

1 **CHAPTER 856. DIVISION FOR REHABILITATION SERVICES**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON AUGUST 8, 2017, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
9 ***REGISTER*.**

10
11 Estimated Publication Date of the Proposal in the *Texas Register*: **August 25, 2017**

12 Estimated End of Comment Period: **September 25, 2017**

13
14 The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 856,
15 relating to the Division for Rehabilitation Services:

16
17 Subchapter B. Eligibility, §856.19

18
19 Subchapter C. Provision of Vocational Rehabilitation Services, §§856.54 - 856.56

20
21 Subchapter D. Consumer Participation, §856.59

22
23 New Subchapter G. Certificate of Blindness for Tuition Waiver, §§856.90 - 856.92

24
25 TWC proposes amendments to the following sections of Chapter 856, relating to the Division for
26 Rehabilitation Services:

27
28 Subchapter A. Vocational Rehabilitation Services Program, §§856.1, 856.3, and 856.5

29
30 Subchapter B. Eligibility, §§856.20 - 856.24

31
32 Subchapter C. Provision of Vocational Rehabilitation Services, §§856.40 - 856.53

33
34 Subchapter D. Consumer Participation, §856.60

35
36 Subchapter E. Comparable Benefits, §856.71

37
38 Subchapter F. Methods of Administration of Vocational Rehabilitation, §§856.80 - 856.82

39
40 TWC proposes the repeal of the following sections of Chapter 856, relating to the Division for
41 Rehabilitation Services:

42
43 Subchapter A. Vocational Rehabilitation Services Program, §856.2

44
45 Subchapter E. Comparable Benefits, §856.70

1 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
2 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
3 PART III. IMPACT STATEMENTS
4 PART IV. COORDINATION ACTIVITIES

5
6 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

7 Chapter 856 rule is amended to comply with Senate Bill (SB) 208, passed by the 84th Texas
8 Legislature, Regular Session (2015), which transferred vocational rehabilitation (VR) services
9 and related programs from the Texas Department of Assistive and Rehabilitative Services
10 (DARS) to the Texas Workforce Commission (TWC) effective September 1, 2016. In addition to
11 transferring VR services, SB 208 required TWC to integrate the two separate VR programs--VR
12 for individuals with visual impairments (Blind Services) and VR for individuals with other
13 disabilities (Rehabilitation Services)--into a single program. Texas Labor Code, §352.101(b)(5)
14 specifically requires TWC to recommend the adoption of any rules necessary to accomplish this
15 integration by October 1, 2017.

16
17 Currently, VR program rules for Blind Services are located in Chapter 854, Subchapter B, and
18 VR program rules for Rehabilitation Services are located in Chapter 856. These two sets of rules
19 must be consolidated to create a unified rule base for TWC's VR program. Many sections in both
20 chapters contain the same or similar language. However, some significant differences exist
21 between the two chapters, and those differences must be resolved to integrate the two rule sets—
22 and programs—into one.

23
24 TWC proposes revising Chapter 856 to contain all rules for the integrated VR program. In a
25 separate, but concurrent rulemaking proposal, TWC proposes repealing Chapter 854, Subchapter
26 B. Language that is unique to VR services for individuals with visual impairments in Chapter
27 854, Subchapter B would be incorporated into Chapter 856 and expanded to apply to all VR
28 customers or retained to ensure the specialization of blind services, as appropriate. Where there
29 are differences between the two rule chapters, TWC proposes incorporating into Chapter 856 the
30 version of the language from either chapter that is most representative of best practices in the VR
31 program.

32
33 Many of the provisions in Chapter 856 refer to, or derive from, federal regulations under the
34 Workforce Investment Act (WIA). With the 2014 passage of the Workforce Innovation and
35 Opportunity Act (WIOA), WIA references are no longer accurate. As such, the VR program
36 rules must be updated to reflect federal regulations enacted under WIOA. TWC proposes
37 amending Chapter 856 to reflect corrected citation and wording with respect to WIOA and
38 related federal regulations under WIOA.

39
40 Additionally, with the passage of SB 208, the transfer of VR services from DARS to TWC, and
41 other related changes, Chapter 856 is not consistent with state law. For example, Chapter 856
42 contains many references to DARS and its organizational structure, and incorporates DARS'
43 terminology, such as referring to individuals receiving services as "consumers." TWC proposes
44 replacing the outdated agency and division names, as well as references to state statutes and rules
45 in Chapter 856. TWC also proposes replacing the word "consumer" with "customer" to be
46 consistent with TWC terminology.

1
2 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

5
6 **SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES PROGRAM**

7 **TWC proposes the following amendments to Subchapter A:**

8 TWC proposes changing the name of Subchapter A to "Vocational Rehabilitation Services:
9 Program and Purpose."

10
11 **§856.1. Purpose**

12 Section 856.1 replaces the reference to "the Department of Assistive and Rehabilitative Services
13 (DARS), Division for Rehabilitation Services (DRS)" with "the Texas Workforce Commission
14 (TWC), Vocational Rehabilitation Division (VRD)" to reflect the transfer of VR services from
15 DARS to TWC. The amendment also adds a provision specifying that the new Vocational
16 Rehabilitation Division is the single designated state unit for the combined VR program in
17 accordance with the Rehabilitation Act of 1973, as amended (29 USC §701 et seq.) and makes
18 other changes to be consistent with federal regulations.

19
20 **§856.2. Legal Authority**

21 Section 856.2 is repealed because it is not necessary or appropriate to include the agency's legal
22 authority in rule.

23
24 **§856.3. Definitions**

25 Section 856.3 incorporates the definitions for "Blind" and "Visually Impaired" from Texas
26 Human Services Code, §91.002 to reflect the integration of the two separate VR programs. The
27 amendment also adds a reference to the definitions in state law and federal regulations relating to
28 VR, updates the division name, and replaces the word "consumer" with "customer."

29
30 **§856.5. Consultation Regarding the Administration of the State Plan**

31 Section 856.5 updates the division name and replaces the word "consumer" with "customer."

32
33 **SUBCHAPTER B. ELIGIBILITY**

34
35 **§856.19. Application**

36 New §856.19, relating to vocational rehabilitation service application, incorporates the
37 provisions in §854.23 of this title, concurrently proposed for repeal, with modifications to:
38 --exclude subsection (b) stating an individual must be available so that VR staff can complete an
39 assessment for eligibility within 60 days of the individual applying for services, as this is not
40 allowable under 34 CFR §361.42; and
41 --update the division name.

42
43 **§856.20. Eligibility**

44 Section 856.20 updates the division name, replaces the term "extended evaluation" with "trial
45 work" to be consistent with changes in WIOA and federal regulations, and adds the requirements
46 from §854.26 to this section with updated rule references.

1
2 **§856.21. Prohibited Factors**

3 Section 856.21 updates the division name and makes other changes to be consistent with federal
4 regulations.

5
6 **§856.22. Extended Evaluation**

7 Section 856.22 updates the division name and replaces the term "extended evaluation" with "trial
8 work" to be consistent with changes in WIOA and federal regulations.

9
10 **§856.23. Determination of Ineligibility**

11 Section 856.23 updates the division name and the federal law reference, replaces the word
12 "consumer" with "customer", and makes other changes to be consistent with federal regulations.

13
14 **§856.24. Case Closure**

15 Section 856.24 updates the division name, replaces the word "consumer" with "customer, " and
16 adds a requirement to subsection (a)(2) to specify, for consistency with changes in WIOA and
17 federal regulations, that trial work is necessary before deciding to close a case due to the severity
18 of a customer's disability.

