because the  
14 terms are defined in §850.3.

15  
16 **§850.62. Filing a Request for Review**

17 Section 850.62 is amended to state that the request for a review shall be filed within 180 calendar  
18 days from the date of the determination and that the CAP can assist and advocate for customers  
19 during an appeal and informal dispute resolution.

20  
21 **§850.69. Reasonable Accommodations**

22 Section 850.69 is amended to clarify that TWC shall bear the costs related to providing  
23 reasonable accommodations for hearings or proceedings conducted.

24  
25 **§850.82. Documentary Evidence and Official Notice**

26 Section 850.82 is amended to remove the reference to 34 Code of Federal Regulations (CFR)  
27 Part 395 as BET appeals are addressed in 40 TAC Chapter 854.

28  
29 **§850.84. Impartial Hearing Officer Decision**

30 Section 850.84 is amended to remove the references to Texas Labor Code, Chapter 355 and 34  
31 CFR Part 395 as BET appeals are addressed in 40 TAC Chapter 854.

32  
33 **PART III. IMPACT STATEMENTS**

34 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the  
35 rules will be in effect, the following statements will apply:

36  
37 There are no additional estimated costs to the state and to local governments expected as a result  
38 of enforcing or administering the rules.

39  
40 There are no estimated cost reductions to the state and to local governments as a result of  
41 enforcing or administering the rules.

42  
43 There are no estimated losses or increases in revenue to the state or to local governments as a  
44 result of enforcing or administering the rules.

1 There are no foreseeable implications relating to costs or revenue of the state or local  
2 governments as a result of enforcing or administering the rules.

3  
4 There are no anticipated economic costs to individuals required to comply with the rules.

5  
6 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural  
7 communities as a result of enforcing or administering the rules.

8  
9 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that  
10 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,  
11 does not apply to this rulemaking.

12  
13 Takings Impact Assessment

14 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that  
15 affects private real property, in whole or in part or temporarily or permanently, in a manner that  
16 requires the governmental entity to compensate the private real property owner as provided by  
17 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas  
18 Constitution, Article I, § 17 or § 19, or restricts or limits the owner's right to the property that  
19 would otherwise exist in the absence of the governmental action, and is the producing cause of a  
20 reduction of at least 25 percent in the market value of the affected private real property,  
21 determined by comparing the market value of the property as if the governmental action is not in  
22 effect and the market value of the property determined as if the governmental action is in effect.  
23 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas  
24 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as  
25 discussed elsewhere in this preamble, is to address stakeholder comments, clarify existing rules,  
26 and improve program service delivery, consistency, and efficiency.

27  
28 The proposed rulemaking action will not create any additional burden on private real property or  
29 affect private real property in a manner that would require compensation to private real property  
30 owners under the United States Constitution or the Texas Constitution. The proposal also will  
31 not affect private real property in a manner that restricts or limits an owner's right to the property  
32 that would otherwise exist in the absence of the governmental action. Therefore, the proposed  
33 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

34  
35 Government Growth Impact Statement

36 TWC determined that during the first five years the rules will be in effect, they:

- 37 --will not create or eliminate a government program;
- 38 --will not require the creation or elimination of employee positions;
- 39 --will not require an increase or decrease in future legislative appropriations to TWC;
- 40 --will not require an increase or decrease in fees paid to TWC;
- 41 --will not create a new regulation;
- 42 --will not expand, limit, or eliminate an existing regulation;
- 43 --will not change the number of individuals subject to the rules; and
- 44 --will not positively or adversely affect the state's economy.

45  
46 Economic Impact Statement and Regulatory Flexibility Analysis

1 TWC determined that the rules will not have an adverse economic impact on small businesses or  
2 rural communities, as the proposed rules place no requirements on small businesses or rural  
3 communities.

4  
5 Mariana Vega, Director, Labor Market Information, determined that there is not a significant  
6 negative impact upon employment conditions in the state as a result of the rules.

