

1 **Policy Concept**  
2 **Chapter 850, Vocational Rehabilitation Services Administrative Rules and Procedures**  
3 **Chapter 856, Vocational Rehabilitation Services**  
4 **Rule Project #2021-16-850 – VR Admin and Services Revisions**  
5

6 **Introduction and Background**

7 Senate Bill (SB) 208, 84th Texas Legislature, Regular Session (2015), added Texas Labor Code,  
8 §351.002 which transferred the administration of vocational rehabilitation (VR) services from the Texas  
9 Department of Assistive and Rehabilitative Services (DARS) to Texas Workforce Commission (TWC)  
10 effective September 1, 2016. The administrative rules relating to the VR Services Program were  
11 transferred from DARS to TWC and codified under 40 TAC Chapter 850, Vocational Rehabilitation  
12 Services Administrative Rules and Procedures. On May 13, 2019, TWC amended Chapter 850 to align  
13 the chapter with TWC's operation of the VR Services Program.  
14

15 On October 17, 2017, TWC adopted rules under 40 TAC Chapter 856, Vocational Rehabilitation  
16 Services, to align with the integration of TWC, VR, and Blind Services. Further amendments to Chapter  
17 856 were adopted on July 31, 2018, to incorporate the Criss Cole Rehabilitation Center.  
18

19 SB 208 added Texas Labor Code, Chapter 352, which included new §352.104, Training and Supervision  
20 of Counselors. Texas Labor Code, §352.104(b) requires TWC to adopt a rule for the monitoring and  
21 oversight of VR counselor performance and decision making in accordance with Texas Labor Code,  
22 §352.104.  
23

24 TWC proposed the review of Chapter 850 and Chapter 856 in accordance with Texas Government Code,  
25 §2001.039. The notices of intent to review the rules were published in the July 17, 2020, issue of the  
26 *Texas Register* (45 TexReg 5016). On August 17, 2020, Disability Rights of Texas (DRT) submitted  
27 comments recommending changes to Chapter 850 and Chapter 856. VR staff appreciates the comments  
28 received from DRT and considered the recommendations in the development of this policy concept.  
29 There will be an opportunity for the public to provide informal comment on this policy concept after the  
30 document is approved by the Commission and posted to TWC's website. The public will also have an  
31 opportunity to provide formal comment on the proposed amendments when the proposed rules are  
32 published in the *Texas Register*.  
33

34 **Purpose for the Proposed Rule**

35 The purpose for this proposed rule is to amend Chapter 850 to adopt rules required by Texas Labor  
36 Code, §352.104 for the monitoring and oversight of VR counselor performance and decision making and  
37 to amend both Chapter 850 and Chapter 856 to clarify existing rule language and improve program  
38 service delivery, consistency, and efficiency.  
39

40 **Rule Revisions Required by Federal Regulation or State Statute**

41 **Issue #1: Rules Required by Texas Labor Code, §352.104 - Monitoring and Oversight of VR  
42 Counselors**

43 SB 208 added new Texas Labor Code, Chapter 352, which included new §352.104, Training and  
44 Supervision of Counselors. Texas Labor Code, §352.104(b) requires TWC to adopt a rule for the  
45 monitoring and oversight of VR counselor performance and decision making in accordance with Texas  
46 Labor Code, §352.104. While TWC is currently in compliance with statutory requirements as they relate  
47 to monitoring and oversight of VR counselor performance utilizing existing internal processes, a new

1 section will be added under Chapter 850, Subchapter A to implement the rule adoption requirement in  
2 Texas Labor Code, §352.104(b).

3  
4 **Issue #2: Consistency with Federal Regulations**

5 Amendments to Chapter 856 incorporate additional information from federal regulations, specifically 34  
6 Code of Federal Regulations (CFR) Part 361. VR staff identified changes to Chapter 856 that would  
7 better align the chapter with federal requirements of the program.