19
20 **SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES**

21
22 **§856.40. Provision of Services**

23 Section 856.40 updates the division name and rule references, and replaces the word "consumer"
24 with "customer."

25
26 **§856.41. Assessment**

27 Section 856.41 updates the division name, changes the title of the section to "Comprehensive
28 Assessment" to be consistent with federal regulations and to distinguish the assessment outlined
29 in this section from other types of assessments in the VR process, and replaces the word
30 "consumer" with "customer."

31
32 **§856.42. Counseling, Guidance, and Referral**

33 Section 856.42 updates the division name and replaces the word "consumer" with "customer."
34

35 **§856.43. Physical Restoration Services**

36 Section 856.43 updates the division name and replaces the word "consumer" with "customer."
37

38 **§856.44. Mental Restoration Services**

39 Section 856.44 updates the division name and makes other changes to be consistent with federal
40 regulations.

41
42 **§856.45. Vocational and Other Training Services**

43 Section 856.45 adds the applicable requirements from §854.43, with a modification to remove
44 the reference to Gallaudet University in subsection (b)(5)(C) because it is not inclusive of the
45 many colleges and universities that offer specialized services to students with disabilities. The
46 amendment also updates the division name, replaces the word "consumer" with "customer," and

1 deletes subsection (d) because the requirements added from §854.43(b) are more comprehensive
2 on the subject of paying for out-of-state tuition.

3
4 **§856.46. Maintenance**

5 Section 856.46 updates the division name and replaces the word "consumer" with "customer."
6

7 **§856.47. Transportation**

8 Section 856.47 updates the division name and replaces the word "consumer" with "customer."
9

10 **§856.48. Interpreter Services for the Deaf and Hard of Hearing**

11 Section 856.48 incorporates requirements from §854.47 to create a section that addresses
12 interpreter services for customers who are deaf, hard of hearing, or deafblind, and changes the
13 title of the section accordingly. The amendment also updates the division and agency names and
14 replaces the word "consumer" with "customer."
15

16 **§856.49. Job Development, Placement and Retention**

17 Section 856.49 replaces the word "consumer" with "customer."
18

19 **§856.50. Post-Employment Services**

20 Section 856.50 updates the division name and replaces the word "consumer" with "customer."
21 The amendment also clarifies that post-employment services support the previously planned
22 employment outcome and that post-employment services do not include "complex rehabilitation
23 services or services to address a new disability or impediment to employment," as stated in
24 §854.50(a) and (b).
25

26 **§856.51. Occupational Licenses, Tools, Equipment, and Training Supplies**

27 Section 856.51 updates the division name and replaces the word "consumer" with "customer."
28 The term "nonconsumable supplies"" is added to the list of items in subsection (c) that customers
29 must safeguard. The amendment also updates the title of the section to "Occupational Licenses,
30 Tools, Equipment, Initial Stocks, and Supplies" to be consistent with WIOA and federal
31 regulations.
32

33 **§856.52. Individualized Plan for Employment**

34 Section 856.52 incorporates language from §854.53 to create a hybrid of the two sections. The
35 amendment also updates the division name, replaces the word "consumer" with "customer,"
36 updates rule references, and clearly ties the services a customer receives to what has been agreed
37 to in the individualized plan for employment (IPE).
38

39 **§856.53. Consumers Determined to Have Achieved Employment Outcome**

40 Section 856.53 updates the division name and replaces the word "consumer" with "customer."
41

42 **§856.54. Services to Family Members**

43 New §856.54, relating to vocational rehabilitation services to family members, incorporates the
44 provisions of §854.46 of this title, concurrently proposed for repeal, with modifications to
45 replace the word "consumer" with "customer."
46

1 **§856.55. Reader Services**

2 New §856.55, relating to reader services, incorporates the provisions of §854.48 of this title,
3 concurrently proposed for repeal, with modifications to:

4 --update the division name;

5 --replace the word "consumer" with "customer"; and

6 --remove “and Rehabilitation Teaching Services” from the title, as those services are not
7 included in the content of the section. (Rehabilitation teaching services are required under federal
8 regulations at 34 CFR §361.48, and will continue to be provided to TWC's VR customers.)

9
10 **§856.56. Assistive Technology Devices**

11 New §856.56, relating to assistive technology devices, incorporates the provisions of §854.52 of
12 this title, concurrently proposed for repeal, with modifications to update the division name and
13 replace the word "consumer" with "customer."

14
15 **SUBCHAPTER D. CONSUMER PARTICIPATION**

16 TWC proposes changing the name of Subchapter D to "Customer Participation."
17

18 **§856.59. Purpose of Customer Participation**

19 New §856.59, relating to customer participation, incorporates the provisions of §854.60 of this
20 title, concurrently proposed for repeal, with modifications to update the division name, replace
21 the word "consumer" with "customer", and be consistent with federal regulations. The section
22 also adds the requirement for individuals to participate in the cost of services based on financial
23 need.
24

25 **§856.60. Basic Living Requirements (BLR)**

26 Section 856.60 updates the division name and replaces the word "consumer" with "customer."
27 The section also incorporates provisions of §854.61 of this title, concurrently proposed for
28 repeal, into the list of services that are not subject to customer participation.
29

30 **SUBCHAPTER E. COMPARABLE BENEFITS**

31
32 **§856.70. Comparable Services and Benefits**

33 Section 856.70 is repealed because a similar provision is added to §856.71 so that all provisions
34 related to comparable services and benefits are in one section.
35

36 **§856.71. Availability of Comparable Services and Benefits**

37 Section 856.71 replaces current provisions with applicable provisions from §854.70 of this title,
38 concurrently proposed for repeal, with modifications to update the division name, replace the word
39 "consumer" with "customer", and be consistent with federal regulations.
40

41 **SUBCHAPTER F. METHODS OF ADMINISTRATION OF VOCATIONAL**
42 **REHABILITATION**

43
44 **§856.80. Statewide Studies and Program Evaluation**

45 Section 856.80 updates the division name.
46

1 **§856.81. Annual Evaluation**

2 Section 856.81 updates the division name and replaces the word "consumer" with "customer."
3 The amendment also replaces the term "evaluation standards and performance indicators" in
4 subsection (a)(2) with "performance accountability measures"" to be consistent with changes in
5 WIOA and federal regulations.
6

7 **§856.82. Order of Selection**

8 Section 856.82 incorporates applicable provisions from §854.80 of this title, concurrently
9 proposed for repeal, with modifications to update the division name, position title, and contact
10 information and replace the word "consumer"" with "customer."
11

12 **SUBCHAPTER G. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER**

13 **TWC proposes new Subchapter G, as follows:**
14

15 **§856.90. Purpose**

16 New §856.90, relating to the purpose of Subchapter G, incorporates the provisions of §854.90 of
17 this title, concurrently proposed for repeal, with modifications to update agency and division
18 names and to add a reference to the statutory authority in the Texas Education Code.
19

20 **§856.91. Definitions**

21 New §856.91, relating to definitions used in Subchapter G, incorporates relevant definitions from
22 §854.92 of this title, concurrently proposed for repeal, with modifications to update agency and
23 division names and remove unnecessary statutory references.
24

25 **§856.92. Eligibility**

26 New §856.92, relating to eligibility, incorporates the provisions of §854.93 of this title,
27 concurrently proposed for repeal, with modifications to update agency and division names and
28 the rule reference and to remove the unnecessary statutory reference.
29

30 **PART III. IMPACT STATEMENTS**

31 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
32 years the rules will be in effect, the following statements will apply:
33

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

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

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

43 There are no foreseeable implications relating to costs or revenue of the state or local
44 governments as a result of enforcing or administering the rules.
45

46 There are no anticipated economic costs to persons required to comply with the rules.

1
2 There is no anticipated adverse economic impact on small or microbusinesses as a result of
3 enforcing or administering the rules.