7  
8 Cheryl Fuller, Director, Vocational Rehabilitation Division, determined that for each year of the  
9 first five years the rules are in effect, the public benefit anticipated as a result of enforcing the  
10 proposed rules will be to clarify existing rules and improve consistency with the Texas Labor  
11 Code and federal regulations.

12  
13 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be  
14 within TWC's legal authority to adopt.

15  
16 **PART IV. PUBLIC COMMENTS**

17 Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov)  
18 and must be received no later than October 3, 2022.

19  
20 **PART V. STATUTORY AUTHORITY**

21 The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources  
22 Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules  
23 as it deems necessary for the effective administration of vocational rehabilitation services.

24  
25 The proposed rules affect Texas Human Resources Code, Chapter 111 and Texas Labor Code,  
26 Chapter 352.

27



1  
2 ~~(A) All petitions proposing the adoption of Agency rules shall be submitted~~  
3 ~~in writing to the Commission. The petition must contain the following:~~

4  
5 ~~(i) the text of the proposed rule prepared in a manner to indicate the~~  
6 ~~words to be added or deleted from the current text, if any;~~

7  
8 ~~(ii) a statement of the statutory or other authority under which the rule~~  
9 ~~is to be promulgated; and~~

10  
11 ~~(iii) the public benefits anticipated as a result of adopting the rule or the~~  
12 ~~anticipated implications that could result from the failure to adopt~~  
13 ~~the proposed rule.~~

14  
15 ~~(B) Agency staff reviews the requests and present recommendations to the~~  
16 ~~Commission for action.~~

17  
18 **§850.5. Complaints.**  
19

- 20 (a) Complaints may be filed with the Agency either ~~in writing~~ through mail, email  
21 mail, phone, ~~or~~ facsimile, or by videotape for individuals who use sign language to  
22 communicate. Complaints should be directed to the customer's local vocational  
23 rehabilitation ~~VR~~ office or may be submitted to the Agency's Customer Relations  
24 staff as indicated on the Agency's website ~~via email to customers@twc.state.tx.us.~~  
25  
26 (b) For the purpose of directing complaints to the Agency, the Agency may notify  
27 customers and service recipients of its name, mailing address, and telephone number  
28 by including the information:  
29  
30 (1) on each registration form, application, or written contract relating to  
31 participation in a program that is funded in any part by money derived from or  
32 through the Agency;  
33  
34 (2) on a sign that is prominently displayed in the place of business of each  
35 individual or entity engaging in a program that is funded in any part by money  
36 derived from or through the Agency;  
37  
38 (3) in a bill for service provided by an individual or entity engaging in a program  
39 that is funded in any part by money derived from or through the Agency; or  
40  
41 (4) in other media for dissemination of information as determined by the Agency.  
42  
43 (c) Ordinarily, the Agency resolves complaints within 60 days.  
44

1 **§850.7. Monitoring and Oversight of Vocational Rehabilitation Counselor Performance**  
2 **and Decision Making.**

3  
4 (a) The Vocational Rehabilitation Division will provide specific guidance to vocational  
5 rehabilitation (VR) counselors as required by Texas Labor Code, §352.104.

6  
7 (b) VR counselor supervisors shall ensure that VR counselors complete all required and  
8 necessary training.

9  
10 (c) VR counselor supervisors shall monitor VR counselor performance through case  
11 reviews, offer required training, and use other tools, as appropriate, to provide  
12 guidance and enhance VR counselor performance and decision making.

13  
14 **§850.11. Qualified Vocational Rehabilitation Counselor.**

15  
16 (a) The Vocational Rehabilitation Division (VRD) helps vocational rehabilitation (VR)  
17 counselors to meet the Comprehensive System of Personnel Development (CSPD)  
18 standard, as set forth in 34 Code of Federal Regulations §361.18, by making funds  
19 available through the Qualified Vocational Rehabilitation Counselor (QVRC)  
20 program for the required graduate education except when:

21  
22 (1) unforeseen circumstances occur that may restrict or prohibit the funding; or

23  
24 (2) VRD management discontinues a VR counselor's participation in the program  
25 in the best interests of VRD~~the division~~.

