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- 26 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**
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1 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
2 **Individuals with Disabilities**

3

- 1
2 (4) submit a petition requesting the adoption of rules pursuant to Chapter 800,
3 Subchapter G of this title (relating to Petition for Adoption of Rules).
4

5 *The provisions of this §850.4 adopted to be effective March 12, 2012, 37 TexReg 1713;*
6 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
7 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to be*
8 *effective December 26, 2022, 47 TexReg 8738*
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12 **§850.5. Complaints.**
13

- 14 (a) Complaints may be filed with the Agency either through mail, email, phone,
15 facsimile, or by videotape for individuals who use sign language to communicate.
16 Complaints should be directed to the customer's local vocational rehabilitation office
17 or may be submitted to the Agency's Customer Relations staff as indicated on the
18 Agency's website.
19
- 20 (b) For the purpose of directing complaints to the Agency, the Agency may notify
21 customers and service recipients of its name, mailing address, and telephone number
22 by including the information:
23
- 24 (1) on each registration form, application, or written contract relating to
25 participation in a program that is funded in any part by money derived from or
26 through the Agency;
27
- 28 (2) on a sign that is prominently displayed in the place of business of each
29 individual or entity engaging in a program that is funded in any part by money
30 derived from or through the Agency;
31
- 32 (3) in a bill for service provided by an individual or entity engaging in a program
33 that is funded in any part by money derived from or through the Agency; or
34
- 35 (4) in other media for dissemination of information as determined by the Agency.
36
- 37 (c) Ordinarily, the Agency resolves complaints within 60 days.
38

39 *The provisions of this §850.5 adopted to be effective March 12, 2012, 37 TexReg 1713;*
40 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
41 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to*
42 *be effective December 26, 2022, 47 TexReg 8738*
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1
2 **§850.6. Cooperation with Other Public Agencies.**
3

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

10 *The provisions of this §850.6 adopted to be effective March 12, 2012, 37 TexReg 1713;*
11 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
12 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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15

16 **§850.7. Monitoring and Oversight of Vocational Rehabilitation Counselor Performance**
17 **and Decision Making.**
18

- 19 (a) The Vocational Rehabilitation Division will provide specific guidance to vocational
20 rehabilitation (VR) counselors as required by Texas Labor Code, §352.104.
21
22 (b) VR counselor supervisors shall ensure that VR counselors complete all required and
23 necessary training.
24
25 (c) VR counselor supervisors shall monitor VR counselor performance through case
26 reviews, offer required training, and use other tools, as appropriate, to provide
27 guidance and enhance VR counselor performance and decision making.
28

29 *The provisions of this §850.7 adopted to be effective December 26, 2022, 47 TexReg 8738*
30

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33

34 **§850.11. Qualified Vocational Rehabilitation Counselor.**
35

- 36 (a) The Vocational Rehabilitation Division (VRD) helps vocational rehabilitation (VR)
37 counselors to meet the Comprehensive System of Personnel Development (CSPD)
38 standard, as set forth in 34 Code of Federal Regulations §361.18, by making funds
39 available through the Qualified Vocational Rehabilitation Counselor (QVRC)
40 program for the required graduate education except when:
41
42 (1) unforeseen circumstances occur that may restrict or prohibit the funding; or
43
44 (2) VRD management discontinues a VR counselor's participation in the program
45 in the best interests of VRD.
46

- 1 (b) The VRD director or designee must approve QVRC financial assistance. This
2 financial assistance is contingent on:
3
- 4 (1) funding;
 - 5
 - 6 (2) VRD management approval; and
 - 7
 - 8 (3) compliance with qualifications for participation.
 - 9
- 10 (c) Qualifications for participation in the QVRC program require that VR counselors
11 and transition VR counselors applying for assistance must:
12
- 13 (1) have completed the initial training year;
 - 14
 - 15 (2) be meeting or exceeding job performance expectations;
 - 16
 - 17 (3) obtain the appropriate approvals to pursue a graduate degree or prescribed
18 coursework;
 - 19
 - 20 (4) apply for Rehabilitation Services Administration scholarship and university
21 stipend funding, if applicable; and
 - 22
 - 23 (5) be accepted by the appropriate institution of higher education.
 - 24
- 25 (d) A VR counselor who meets the CSPD standard is considered a QVRC.
- 26
- 27 (e) A VR counselor is expected to meet the CSPD standard within seven years from
28 completion of the initial training year. VRD must conduct transcript reviews and/or
29 confirm certifications to determine compliance with standards or to outline
30 coursework to be completed by the VR counselor.
- 31
- 32 (f) A VR counselor is expected to pay all costs or expenses:
33
- 34 (1) associated with the college application, admission, and GRE exam
35 (reimbursement of one GRE exam is allowed);
 - 36
 - 37 (2) related to tuition, fees, and books for any coursework that must be repeated
38 because of failure to successfully complete; and
 - 39
 - 40 (3) related to completing work necessary to remove any grade of "I" (Incomplete)
41 within three months, unless there are valid reasons (for example, serious
42 illness, or university regulations to the contrary).
 - 43

44 *The provisions of this §850.11 adopted to be effective March 12, 2012, 37 TexReg 1713;*
45 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*

1 2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to
2 be effective December 26, 2022, 47 TexReg 8738
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6 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**
7