4
5 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
6 that the requirement to repeal or amend a rule as required by HB 1290 passed by the 85th
7 Legislature (to be codified at Texas Government Code §2001.0045), does not apply to this
8 rulemaking. Additionally, Texas Labor Code §352.101 requires the Commission to adopt rules
9 necessary to integrate the vocational rehabilitation programs, including recommending adopting
10 rules to implement the integration. Therefore, the exception identified in §2001.0045(c)(9) also
11 applies.

12
13 Economic Impact Statement and Regulatory Flexibility Analysis

14 TWC has determined that the proposed rules will not have an adverse economic impact on small
15 businesses as these proposed rules place no requirements on small businesses.

16
17 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no
18 significant negative impact upon employment conditions in the state as a result of the rules.

19
20 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
21 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
22 the proposed rules will be to comply with statutory requirements, unify and clarify rule language,
23 update terminology, and improve consistency within the VR program.

24
25 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
26 within TWC's legal authority to adopt.

27
28 **PART IV. COORDINATION ACTIVITIES**

29 In the development of these rules for publication and public comment, TWC sought the
30 involvement of Texas' 28 Boards and the Rehabilitation Council of Texas (RCT). TWC provided
31 the concept paper regarding these rule amendments to the Boards and RCT's Policy Committee
32 for consideration and review on June 13, 2017. TWC also conducted conference calls with Board
33 executive directors and Board staff on June 23, 2017, and with RCT's Policy Committee on June
34 20 and June 27, 2017, to discuss the concept paper. During the rulemaking process, TWC
35 considered all information gathered in order to develop rules that provide clear and concise
36 direction to all parties involved.

37
38 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
39 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin,
40 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
41 Comments must be received or postmarked no later than 30 days from the date this proposal is
42 published in the *Texas Register*.

43
44 The rules are proposed under Texas Labor Code §352.101, which requires TWC to adopt rules as
45 necessary to integrate the vocational rehabilitation programs, and §301.0015 and §302.002(d),

1 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems
2 necessary for the effective administration of TWC services and activities.

3

4 The proposed rules affect Title 4, Texas Labor Code, Chapters 301, 302, and 352.

5

1 **CHAPTER 856. ~~DIVISION FOR~~ VOCATIONAL REHABILITATION SERVICES**

2
3 **SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES: PROGRAM AND**
4 **PURPOSE**

5
6 **§856.1. Purpose.**

7
8 The Vocational Rehabilitation Services Program is a joint state- and federal-funded
9 program administered by the Texas ~~Department of Assistive and Rehabilitative Services~~
10 ~~(DARS)~~ Workforce Commission (TWC), ~~Division for Vocational Rehabilitation Services~~
11 ~~(DRS)~~ Division (VRD) to assess, plan, develop, and provide vocational rehabilitation
12 services for eligible ~~person~~ individuals with disabilities, consistent with their unique
13 strengths, resources, priorities, concerns, abilities, ~~and~~ capabilities, interests, and
14 informed choice so that these ~~person~~ individuals ~~may~~ can prepare for and engage in
15 ~~gainful~~ competitive integrated employment and achieve economic self-sufficiency. In
16 accordance with the Rehabilitation Act of 1973, as amended, the Vocational
17 Rehabilitation Division is the single designated state unit for the VR program.

18
19 ~~§856.2. Legal Authority.~~

20
21 ~~The following statutes and regulations authorize or require the rules in this subchapter:~~

- 22
23 ~~(1) The Texas Human Resources Code §111.053.~~
- 24
25 ~~(2) The Texas Human Resources Code, Chapter 117.~~
- 26
27 ~~(3) The Rehabilitation Act of 1973, as amended (29 USC §§701 et seq.), referred~~
28 ~~to as "the Act."~~
- 29
30 ~~(4) Implementing federal regulations (34 CFR §§361.51 et seq., as amended).~~
- 31
32 ~~(5) The DRS state plan WIOA Combined State Plan submitted to and approved by~~
33 ~~the federal government, which is effective in all political subdivisions of the~~
34 ~~state.~~

35
36 **§856.3. Definitions.**

37
38 ~~The following words and terms, when used in this subchapter, have the following~~
39 ~~meanings, unless the context clearly indicates otherwise. In addition to the definitions~~
40 ~~contained in Texas Labor Code §352.001 and 34 CFR §361.5 vocational rehabilitation,~~
41 ~~the following words and terms, when used in this chapter, shall have the following~~
42 ~~meanings.~~

- 43
44 (1) Applicant--An individual who applies to ~~DRS~~ VRD for vocational
45 rehabilitation services.

1 (2) Blind--An individual having not more than 20/200 visual acuity in the better
2 eye with correcting lenses or visual acuity greater than 20/200 but with a
3 limitation in the field of vision such that the widest diameter of the visual field
4 subtends an angle no greater than 20 degrees.

5
6 (3) ~~Consumer~~Customer--An individual with a disability who has applied for, or
7 is receiving vocational rehabilitation services.

8
9 (4) Visually Impaired--A visual acuity of not more than 20/70 in the better eye
10 with correcting lenses, or visual acuity greater than 20/70 but with a limitation
11 in the field of vision such that the widest diameter of the visual field subtends
12 an angle no greater than 30 degrees.

13
14 **§856.5. Consultation Regarding the Administration of the State Plan.**

15
16 (a) The state plan must ensure that, in connection with developing and administering
17 general policy in the administration of the state plan, ~~DRS~~VRD seeks and takes into
18 account the views of:

- 19 -
20 (1) individuals who receive vocational rehabilitation services or, as appropriate,
21 the individuals' representatives;
22
23 (2) personnel working in the field of vocational rehabilitation;
24
25 (3) providers of vocational rehabilitation services;
26
27 (4) the Client Assistance Program (CAP) director; and
28
29 (5) the Rehabilitation Council of Texas.

30
31 (b) The state plan must specifically describe the manner in which ~~DRS~~VRD will take
32 into account the views regarding state policy and administration of the state plan that
33 are expressed in the ~~consumer~~customer satisfaction surveys conducted by the
34 Rehabilitation Council of Texas under 34 CFR §361.17(h)(4) or by ~~DRS~~VRD.

35
36 **SUBCHAPTER B. ELIGIBILITY**

37
38 **§856.19. Application.**

39
40 An individual is considered to have submitted an application when the individual or the
41 individual's representative, as appropriate:

- 42
43 (1) has completed and signed the VRD application form or has otherwise requested
44 services;
45

1 (2) has provided the information necessary to initiate an assessment to determine
2 eligibility and priority for services; and

3
4 (3) is available to complete the assessment process.
5

6
7 **§856.20. Eligibility.**
8

9 (a) ~~DRS-VRD~~ bases eligibility for vocational rehabilitation (VR) services on the
10 following requirements only.
11

12 (b) Within 60 days of application, ~~DRS-VRD~~ must:
13

14 (1) determine that the applicant has a physical or mental impairment;
15

16 (2) determine that the impairment constitutes or results in a substantial
17 impediment to employment for the applicant;
18

19 (3) establish that the applicant requires VR services to prepare for, enter, engage
20 in, or retain gainful employment consistent with the applicant's strengths,
21 resources, priorities, concerns, abilities, capabilities, interests, and informed
22 choice; and
23

24 (4) presume that the applicant is capable of achieving an employment outcome,
25 unless there is a demonstration by clear and convincing evidence in ~~extended~~
26 ~~evaluation~~trial work that the applicant is incapable of achieving an
27 employment outcome because of the severity of the applicant's disability.
28

29 (c) Social Security disability recipients and beneficiaries are presumed eligible for VR
30 services, unless there is a demonstration by clear and convincing evidence in
31 ~~extended-evaluation~~trial work that the applicant is incapable of achieving an
32 employment outcome because of the severity of the applicant's disability.
33

34 (d) Eligibility or ineligibility must be determined no later than 60 days after the
35 applicant, or the applicant's representative, as appropriate, has signed and submitted
36 an application for VR services in accordance with the provisions of §856.19 of this
37 subchapter (relating to Application).
38

39 (e) Exceptions to the 60-day time frame for determining eligibility or ineligibility may
40 occur only when:
41

42 (1) VRD notifies the applicant that unforeseen circumstances beyond the control
43 of VRD preclude it from completing the determination in 60 days;
44

45 (2) the applicant, or the applicant's representative, as appropriate, agrees to a
46 specific extension of time; or

1
2 (3) VRD requires further time exploring an applicant's abilities, capabilities, and
3 capacity to perform in work situations through trial work.