26  
27 (b) The VRD director or designee must approve QVRC financial assistance. This  
28 financial assistance is contingent on:

29  
30 (1) funding;

31  
32 (2) VRD management approval; and

33  
34 (3) compliance with qualifications for participation.

35  
36 (c) Qualifications for participation in the QVRC program require that VR~~vocational~~  
37 ~~rehabilitation~~ counselors and transition VR~~vocational rehabilitation~~ counselors  
38 applying for assistance must:

39  
40 (1) have completed the initial training year;

41  
42 (2) be meeting or exceeding job performance expectations;

43  
44 (3) obtain the appropriate approvals to pursue a graduate degree or prescribed  
45 coursework;



1 (4) apply for Rehabilitation Services Administration ~~(RSA)~~ scholarship and  
2 university stipend funding, if applicable; and  
3

4 (5) be accepted by the appropriate institution of higher education.  
5

6 (d) A VR counselor who meets the CSPD standard is considered a QVRC Qualified  
7 ~~Vocational Rehabilitation Counselor~~.  
8

9 (e) A VR counselor is expected to meet the CSPD standard within seven years from  
10 completion of the initial training year. VRD Divisions must conduct transcript  
11 reviews and/or confirm certifications to determine compliance with standards or to  
12 outline coursework to be completed by the VR counselor.  
13

14 (f) A VR counselor is expected to pay all costs or expenses:  
15

16 (1) associated with the college application, ~~and~~ admission, ~~and except one~~ GRE  
17 exam (reimbursement of one GRE exam is allowed) ~~fee~~;  
18

19 (2) related to tuition, fees, and books for any coursework that must be repeated  
20 because of failure to successfully complete; and  
21

22 (3) related to completing work necessary to remove any grade of "I" (Incomplete)  
23 within three months, unless there are valid reasons (for example, serious  
24 illness, or university regulations to the contrary).  
25

## 26 SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES 27

### 28 ~~§850.32. Definitions.~~

29  
30 ~~The following words and terms, when used in this division, have the following meanings,~~  
31 ~~unless the context clearly indicates otherwise:~~  
32

33 ~~(1) Agency The Texas Workforce Commission.~~

34  
35 ~~(2) RCT The Rehabilitation Council of Texas.~~  
36

### 37 **§850.33. Tasks.**

38  
39 ~~Tasks.~~ The Rehabilitation Council of Texas (RCT) shall:  
40

41 (1) review, analyze, and advise the Vocational Rehabilitation Division (VRD)  
42 about ~~its~~their performance of responsibilities, particularly those relating to:  
43

44 (A) eligibility determination (including order of selection);  
45

46 (B) the extent, scope, and effectiveness of services provided; and

1  
2 (C) functions performed by VRD that potentially affect the ability of  
3 individuals with disabilities to achieve rehabilitation goals and  
4 objectives;

5  
6 (2) advise ~~the Vocational Rehabilitation Division (VRD)~~ and, at its discretion, help  
7 prepare the State Plan for Vocational Rehabilitation Services; amendments to  
8 the plan; and applications, reports, needs assessments, and evaluations  
9 required;

10  
11 (3) to the extent feasible, review and analyze the effectiveness of, and customer  
12 satisfaction with:

13  
14 (A) the functions performed by state agencies and other public and private  
15 entities responsible for performing functions for individuals with  
16 disabilities; and

17  
18 (B) vocational rehabilitation services:

19  
20 (i) provided, or paid for from funds made available, under 29 [United](#)  
21 [States Code \(USC\) §725](#), or through other public or private sources;  
22 and