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9 **Other Rule Revisions**

10 **Issue #3: Chapter 850 Revisions**

- 11 • Amend §850.3, Definitions, to add the definition of "Agency."
- 12
- 13 • Amend §850.4, Opportunities for Citizen Participation, to clarify information regarding open  
14 meetings and add a reference to Chapter 800, Subchapter G (relating to Petition for Adoption of  
15 Rules).
- 16
- 17 • Amend §850.5, Complaints, to add a method allowing a person to contact TWC by phone to  
18 make a complaint and to clarify where to find the contact information to submit a complaint on  
19 TWC's website.
- 20
- 21 • Amend §850.11, Qualified Vocational Rehabilitation Counselor, to include Vocational  
22 Rehabilitation Division acronym "VRD" in the references to "division" and "management" for  
23 clarity.
- 24
- 25 • Repeal §850.32, Definitions, because that section is no longer needed.
- 26
- 27 • Amend §850.33, Tasks, to define the Vocational Rehabilitation Division acronym the first time  
28 the acronym is used in the section.
- 29
- 30 • Amend §835.35, Funding, to replace the acronym "RCT" with Rehabilitation Council of Texas.
- 31
- 32 • Amend §850.60, Scope, to remove the reference to 34 CFR Part 395 and the Business  
33 Enterprises of Texas (BET) program because BET appeals are addressed in 40 TAC Chapter  
34 854; add a legal reference to the Client Assistance Program (CAP) relating to 34 CFR Part 370 to  
35 the scope of procedures of appeals and hearing procedures; and remove Comprehensive  
36 Rehabilitative Services (CRS) from the scope of services because CRS falls under Texas Health  
37 and Human Services Commission oversight.
- 38
- 39 • Amend §850.61, Definitions, to remove the definition for "counselor" because the term is  
40 defined in §850.3.
- 41
- 42 • Amend §850.62, Filing a Request for Review, to add language stating that the request for a  
43 review shall be filed within 180 calendar days from the date of the determination and clarify that  
44 the CAP can assist and advocate for customers during an appeal and informal dispute resolution.
- 45

- 1 • Amend §850.69, Reasonable Accommodations, to clarify that TWC shall bear the costs related  
2 to providing reasonable accommodations for hearings or proceedings conducted.  
3
- 4 • Amend §850.82, Documentary Evidence and Official Notice, to remove reference to 34 CFR  
5 Part 395 as BET appeals are addressed in Chapter 854.  
6
- 7 • Amend §850.84, Impartial Hearing Officer Decision, to remove the reference to Texas Labor  
8 Code, Chapter 355 and 34 CFR Part 395 as BET appeals are addressed in Chapter 854.  
9

#### 10 **Issue #4: Chapter 856 Rule Revisions**

- 11 • Amend §856.3, Definitions, to add the definition of "academic training" and define the acronyms  
12 for Vocational Rehabilitation (VR) and Vocational Rehabilitation Division (VRD).  
13
- 14 • Amend §856.41, Comprehensive Assessment, to clarify the criteria used for comprehensive  
15 assessments and to clarify that certain types of assessments are not mandatory but are completed  
16 as appropriate to identify VR services and needs.  
17
- 18 • Amend §856.45, Vocational and Other Training Services, to clarify that training at a vocational  
19 or technical school is not required to occur in Texas; however, the schools must be certified by  
20 TWC or another regulatory agency; and to remove current §856.45(c)(9) as this was added in the  
21 "academic training" definition, as well as §856.45(e), which precludes VR from paying above  
22 published fees.  
23
- 24 • Amend §856.52, Individual Plan for Employment, to clarify that notice of adverse action can be  
25 provided through methods other than mailing.  
26
- 27 • Amend §856.59, Purpose of Customer Participation, to clarify that some customers may not have  
28 to participate in cost of services based on their financial need.  
29

#### 30 **PC Decision Point**

31 VR staff recommends amending Chapter 850 to adopt rules required by Texas Labor Code, §352.104  
32 and to amend both Chapter 850 and Chapter 856 to clarify the rule language and improve program  
33 services.