4
5 (f) Eligibility must be determined before applying Subchapter F of this chapter, if
6 appropriate (relating to Methods of Administration of Vocational Rehabilitation) and
7 Subchapter D of this chapter (relating to Customer Participation).

8
9 **§856.21. Prohibited Factors.**

10
11 (a) ~~DRS-VRD~~ does not impose, as part of determining eligibility under this subchapter,
12 a duration-of-residence requirement that excludes from services any applicant who is
13 present in the state.

14
15 (b) In determining eligibility under this subchapter, ~~DRS-VRD~~ ensures that:

16
17 (1) No applicant or group of applicants is excluded or found ineligible solely on
18 the basis of the type of disability; and

19
20 (2) The eligibility requirements are applied without regard to the:

21
22 (A) age, ~~sex~~gender, race, color, or national origin of the applicant;

23
24 (B) type of expected employment outcome;

25
26 (C) source of referral for vocational rehabilitation services; ~~and~~

27
28 (D) particular service needs or anticipated cost of services required by an
29 applicant or the income level of an applicant or applicant's family.;

30
31 (E) applicants' employment history or current employment status; and

32
33 (F) applicants' educational status or current educational credential.

34
35 **§856.22. ~~Extended Evaluation~~Trial Work.**

36
37 (a) ~~Extended evaluation~~Trial work is used only to determine whether an applicant with
38 a significant disability is capable of achieving an employment outcome.

39
40 (b) ~~DRS-VRD~~ provides only the vocational rehabilitation services necessary to
41 determine if the applicant is capable of achieving an employment outcome. Services
42 are provided in the most integrated setting possible, consistent with the informed
43 choice of the applicant.

44
45 (c) ~~DRS-VRD~~ may terminate ~~extended evaluation~~trial work services ~~at any time~~ when:

- 1 (1) there is sufficient evidence to conclude that the applicant can achieve an
2 employment outcome;
3
4 (2) the applicant is found ineligible for any additional vocational rehabilitation
5 services on the basis of clear and convincing evidence that the applicant cannot
6 be expected to benefit in terms of an employment outcome from vocational
7 rehabilitation services; or
8
9 (3) the applicant is unavailable for services.
10
11 (d) When an applicant is determined ineligible for vocational rehabilitation services
12 after ~~extended evaluation~~ trial work, ~~DRS-VRD~~ conducts a periodic review at least
13 annually of the ineligibility decision in which the applicant is afforded a clear
14 opportunity for full consultation in the reconsideration of the decision. A periodic
15 review is not required when the applicant has refused services, the applicant has
16 refused a periodic review, the applicant is no longer present in the state, the
17 applicant's whereabouts are unknown, or the applicant's medical condition is rapidly
18 progressive or terminal.
19

20 §856.23. Determination of Ineligibility.

21
22 When an applicant is determined ineligible for vocational rehabilitation services or a
23 ~~consumer~~ customer receiving services under an individualized plan of employment (IPE)
24 is no longer eligible for services, ~~DRS-VRD~~ must:

- 25
26 (1) make the determination only after providing an opportunity for full
27 consultation with the ~~person~~ individual or, ~~as appropriate,~~ the
28 ~~person~~ individual's representative, as appropriate;
29
30 (2) inform the ~~person~~ individual in writing of the ineligibility determination. The
31 written determination, ~~to~~ must be supplemented as necessary by other
32 appropriate modes of communication consistent with the individual's informed
33 choice, ~~of the person and~~ must include the reasons for that determination and
34 the means by which the ~~person~~ individual may express and seek remedy for any
35 dissatisfaction, including the procedures for review of a determination by the
36 ~~rehabilitation-VR~~ counselor;
37
38 (3) provide the ~~person~~ individual with a description of services available from the
39 Client Assistance Program established under 34 CFR Part 370 and information
40 on how to contact that program;
41
42 (4) refer the ~~person~~ individual to:
43
44 (A) other programs that are part of the one-stop service delivery system
45 under the Workforce ~~Investment~~ Innovation and Opportunity Act that

1 can address the personindividual's training or employment-related needs;
2 or

3
4 (B) local extended employment providers if the ineligibility determination is
5 based on a finding that the personindividual is incapable of achieving, or
6 has chosen not to pursue, an employment outcome; and

7
8 (5) review within 12 months and annually thereafter, if requested by the
9 personindividual or, if appropriate, by the personindividual's representative, any
10 ineligibility determination that is based on a finding that the personindividual is
11 incapable of achieving an employment outcome. ~~This~~ It is not necessary that the
12 review ~~need not~~ be conducted in situations ~~where in which~~ the personindividual
13 has refused it, the personindividual is no longer present in the state, the
14 personindividual's whereabouts are unknown, or the personindividual's medical
15 condition is rapidly progressive or terminal.

16
17
18 **§856.24. Case Closure.**

19
20 (a) ~~DRS-VRD~~ closes a case when the consumer's-customer's rehabilitation plan has been
21 completed and the consumer-customer has achieved and maintained continuous
22 employment commensurate with the established employment goal-outcome for a
23 minimum of 90 days. ~~DRS-VRD~~ closes the case sooner if:

- 24
25 (1) ~~DRS-VRD~~ is unable to locate or contact the consumercustomer;
- 26
27 (2) the consumer's-customer's disability is so severely limiting that there is
28 little chance the consumer-customer can be vocationally rehabilitated, as
29 demonstrated by clear and convincing evidence in trial work, or the
30 consumer's-customer's medical condition is expected to progress to such
31 a severely limiting degree in a fairly short period that rehabilitation
32 services will be of little or no help;
- 33
34 (3) the consumer-customer has refused services or further services;
- 35
36 (4) the consumer-customer has died;
- 37
38 (5) the consumer-customer has been institutionalized;
- 39
40 (6) the consumer-customer has been determined to have no disabling
41 condition;
- 42
43 (7) the consumer-customer has refused to cooperate with ~~DRS~~VRD;
- 44
45 (8) transportation is not feasible or available;
- 46

- (9) the ~~consumer~~customer has been determined to have no impediment to employment;
- (10) ~~E~~extended services for supported employment are not available;
- (11) the ~~consumer~~customer has chosen extended employment (for example, sheltered workshop); or
- (12) the ~~consumer's~~customer's case has been transferred to another agency.

(b) Case closure is made with the customer's full knowledge ~~of the consumer~~ customer, when the ~~consumer~~customer is available.

SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

§856.40. Provision of Services.

- (a) ~~DRS~~VRD, as appropriate to the vocational rehabilitation needs of each eligible ~~person~~individual, provides goods and services necessary to render a ~~consumer~~customer employable, subject to certain limitations prescribed in this subchapter and ~~application of Divisions 4 and 5 of this subchapter~~Subchapters D and E of this chapter (relating to ~~Consumer~~Customer Participation; and Comparable Benefits).
- (b) Services are provided only ~~when~~as planned in advance and ~~contained~~set forth in the ~~consumer's~~customer's individualized plan ~~of~~for employment (IPE).

§856.41. Comprehensive Assessment.