23  
24 (ii) provided by state agencies and other public and private entities  
25 responsible for providing vocational rehabilitation services to  
26 individuals with disabilities; and

27  
28 (C) the employment outcomes achieved by individuals who receive services  
29 under 29 USC §725, including the availability of health and other  
30 employment benefits in connection with those employment outcomes;

31  
32 (4) coordinate with other councils in the state, including the State Independent  
33 Living Council established under 29 USC §796d; the advisory panel  
34 established under ~~§612(a)(20)~~ of the Individuals with Disabilities Education  
35 Act, 20 USC §1412(a)(21); the State Council on Developmental Disabilities  
36 described in 42 USC §15025; the State Mental Health Planning Council  
37 established under 42 USC §300x-3(a); and the state workforce investment  
38 board;

39  
40 (5) advise VRD and coordinate working relationships between [VRD](#) ~~the divisions~~  
41 and the State Independent Living Council and centers for independent living  
42 within the state; and

43  
44 (6) perform other comparable functions consistent with the Rehabilitation Act of  
45 1973, as amended, that the RCT determines to be appropriate.  
46

1       **§850.34. Reports.**

2  
3       The [Rehabilitation Council of Texas](#)~~RCT~~ shall:

- 4  
5           (1)   prepare and submit an annual report to the governor or appropriate state entity  
6                   and the Commission on the status of vocational rehabilitation programs  
7                   operated within the state, and make the report available to the public; and  
8  
9           (2)   submit to the commissioner of the Rehabilitation Services Administration,  
10                   United States Department of Education, periodic reports that the commissioner  
11                   may reasonably request, and keep records that the commissioner finds  
12                   necessary to verify those reports.  
13

14       **§850.35. Funding.**

15  
16       The Rehabilitation Council of Texas (~~RCT~~) is funded primarily by federal funds, and its  
17       existence is required in order for the Agency to receive and expend federal funds.  
18

19 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**  
20 **HEARING PROCEDURES**

21  
22       **§850.60. Scope.**

23  
24       (a)   The following statutes and regulations authorize the procedures established by this  
25       [subchapter](#)~~chapter~~:

- 26  
27           (1)   The Rehabilitation Act of 1973, as amended, 29 [United States Code](#)~~USC~~ §701  
28                   et seq. and regulations of the [United States](#)~~U.S.~~ Department of Education,  
29                   Rehabilitation Services Administration, 34 [Code of Federal Regulations](#) (CFR)  
30                   Part 361, as amended, relating to [the](#) State Vocational Rehabilitation Services  
31                   [Program](#);

32  
33           ~~(2) 34 CFR Part 395, as amended, relating to Vending Facility Program for the~~  
34           ~~Blind on Federal and Other Property; and~~

35  
36           ~~(2)(3) 34 CFR Part 367, as amended, relating to [the](#) Independent Living Services~~  
37           ~~for Older Individuals Who Are Blind (ILS-OIB); [and](#)-~~

38  
39           ~~(3) 34 CFR Part 370, as amended, relating to [the Client Assistance Program](#).~~

40  
41       (b)   The procedures in this subchapter apply to those determinations made by Agency  
42       personnel that affect the provision of vocational rehabilitation (VR) services [and](#)  
43       ~~ILS-OIB, independent living services for older individuals who are blind, and the~~  
44       ~~Business Enterprises of Texas program.~~

- 45  
46           (1)   Unless the determination concerns the denial, reduction, suspension, or

1 termination of VR services or ILS-OIB, ~~independent living services for older~~  
2 ~~individuals who are blind, or comprehensive rehabilitation services by the~~  
3 ~~Agency~~; it is not subject to review under the procedures of this subchapter.  
4

5 (2) The following decisions or determinations are not subject to review under this  
6 subchapter:  
7

8 (A) Administrative~~administrative~~ decisions that are made by Agency  
9 supervisors or managers without reference to any specific applicant or  
10 customer and that apply generally to the provision of VR services to  
11 applicants or customers, including to decisions concerning the  
12 assignment of personnel;  
13