- (a) After a ~~consumer~~customer has been found eligible, ~~DRS~~VRD conducts assessments for vocational rehabilitation needs and, if necessary, rehabilitation technology needs for each ~~consumer~~customer in order to develop an IPE that is designed to achieve the ~~consumer's~~customer's ~~vocational goal~~employment outcome.
- (b) If more information is needed to determine the appropriate employment outcome and services required to achieve it, ~~DRS~~VRD, as appropriate in each case, conducts an assessment of the ~~consumer's~~customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the ~~consumer~~customer.
- (c) The assessment is limited to information that is necessary to identify the customer's rehabilitation needs ~~of the consumer~~ and develop the IPE and may, to the extent needed, include:
 - (1) an analysis of medical, psychological, vocational, educational, and other related factors that bear on the ~~consumer's~~customer's impediment to

1 employment and rehabilitation needs. Additional examinations are authorized
2 after services are initiated when conditions arise that jeopardize the ~~consumer's~~
3 customer's plan for employment IPE;

4
5 (2) an analysis of the ~~consumer's~~customer's personality, career interests,
6 interpersonal skills, intelligence and related functional capacities, educational
7 achievement, work experience, vocational aptitudes, personal and social
8 adjustments, and employment opportunities;

9
10 (3) an appraisal of the ~~consumer's~~customer's patterns of work behavior and
11 services needed to acquire occupational skills and to develop work attitudes,
12 work habits, work tolerance, and social and behavioral patterns suitable for
13 successful job performance; and

14
15 (4) an assessment, through provision of rehabilitation technology services, of the
16 ~~consumer's~~customer's capacities to perform in a work environment, including
17 in an integrated setting, to the maximum extent feasible and consistent with the
18 ~~consumer's~~customer's informed choice.

19
20 (d) ~~DRS-VRD~~ uses, to the maximum extent possible and appropriate and in accordance
21 with confidentiality requirements, existing information, including information that is
22 provided by the ~~consumer~~customer, the family of the ~~consumer~~customer, and
23 education agencies.

24 25 **§856.42. Counseling, Guidance, and Referral.**

26
27 ~~DRS-VRD~~ provides counseling, guidance, and referral services as necessary for the
28 customer's vocational rehabilitation ~~of the consumer~~customer. Counseling is a process in
29 which a ~~vocational rehabilitation~~VR counselor works with the ~~consumer~~customer ~~in~~
30 ~~order~~ to help the ~~consumer~~customer understand both problems and vocational potential.
31 Counseling is a continuous process throughout the rehabilitation program to help the
32 ~~consumer~~customer make the best possible vocational, personal, and social adjustment.
33 Referral means referral of the ~~consumer~~customer to other agencies for assistance not
34 available from ~~DRS~~VRD.

35 36 **§856.43. Physical Restoration Services.**

37
38 ~~DRS-VRD~~ provides physical restoration services that are necessary to correct or
39 substantially modify the ~~consumer's~~customer's physical condition within a reasonable
40 period. The physical conditions for which the services are rendered must be stable or
41 slowly progressive.

42 43 **§856.44. Mental Restoration Services.**

44
45 (a) ~~DRS-VRD~~ provides mental restoration services for mental conditions that are stable
46 or slowly progressive.

- 1
2 (b) ~~DRS-VRD~~ provides psychiatric treatment as a limited service on a short-term basis
3 only to support achievement of the employment ~~goal~~outcome.
4
5 (c) ~~DRS-VRD~~ provides psychotherapy as a limited service on a short-term basis only to
6 support achievement of the employment ~~goal~~outcome.
7

8 **§856.45. Vocational and Other Training Services.**
9

- 10 (a) ~~DRS-VRD~~ purchases vocational and other training services for ~~consumers~~customers
11 who require additional knowledge or skills to enter employment consistent with their
12 aptitudes and ability, and compatible with their physical or mental impairments.
13
14 (b) ~~DRS-VRD~~ purchases vocational and other training services through an appropriate
15 facility. These facilities include accredited colleges and universities, certified public
16 or private businesses, technical and vocational schools, on-the-job training,
17 correspondence course training, tutorial training, and community rehabilitation
18 program training.
19

20 (c) Academic training in institutions of higher education (universities, colleges,
21 community or junior colleges, vocational schools, technical institutes, or hospital
22 schools of nursing) is subject to the following:
23

- 24 (1) Academic training in vocational schools and technical institutes must be
25 provided only in schools that are certified by the State of Texas.
26
27 (2) No vocational rehabilitation funds may be used to pay for academic training
28 unless VRD and the customer have made maximum efforts to secure grant
29 assistance in whole or in part from other sources to pay for the training.
30
31 (3) The PELL grant, like any other comparable services and benefits, must be
32 applied to the educational process before the expenditure of VRD funds for
33 services under this section. Services must not be denied pending receipt of a
34 PELL grant, but must be contingent upon the customer's making application if
35 eligible.
36
37 (4) Academic training must be provided through public, tax-supported colleges and
38 universities in Texas unless:
39
40 (A) a specific curriculum related to the customer's academic major is not
41 available at a Texas public institution;
42
43 (B) academic training elsewhere is determined to be more economical; or
44
45 (C) academic training elsewhere provides specialized services needed by the
46 customer.

1
2 (5) If the customer chooses to obtain academic training at a private college or
3 university in Texas or at a college or university outside Texas and the provisions
4 in paragraph (4) of this subsection do not apply, academic support must be
5 limited to that which the customer would receive if he or she attended a state-
6 supported college or university in Texas.

7
8 (6) A customer who is blind, does not meet the residency requirements of a
9 particular institution, and is not eligible for tuition exemption under Texas
10 Education Code §54.364 may receive VRD tuition assistance based on the
11 customer's economic need, but the payments must not exceed the tuition paid
12 for a customer who does meet the residency requirements.

13
14 (7) Tuition and fee exemption is an exemption from payment of tuition and/or
15 required fees normally charged by a state-supported college or university.
16 Required fees include student services, building use, health center use, lab fees,
17 and property deposits not reimbursable to the student. Required fees do not
18 include optional fees.

19
20 (8) Any equipment purchased for the customer during academic training must be
21 needed by the customer to help maintain academic success so that the customer
22 can meet the employment outcome.

23
24 (9) Academic training does not include continuing education required for
25 maintaining certification in a field in which the customer is already gainfully
26 employed.

27
28 (10) Once admitted to academic training:

29
30 (A) the customer must maintain and complete a full-time course load as
31 defined by the college or university. This requirement may be waived if:

32
33 (i) the customer is a graduating senior;

34
35 (ii) the customer is an incoming freshman (first two semesters or
36 quarters);

37
38 (iii) the customer is a returning adult (first academic year only);

39
40 (iv) the customer is in summer school; or

41
42 (v) other extenuating circumstances prevent the customer from
43 participating in a full-time course load; and

44
45 (B) the customer is required to meet with the VR counselor at least once
46 each semester, to submit add or drop slips as changes occur, and to

1 provide grade slips or transcripts to the VR counselor at the end of each
2 semester.

3
4 (de) ~~DRS-VRD~~ requires that each ~~consumer~~customer who is provided with vocational or
5 other training services by ~~DRS-VRD~~ apply for financial assistance where reasonably
6 available. This assistance can include federal, state, or local grants-in-aid and private
7 scholarships where applicable. If the ~~consumer~~customer has not done so before the
8 time of application for vocational rehabilitation services, the VR counselor assists
9 the ~~consumer~~customer in doing so.

10
11 ~~(d) DRS does not pay the nonresident fee to a college or university outside Texas if the~~
12 ~~course is available at a school within Texas, but does pay tuition at the same rate as~~
13 ~~would have been paid to a comparable college in Texas.~~

14
15 (e) ~~DRS-VRD~~ does not pay tuition and fees to a business, technical, or vocational school
16 in excess of the published fees.

17
18 **§856.46. Maintenance.**

19
20 ~~DRS-VRD~~ may pay maintenance to the ~~consumer~~customer. Maintenance is a payment to
21 the ~~consumer~~customer made during any stage of the rehabilitation process to cover basic
22 living expenses, such as food, shelter, clothing, and other subsistence expenses that are in
23 excess of the customer's normal expenses ~~of the consumer~~, and are necessary for the
24 ~~consumer~~customer to derive the full benefit of other vocational rehabilitation services.

25
26 **§856.47. Transportation.**

27
28 ~~DRS-VRD~~ may pay for transportation services for the ~~consumer~~customer in connection
29 with other vocational rehabilitation services.

30
31 **§856.48. ~~Interpreter~~ Services for ~~the~~ Customers Who Are Deaf, and Hard of Hearing, or**
32 **Deafblind.**

33
34 (a) ~~DRS-VRD~~ may provide interpreter services for a ~~consumer~~customer who is deaf, ~~or~~
35 hard of hearing, or deafblind when the services will help the ~~consumer~~customer to
36 attain the ~~rehabilitation objective~~employment outcome.

37
38 (b) ~~DRS-VRD~~ may provide telecommunications, sensory, and other technological aids
39 and devices to facilitate training, employability, and job opportunities for ~~consumers~~
40 customers with significant disabilities, particularly ~~consumers~~customers who are
41 deaf, deafblind, or have ~~and consumers with~~ profound hearing or speech
42 impairments.

43
44 (c) When delivering interpreter services, note-taking services, or tactile interpreting to
45 individuals who are deaf, hard of hearing, or deafblind, VRD uses interpreters, if
46 available, certified by one of the following:

1
2 (1) Texas Health and Human Services Commission, Board for Evaluation of
3 Interpreters; or

4
5 (2) The Registry of Interpreters for the Deaf.
6

7 **§856.49. Job Development, Placement and Retention.**

- 8
9 (a) The principal objective of vocational rehabilitation services is a competitive
10 integrated employment outcome for each ~~consumer~~customer that is consistent with
11 the individual's strengths, resources, priorities, concerns, abilities, capabilities,
12 interests, and informed choice.
13
14 (b) Employment outcomes include entering, advancing in, or retaining full-time or, if
15 appropriate, part-time competitive employment in the integrated labor market;
16 supported employment; or any other type of employment in an integrated setting,
17 including self-employment, telecommuting, or business ownership.
18

19 **§856.50. Post-Employment Services.**

- 20
21 (a) ~~DRS-VRD~~ may provide post-employment services to ~~consumers~~customers who
22 have been determined rehabilitated in order to maintain or strengthen the ~~consumer's~~
23 customer's employment. A customer may be considered for post-employment
24 services if he or she has an employment-related problem that does not entail a
25 complex rehabilitation effort or address a new and distinct substantial impediment to
26 employment.
27
28 (b) Post-employment services are services that are necessary for the ~~consumer~~customer
29 to maintain, regain, or advance in an employment outcome that is consistent with the
30 ~~consumer's~~customer's strengths, resources, priorities, concerns, abilities,
31 capabilities, interests, and informed choice.
32
33 (c) Post-employment services must be related to the previously planned employment
34 outcome.
35

36 **§856.51. Occupational Licenses, Tools, Equipment, Initial Stocks, and ~~Training~~Supplies.**

- 37
38 (a) ~~DRS-VRD~~ may engage in or contract for activities to provide the ~~consumer~~customer
39 with occupational licenses, including any license, permit, or other written authority
40 that a state, city, or other governmental unit requires a n ~~person~~individual to obtain
41 before entering an occupation or self-employment.
42
43 (b) ~~DRS-VRD~~ may provide the ~~consumer~~customer with tools, equipment, initial stocks,
44 goods, and supplies necessary to enter an occupation or self-employment.
45

- 1 (c) ~~The consumers~~ Customers must safeguard and maintain in a serviceable condition
2 nonconsumable supplies, tools, and equipment and will not sell, give away, or
3 otherwise wrongfully dispose of them.
4
- 5 (d) The ~~consumers~~ customer must sign a prescribed form agreeing to the terms of
6 subsection (c) of this section at the time that the ~~consumer~~ customer receives tools
7 and equipment.
8

9 **§856.52. Individualized Plan for Employment ~~(IPE)~~.**
10

- 11 (a) ~~DRS-VRD~~ initiates and continuously develops an individualized plan for
12 employment (IPE) for each individual eligible for vocational rehabilitation services
13 and for each individual being provided such services in ~~extended evaluation trial~~
14 work. All IPEs must be written using the form prescribed by VRD for this purpose.
15
- 16 (b) VRD advises the customer or, the customer's parent, guardian, or other
17 representative, as appropriate, of the customer's options and all VRD procedures and
18 requirements affecting the development and review of an IPE, including the
19 availability of special modes of communication.
20
- 21 (c) The VR counselor and ~~consumer~~ customer or, as appropriate, the ~~consumer's~~
22 customer's parent, guardian, or other representative, uses information obtained
23 during the assessment to help the ~~consumer~~ customer make informed choices about
24 vocational rehabilitation needs, employment ~~goal~~ outcome, intermediate
25 rehabilitation objectives, and the nature and scope of vocational rehabilitation
26 services and the service providers to be included in the IPE.
27
- 28 (d) The VR counselor must provide the customer or, as appropriate, the customer's
29 representative, with a copy of the IPE and its amendments, in the mode of
30 communication specified by the customer or representative.
31
- 32 (e) All substantive revisions necessary to reflect changes in the customer's employment
33 outcome, specific vocational rehabilitation services, service providers, and the
34 methods used to procure services must be incorporated into the customer's IPE.
35
- 36 (f) ~~The consumer~~ customer may develop all or part of the IPE with ~~or without~~
37 assistance from a the ~~DRS-VRD~~ VR counselor, a qualified ~~vocational~~
38 ~~rehabilitation~~ VR counselor not employed by ~~DRS-VRD~~, or another resource outside
39 ~~DRS-VRD~~. ~~DRS-VRD~~ does not pay for non-~~DRS-VRD~~ assistance with IPE
40 development. The IPE is not final until approved by the ~~DRS-VRD~~ VR counselor. A
41 copy of the plan and any amendments are provided to the ~~consumer~~ customer or, ~~as~~
42 ~~appropriate~~, the ~~consumer's~~ customer's parent, guardian, or other representative, as
43 appropriate.
44
- 45 (g) The data used to prepare the IPE must include the information necessary to satisfy
46 federal requirements and to adequately document the customer's plan of services.

1 Regardless of the approach selected by the customer to develop the IPE, the IPE
2 must, at a minimum, contain the following mandatory components:

- 3
- 4 (1) a description of the customer's specific employment outcome;
- 5
- 6 (2) a description of the specific vocational rehabilitation services that are needed
7 to achieve the employment outcome, including, as appropriate, the provision of
8 assistive technology devices and assistive technology services; personal
9 assistance services, including training in the management of those services;
10 and timelines for initiating the services and for achieving the employment
11 outcome;
- 12
- 13 (3) a description of the entity chosen by the customer or, as appropriate, the
14 customer's representative, that will provide the vocational rehabilitation
15 services, and the methods used to procure the services;
- 16
- 17 (4) a description of criteria to evaluate progress toward achievement of the
18 employment outcome;
- 19
- 20 (5) the terms and conditions of the IPE, including, as appropriate, information
21 describing:
- 22
- 23 (A) VRD responsibilities; and
- 24
- 25 (B) customer responsibilities, including:
- 26
- 27 (i) the customer's responsibilities related to his or her employment
28 outcome;
- 29
- 30 (ii) if applicable, the customer's participation in paying for the costs of
31 the plan;
- 32
- 33 (iii) the customer's responsibility to apply for and secure comparable
34 benefits; and
- 35
- 36 (iv) the responsibilities of other entities resulting from arrangements
37 made under comparable services or benefits;
- 38
- 39 (6) for a customer with the most significant disabilities for whom an employment
40 outcome in a supported employment setting has been determined to be
41 appropriate, information identifying:
- 42
- 43 (A) the extended services that the customer needs; and
- 44
- 45 (B) the source of extended services or, if the source of the extended services
46 cannot be identified at the time that the IPE is developed, a description of

1 the basis for a reasonable expectation that a source will become
2 available; and

3
4 (7) as determined to be necessary, a statement of projected need for post-
5 employment services.