14 (B) Decisions~~decisions~~, diagnoses, judgments, actions, or omissions of third-  
15 party vendors or service providers;  
16

17 (C) Decisions~~decisions~~ concerning the content of an applicant's or customer's  
18 record of service for which remedies are provided under 34 CFR  
19 §361.38(c)(4) and §361.47(a)(12); and  
20

21 (D) Decisions~~decisions~~ allegedly violating any state or federal  
22 antidiscrimination or civil rights statute (as amended), including the  
23 provisions of Texas Labor Code, Chapter 21; the Rehabilitation Act of  
24 1973, as amended; the Americans with Disabilities Act, Section 504, ~~the~~  
25 ~~Americans with Disabilities Act~~; or the Age Discrimination in  
26 Employment Act.  
27

28 (c) Ineligibility. The following may challenge a determination of ineligibility through  
29 the procedures of this subchapter~~division~~:  
30

31 (1) Applicants~~applicants~~ who are found not to be eligible for VR services; and  
32

33 (2) Previously~~previously~~ eligible individuals who have been determined no longer  
34 eligible for VR services under 34 CFR §361.43.  
35

36 (d) An individual's decision to seek an informal resolution of matters about which the  
37 individual is dissatisfied shall not prevent, compromise, or delay the individual's  
38 access to formal resolution procedures in this subchapter~~division~~.  
39

40 (e) The Agency shall not suspend, reduce, or terminate VR services being provided to an  
41 applicant or customer, including evaluation and assessment services and the  
42 development of an Individualized Plan for Employment, pending a resolution of the  
43 applicant's or customer's appeal by mediation or hearing, unless:  
44

45 (1) the applicant or customer requests a suspension, reduction, or termination of  
46 services; or

- 1  
2 (2) the Agency has evidence that the applicant or customer obtained the services  
3 through misrepresentation, fraud, collusion, or criminal conduct.  
4

5 **§850.61. Definitions.**  
6

7 The following words and terms, when used in this subchapter, have the following  
8 meanings unless the context clearly indicates otherwise. The use of the singular or plural  
9 case is not meant to be limiting unless the context clearly indicates otherwise.  
10

- 11 (1) Act--The Rehabilitation Act of 1973 as amended, 29 [United States Code](#) ~~USC~~  
12 §701, et seq.  
13  
14 (2) Appellant--An applicant, eligible individual, authorized representative, or  
15 parent who has initiated formal procedures under this subchapter.  
16  
17 (3) Applicant--An individual who submits an application for [vocational](#)  
18 [rehabilitation](#) ~~VR~~ services in accordance with 34 [Code of Federal Regulations](#)  
19 ~~CFR~~ Part 361.  
20  
21 (4) Authorized representative--An attorney authorized to practice law in the State  
22 of Texas, or an individual designated by a party to represent the party in  
23 hearing procedures. The term includes a parent or an individual made legally  
24 responsible for a child by a court of competent jurisdiction.  
25  
26 ~~(5) Counselor--An Agency employee who is trained to provide vocational~~  
27 ~~guidance and counseling and meets the minimum qualifications designated in a~~  
28 ~~functional job description.~~  
29  
30 ~~(5)(6)~~ (6) Customer--An applicant or an individual with a disability who is receiving  
31 [vocational rehabilitation](#) ~~VR~~ services.  
32  
33 ~~(6)(7)~~ (7) Discovery--The process by which a party, before any final hearing on the  
34 merits, may obtain evidence and other information that is relevant to a claim or  
35 defense in the appeal.  
36  
37 ~~(7)(8)~~ (8) Eligible individual--Any individual with a disability determined to be  
38 eligible to receive [vocational rehabilitation](#) ~~VR~~ services.  
39  
40 ~~(8)(9)~~ (9) Hearing--A formal review conducted under this [subchapter](#) ~~chapter~~. This  
41 term includes prehearing conferences.  
42  
43 ~~(9)(10)~~ (10) Impartial hearing officer (IHO)--An individual who is appointed to conduct  
44 a hearing under this [subchapter](#) ~~chapter~~.  
45  
46 ~~(10)(11)~~ (11) Individualized Plan for Employment--A plan developed for each

1 individual determined to be eligible for [vocational rehabilitation](#) ~~VR~~ services,  
2 in accordance with 34 [Code of Federal Regulations](#) ~~CFR~~ Part 361.