6
7 (h) In developing an IPE for a student with a disability who is receiving special
8 education services, ~~DRS-VRD~~ must consider the student's individualized education
9 program.

10
11 (i) The VR counselor must advise the ~~consumer~~customer of the ~~consumer's~~
12 customer's rights and the means by which the ~~consumer~~customer may express and
13 seek remedy for dissatisfaction with the plan, including the opportunity for an
14 administrative review of ~~DRS-VRD~~ action and a fair hearing in accordance with the
15 Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules
16 in Chapter ~~101-850~~ of this title (relating to Vocational Rehabilitation Services
17 Administrative Rules and Procedures).

18
19 (j) The VR counselor reviews the IPE as often as necessary, but ~~at least~~ on at least an
20 annual basis, at which time the ~~consumer~~customer, or ~~as appropriate,~~ the ~~consumer's~~
21 customer's parent, guardian, or other representative, as appropriate, is afforded an
22 opportunity to review the plan and, if necessary, jointly redevelop its terms.

23
24 (k) The IPE is a joint commitment that must be signed by both the VR counselor and
25 the ~~consumer~~customer.

26
27 (l) ~~DRS-VRD~~ may provide only goods and services that are reasonable and necessary
28 to achieve the employment outcome identified in customer IPEs ~~can reasonably be~~
29 ~~expected to benefit a person with a disability in terms of employment.~~

30
31 (m) Before suspending, reducing, or terminating any planned service in the IPE, VRD
32 shall send written notification of intent to the customer's last known address.

33
34 (n) VRD must suspend, reduce, or terminate the customer's planned services no sooner
35 than 10 working days after written notice has been mailed to the customer.

36
37 **§856.53. ~~Consumers~~Customers Determined to Have Achieved Employment Outcome.**

38
39 (a) ~~DRS-VRD~~ determines a ~~consumer~~customer to have achieved an employment
40 outcome when the following requirements are met:

41
42 (1) the provision of services under the ~~consumer's~~customer's IPE has contributed
43 to the achievement of the employment outcome;

44
45 (2) the ~~consumer~~customer has achieved the employment outcome that is
46 described in the ~~consumer's~~customer's IPE and that is consistent with the

1 ~~consumer's~~customer's strengths, resources, priorities, concerns, abilities,
2 capabilities, interests, and informed choice;

3
4 (3) the employment outcome is in an integrated setting;

5
6 (4) the ~~consumer~~customer has maintained the employment outcome for at least 90
7 days; and

8
9 (5) the ~~consumer~~customer and the ~~rehabilitation~~VR counselor consider the
10 employment outcome to be satisfactory and agree that the ~~consumer~~customer
11 is performing well on the job.

12
13 (b) After a ~~consumer~~customer has been determined to have achieved an employment
14 outcome, ~~DRS~~VRD may provide post-employment services as required to maintain,
15 regain, or advance in employment.

16
17 **§856.54. Services to Family Members.**

18
19 (a) VR services are provided to family members only if without the services the
20 applicant or customer would be unable to begin or continue the rehabilitation
21 program, and the customer's employment would be unnecessarily delayed or could
22 not be achieved.

23
24 (b) Only family members whose receipt of services would further the applicant's or
25 customer's vocational adjustment or rehabilitation may receive services.

26
27 (c) Family member, for purposes of receiving vocational rehabilitation services in
28 accordance with this section, means an individual:

29
30 (1) who either:

31 (A) is a relative or guardian of the applicant or customer; or

32 (B) lives in the same household as the applicant or customer;

33
34 (2) who has a substantial interest in the well-being of the applicant or customer;
35 and

36
37 (3) whose receipt of services is necessary to enable the applicant or customer to
38 achieve an employment outcome.

39
40 **§856.55. Reader Services.**

41
42 (a) Reader services are available only to customers who are blind and who are receiving
43 vocational or academic training.

44
45 (b) The customer must use all other available reading sources to the greatest extent
46 possible before seeking reimbursement from VRD for reader services.

1
2 (c) The maximum amount allowed per month for reader services is calculated according
3 to the number of semester hours the customer is taking, whether during a fall, spring,
4 or summer semester, and whether the customer is an undergraduate or graduate
5 student. The rate of reimbursement is available from any VRD office during business
6 hours.

7
8 (d) VRD does not pay for reader services rendered by a member of the customer's
9 family.

10
11 (e) To receive reimbursement for reader services, the customer must submit the
12 information required by VRD using the prescribed form.

13
14
15 **§856.56. Assistive Technology Devices.**

16
17 (a) Assistive technology devices are purchased only after evaluation of the customer's
18 need and the cost. Simple and less expensive alternatives must be considered first.

19
20 (b) The customer must return to VRD any assistive technology device no longer needed
21 for training, employment, or pursuit of employment.

22
23 **SUBCHAPTER D. ~~CONSUMER-CUSTOMER~~ PARTICIPATION**

24
25 **§856.59. Purpose of Customer Participation.**

26
27 (a) Establishing customer participation in service costs encourages customer
28 commitment to an employment outcome, creates a cooperative relationship between
29 the customer and VRD, and maximizes VRD's limited funds.

30
31 (b) VRD requires customers to participate in the cost of services based on financial
32 need.

33
34 **§856.60. Basic Living Requirements (BLR).**

35
36 (a) The purpose of ~~the table of~~ basic living requirements (BLR) is to establish a
37 framework for determining whether the ~~consumer-customer~~ should pay any of the
38 service cost. ~~DRS-VRD~~ does not consider BLR in determining eligibility for
39 vocational rehabilitation services, but ~~DRS-VRD~~ does apply BLR to determine
40 whether the ~~consumer-customer~~ must contribute to the cost of certain services. ~~DRS~~
41 VRD applies BLR uniformly to ensure that all ~~consumers-customers~~ in similar
42 circumstances receive equitable treatment.

43
44 (b) All services are subject to required ~~consumer-customer~~ participation except for the
45 following:
46

- (1) services paid for, or reimbursed by, a source other than ~~DRS~~VRD;
- (2) counseling, guidance, and referral provided by ~~DARS~~VRD;
- (3) employment assistance services provided by VRD;
- (4) diabetes education training;
- (5) VR teacher services (including consumable supplies);
- (6) orientation and mobility services;
- ~~(7)~~ assessment services, to determine eligibility and rehabilitation needs;
- ~~(8)~~ interpreter services;
- ~~(9)~~ reader services;
- ~~(10)~~ translator services;
- ~~(11)~~ personal assistant services; and/or
- ~~(12)~~ job-related services: job placement, services leading to supported employment, and job coach services.
- (c) ~~Consumers~~Customers who are recipients of Social Security disability benefits, either SSI or SSDI, are not required to participate in the cost of services.
- (d) The VR counselor informs each ~~consumer~~customer of the services that require ~~consumer~~customer participation in the cost of services and the services that do not require ~~consumer~~customer participation.
- (e) If a ~~consumer~~customer declines to provide financial information to determine BLR, it is assumed that the ~~consumer~~customer has resources that exceed the BLR and therefore must fully participate in the cost of planned services.

SUBCHAPTER E. COMPARABLE BENEFITS

~~§856.70. Comparable Services and Benefits.~~

~~If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objective in the consumer's IPE, DRS must use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.~~

1 §856.71. Availability of Comparable Services and Benefits.
2

3 ~~DARS determines whether comparable services or benefits are available to the consumer~~
4 ~~under any other program or law to meet, in whole or in part, the cost of any VR services.~~
5 ~~DARS does not make this determination in cases where:~~

6 (a) If comparable services or benefits exist under any other program and are available to
7 the customer at the time needed to achieve the employment outcome in the
8 customer's IPE, VRD must use those comparable services or benefits to meet, in
9 whole or in part, the cost of VR services.

10
11 (b) If comparable services or benefits exist under any other program, but are not
12 available to the customer at the time necessary to satisfy the employment outcome in
13 the consumer's IPE, VRD must provide VR services until those comparable services
14 and benefits become available.

15
16 (c) The following services are exempt from determination of the availability of
17 comparable services and benefits:

18
19 (1) assessment for determining eligibility and priority for services;

20
21 (2) assessment for determining VR needs;

22
23 (3) VR counseling, guidance, and referral services;

24
25 (4) placement services;

26
27 (5) rehabilitation technology services; and

28
29 (6) post-employment services consisting of the services listed under paragraphs
30 (1) - (5) of this subsection.

31
32 (d) The requirements of subsection (a) of this section also do not apply if:

33
34 (1) determining the availability of comparable services and benefits under any
35 other program would delay the provision of vocational rehabilitation services
36 to any ~~consumer~~customer whom ~~DRS~~VRD has determined to be at extreme
37 medical risk, based on medical evidence provided by an appropriate qualified
38 medical professional; or

39
40 (2) an immediate job placement would be lost because of a delay in the provision
41 of comparable services and benefits; ~~or,~~

42
43 ~~(3) the determination would interrupt or delay progress toward achieving the employment~~
44 ~~outcome on the IPE.~~

1 **SUBCHAPTER F. METHODS OF ADMINISTRATION OF VOCATIONAL**
2 **REHABILITATION**

3
4 **§856.80. Statewide Studies and Program Evaluation.**

- 5
6 (a) ~~DRS-VRD~~ conducts continuing statewide studies of the needs of ~~person~~individuals
7 with disabilities within the state and the methods by which these needs may be most
8 effectively met.
9
10 (b) The studies are directed toward:
11
12 (1) assessing the rehabilitation needs of ~~person~~individuals with significant
13 disabilities who reside in the state;
14
15 (2) reviewing the effectiveness of outreach procedures used to identify and serve
16 ~~person~~individuals with disabilities who are minorities and ~~person~~individuals
17 with disabilities who are unserved ~~and or~~ underserved by the vocational
18 rehabilitation system;
19
20 (3) reviewing a broad variety of methods to provide, expand, and improve
21 vocational rehabilitation services to ~~person~~individuals with the most significant
22 disabilities, including ~~person~~individuals receiving supported employment
23 services;
24
25 (4) ensuring the orderly and effective development of vocational rehabilitation
26 services; and
27
28 (5) reviewing the efficacy of the criteria employed by ~~DRS-VRD~~ in making
29 ineligibility decisions with respect to applicants for vocational rehabilitation
30 services.
31
32 (c) Reports of the studies are available to the public for review.
33

34 **§856.81. Annual Evaluation.**

- 35
36 (a) ~~DRS-VRD~~ conducts an annual comprehensive evaluation of the effectiveness of the
37 state's vocational rehabilitation program in achieving:
38
39 (1) service goals and priorities established in the state plan and annual
40 amendments to the state plan; and
41
42 (2) compliance with the ~~evaluation standards and performance~~
43 ~~indicators~~performance accountability measures established by the Act.
44
45 (b) The evaluation measures the adequacy of ~~DRS-VRD~~ performance in providing
46 vocational rehabilitation services, especially to ~~person~~individuals with the most

1 significant disabilities, ~~in light of~~ considering the state's vocational rehabilitation
2 program financial resources. The evaluation has the following minimum objectives:

- 3
- 4 (1) to ensure that the rehabilitation program is serving the target population and
5 that the services are provided in an equitable manner;
- 6
- 7 (2) to ensure that ~~consumers~~ customers are placed in gainful employment suitable
8 to their capabilities, interests, and informed choice;
- 9
- 10 (3) to measure the extent to which undue delays are avoided in providing
11 ~~consumers~~ customers with services;
- 12
- 13 (4) to ensure that available resources are used effectively to achieve maximum
14 efficiency;
- 15
- 16 (5) to ensure that VR counselors maintain manageable-sized caseloads and
17 provide timely and adequate services to individual ~~consumers~~ customers;
- 18
- 19 (6) to ensure that ~~consumers~~ customers retain the benefits obtained from the
20 rehabilitation process;
- 21
- 22 (7) to ensure that the need for post-employment services is satisfied;
- 23
- 24 (8) to identify reasons why ~~consumers~~ customers are not successfully
25 rehabilitated; and
- 26
- 27 (9) to ensure that the ~~consumer~~ customer is satisfied with the individualized plan
28 for employment.
- 29

30 **§856.82. Order of Selection.**

31
32 (a) An order of selection is authorized in Rehabilitation Act of 1973 §101, as amended,
33 to ensure that in times of limited funding customers with the most severe disabilities
34 are selected for service before other customers.

35
36 (b) In determining whether to invoke an order of selection, the ~~assistant commissioner~~
37 ~~for~~ director for ~~rehabilitation~~ VR services applies the criteria set out in ~~29 USC §709,~~
38 ~~in~~ 34 CFR §361.36, as amended, and ~~in~~ the state plan.

39
40 (c) The order of selection, if invoked, is applied after eligibility for services is
41 determined.

1
2 **SUBCHAPTER G. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER**
3

4 **§856.90. Purpose.**
5

6 The purpose of this subchapter is to set out the administration and general procedures
7 governing the Certificate of Blindness for Tuition Waiver established in Texas Education
8 Code §54.364. VRD provides a certificate of blindness to an individual who applies for a
9 tuition waiver at a state-supported postsecondary school in Texas.
10

11
12
13 **§856.91. Definitions.**
14

15 The following words and terms, when used in this subchapter, have the following
16 meanings.
17

18 (1) Applicant--An individual applying to VRD for a Certificate of Blindness for
19 Tuition Waiver.
20

21 (2) Certificate of Blindness for Tuition Waiver--The certificate issued by VRD to
22 certify that the applicant is blind. The applicant may use the certificate to apply
23 for a tuition waiver at any Texas state institution of higher education using
24 public funds, as set forth in Texas Education Code §54.364.
25

26
27 **§856.92. Eligibility.**
28

29 (a) To obtain a certificate, a VRD customer must make a request through his or her VR
30 counselor.
31

32 (b) For an individual who is not a VRD customer to obtain a certificate, the individual
33 must submit a request in person or by mail to any VRD office, and present visual
34 diagnostic information confirming that the individual is blind.
35

36 (c) Visual diagnostic information must include eye exams from an optometrist,
37 ophthalmologist, or low-vision specialist.
38

39 (d) VRD does not pay for diagnostic exams for the sole purpose of obtaining this record.
40

41 (e) Eligibility for a Certificate of Blindness for Tuition Waiver is determined by VRD,
42 and the determination is final.
43

44 (f) The Certificate of Blindness for Tuition Waiver issued by VRD is not a
45 determination that an applicant satisfies the residency requirement, or any other

requirement set forth under Texas Education Code, §54.364, for tuition waiver at any eligible institution.

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