3  
4 ~~(11)(12)~~ Parent--The term "parent," whether singular or plural, means a minor  
5 child's natural or adoptive parent, the spouse of the minor child's natural or  
6 adoptive parent, the minor child's surrogate or foster parent, the spouse of the  
7 surrogate or foster parent, or other individual made legally responsible for the  
8 minor child by a court.

9  
10 ~~(12)(13)~~ Party--An individual or agency named or admitted to participate in a  
11 formal hearing.

12  
13 ~~(13)(14)~~ Record--The official record of a hearing, including all arguments, briefs,  
14 pleadings, motions, intermediate rulings, orders, evidence received or  
15 considered, statements of matters officially noticed, questions and offers of  
16 proof, objections and rulings on objections, proposed findings of fact,  
17 conclusions of law, and ~~IHO~~ ~~hearing officer~~ decision; any other decision,  
18 opinion, or report by the ~~IHO~~ ~~hearing officer~~ or Commission; and all  
19 memoranda or data, including customer and applicant files, submitted to or  
20 considered by the ~~IHO~~ ~~impartial hearing officer~~.

21  
22 ~~(15) State Plan The plan for VR services submitted by the Agency's Vocational~~  
23 ~~Rehabilitation Division in compliance with the Act.~~

## 24 25 **§850.62. Filing a Request for Review.**

26  
27 (a) Any applicant or eligible individual who is dissatisfied with a determination made by  
28 the Agency, as described in §850.60 of this subchapter (relating to Scope), may  
29 request, or, if appropriate, may request through the individual's authorized  
30 representative, a review of the determination. Although no prescribed form is  
31 required to file a request, preprinted forms for this purpose are available on request  
32 [within the Agency's Office of General Counsel or](#) at any Agency [vocational](#)  
33 [rehabilitation](#) ~~VR~~ office.

34  
35 (b) The request for a review shall be filed [within 180 calendar days from the date of the](#)  
36 [determination and shall be filed](#) in writing with the hearings coordinator within the  
37 Agency's Office of General Counsel. [A request shall be considered filed on the day](#)  
38 [that it is received by the hearings coordinator within the Agency's Office of General](#)  
39 [Counsel.](#)

40  
41 ~~(1) A request shall be considered filed on the day that it is received by the hearings~~  
42 ~~coordinator within the Agency's Office of General Counsel.~~

43  
44 ~~(2) Preprinted forms for this purpose are available on request from the hearings~~  
45 ~~coordinator within the Agency's Office of General Counsel or any Agency VR~~  
46 ~~office.~~

- 1  
2 (c) On receiving a request for review, the hearings coordinator within the Agency's  
3 Office of General Counsel shall, within five working days, mail the appellant:  
4  
5 (1) the name, address, and telephone number of the Client Assistance Program  
6 established under federal law [that can, among other things, assist and advocate](#)  
7 [for customers during an appeal and informal dispute resolution](#);  
8  
9 (2) the name of the IHO appointed to hear the appeal, and the date, time, and place  
10 of any prehearing;  
11  
12 (3) a copy of applicable hearing procedures; and  
13  
14 (4) notice that the appellant has the right to request mediation procedures.  
15

16 **§850.69. Reasonable Accommodations.**  
17

- 18 (a) Any hearing or proceedings conducted under this subchapter shall be held, whenever  
19 feasible, by telephone (directly or by relay), at a time and place reasonably accessible  
20 to the appellant and any witnesses, and convenient for parties. In considering the  
21 physical location of a hearing or proceeding, the IHO shall consider, among other  
22 factors:  
23  
24 (1) the suitability of any proposed facilities for a hearing, including the ability of  
25 the appellant and any witnesses to gain physical access to the proceedings and  
26 facilities; and  
27  
28 (2) the comparative distances and times required to travel from places of work or  
29 residence to a proposed hearing location by parties and witnesses.  
30  
31 (b) The Agency shall, upon reasonable notice, provide the appellant with readers or  
32 interpreters. Reasonable notice shall be considered to be no fewer than five working  
33 days prior to the proceeding, unless good cause for a shorter period exists in the  
34 judgment of the IHO.  
35  
36 (c) A copy of a transcript prepared during hearing proceedings and all notices and  
37 documents shall be provided to the appellant in an accessible format on request.  
38  
39 [\(d\) The Agency shall bear the costs related to providing reasonable accommodations for](#)  
40 [hearings or proceedings conducted under this subchapter.](#)  
41

42 **§850.82. Documentary Evidence and Official Notice.**  
43

- 44 (a) Documentary evidence may be received in the form of copies or excerpts if the  
45 original is not readily available. On request, parties shall be given an opportunity to  
46 compare the original and the copy or excerpt.

1  
2 (b) When numerous similar documents that are otherwise admissible are offered into  
3 evidence, the IHO may limit the documents received to those that are typical and  
4 representative. The IHO may also require that an abstract of relevant data from the  
5 documents be presented in the form of an exhibit, provided that all parties are given  
6 the right to examine the documents from which such abstracts were made.  
7

8 (c) The following laws, rules, regulations, and policies are officially noticed:  
9

10 (1) The Rehabilitation Act of 1973, as amended, 29 [United States Code](#) ~~USC~~ §701,  
11 et seq.;

12  
13 (2) [United States](#) ~~U.S.~~ Department of Education regulations, 34 [Code of Federal](#)  
14 [Regulations](#) ~~CFR~~ Parts 361 ~~and~~, 367, ~~and 395~~;

15  
16 (3) The Agency's State Plan for Vocational Rehabilitation Services;

17  
18 (4) The Agency's Vocational Rehabilitation ~~and~~ Independent Living for Older  
19 Individuals Who Are Blind, ~~and Rehabilitation~~ policy manuals; and

20  
21 (5) Texas Administrative Code, Title 40, Part 20, Texas Workforce Commission.  
22

23 (d) Official notice also may be taken of:

24 (1) all facts that are judicially cognizable; and

25  
26 (2) generally recognized facts within the area of the Agency's specialized  
27 knowledge.  
28  
29

### 30 **§850.84. Impartial Hearing Officer Decision.** 31

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

41 (b) The hearing completion date is the date upon which the IHO receives the transcript  
42 [of the oral hearing](#), if any was prepared, ~~of the oral hearing~~, or, if no transcript was  
43 prepared, ~~the date of the adjournment of the~~ [hearing's adjournment date](#) ~~hearing~~.  
44

45 (c) The decision shall address each issue considered by the IHO.

46  
47 (d) The IHO may prescribe such remedies as are appropriate within the scope of, and



1 permitted by, as applicable, Texas Labor Code, [Chapter 352](#)~~Chapters 352 and 355~~;  
2 the Act, as amended; the regulations of the Rehabilitation Services Administration of  
3 the [United States](#)~~U.S.~~ Department of Education, 34 [Code of Federal Regulations](#)~~CFR~~  
4 Parts 361 ~~and~~, 365, ~~and 395~~; and the Agency's policies and rules.  
5

- 6 (1) The IHO shall not award restitutionary, compensatory, or monetary relief,  
7 including monetary damages, to any party.  
8
- 9 (2) The IHO shall not prescribe an action affecting the employment of an Agency  
10 employee.