8 **§850.33. Tasks.**
9

10 The Rehabilitation Council of Texas (RCT) shall:
11

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

- 1
2 (4) coordinate with other councils in the state, including the State Independent
3 Living Council established under 29 USC §796d; the advisory panel
4 established under the Individuals with Disabilities Education Act, 20 USC
5 §1412(a)(21); the State Council on Developmental Disabilities described in 42
6 USC §15025; the State Mental Health Planning Council established under 42
7 USC §300x-3(a); and the state workforce investment board;
8
9 (5) advise VRD and coordinate working relationships between VRD and the State
10 Independent Living Council and centers for independent living within the
11 state; and
12
13 (6) perform other comparable functions consistent with the Rehabilitation Act of
14 1973, as amended, that the RCT determines to be appropriate.
15

16 *The provisions of this §850.33 adopted to be effective March 12, 2012, 37 TexReg 1706;*
17 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
18 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to be*
19 *effective December 26, 2022, 47 TexReg 8738*

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22
23 **§850.34. Reports.**

24
25 The Rehabilitation Council of Texas shall:

- 26
27 (1) prepare and submit an annual report to the governor or appropriate state entity
28 and the Commission on the status of vocational rehabilitation programs
29 operated within the state, and make the report available to the public; and
30
31 (2) submit to the commissioner of the Rehabilitation Services Administration,
32 United States Department of Education, periodic reports that the commissioner
33 may reasonably request, and keep records that the commissioner finds
34 necessary to verify those reports.
35

36 *The provisions of this §850.34 adopted to be effective March 12, 2012, 37 TexReg 1706;*
37 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
38 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to*
39 *be effective December 26, 2022, 47 TexReg 8738*

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42
43 **§850.35. Funding.**

44
45 The Rehabilitation Council of Texas is funded primarily by federal funds, and its
46 existence is required in order for the Agency to receive and expend federal funds.

1
2 *The provisions of this §850.35 adopted to be effective March 12, 2012, 37 TexReg 1706;*
3 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
4 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364; amended to*
5 *be effective December 26, 2022, 47 TexReg 8738*
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9 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**

10
11 **§850.50. Privacy Policies.**

12
13 In accordance with Chapter 559, Government Code, the Agency adheres to the following
14 privacy policies.
15

- 16 (1) Right to be informed about information collected. An individual has the right
17 to be informed about information that the Agency collects about the individual
18 unless the Agency is allowed to withhold the information from the individual
19 under Government Code, §552.023(b).
20
- 21 (2) Right to receive notice about certain information laws and practices.
22
- 23 (A) When the Agency collects information about an individual by means of a
24 form that the individual completes and files with the Agency, the Agency
25 informs the individual of his or her rights related to the information
26 collected. If the form is in a paper format, the Agency posts a prominent
27 notice of the individual's rights on the form. Or if the form is in an
28 electronic format on an Internet site, the Agency prominently posts the
29 notice on the Internet site in connection with the electronic form. The
30 notice states that:
31
- 32 (i) with few exceptions, the individual is entitled on request to be
33 informed about the information that the Agency collects about the
34 individual;
35
- 36 (ii) under the Government Code, §552.021 and §552.023, the individual
37 may receive and review the information; and
38
- 39 (iii) under the Government Code, §559.004, the individual may have the
40 Agency correct information about the individual that is incorrect.
41
- 42 (B) When Agency staff uses an Internet site to collect information about an
43 individual or about the computer network location or identity of a user of
44 the site, the Agency prominently posts on the site what information the
45 Agency is collecting, including such information being collected by
46 means that are not obvious.

- 1
2 (3) Right to correction of incorrect information. The Agency has established a
3 procedure under which an individual may have the Agency correct information
4 that the Agency possesses about the individual and that is incorrect. The
5 individual should send a written request to the Agency, including his or her full
6 name and mailing address; identify the incorrect information; and provide the
7 correct information. If the information to be corrected is related to a vocational
8 rehabilitation case, or to an Agency personnel or employment record,
9 documentation establishing the individual's identity should be included. The
10 individual should attach to the request any additional material needed to
11 identify the incorrect information or verify the correct information. The
12 individual should include with the request contact information such as address,
13 a daytime telephone number and an email address in case the Agency needs to
14 clarify the request. The individual must sign and mail the request to Records
15 Management Center, ATTN: Records Management Officer, 4405A Springdale
16 Road, Austin, Texas 78723-6050. The Agency will acknowledge receipt of the
17 request, and will notify the individual of final action taken.
18
- 19 (4) Applicability of Public Information Law. Government Code, Chapter 552,
20 governs the charges that the Agency may impose on an individual who
21 requests information that the Agency collects about himself or herself.
22 However, the Agency does not charge an individual to correct information
23 about the individual.
24

25 *The provisions of this §850.50 adopted to be effective March 12, 2012, 37 TexReg 1706;*
26 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
27 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
28

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30
31 **§850.51. Confidentiality of Customer Information in Vocational Rehabilitation**
32 **Services Program.**
33

- 34 (a) Customer records.
35
- 36 (1) All personal information available to Agency employees as they administer
37 rehabilitation services programs, including names, addresses, and records of
38 customer evaluations, is confidential.
39
- 40 (2) The Agency may use such information and records only for purposes directly
41 connected with administering the vocational rehabilitation programs.
42
- 43 (3) The Agency may directly or indirectly disclose information only in
44 administering the rehabilitation programs, except with the customer's written
45 consent, in compliance with a court order, or in accordance with a federal or
46 state law or regulation. The Agency may not share information containing

1 identifiable personal information with advisory or other bodies that do not have
2 official responsibilities for administration of the programs.

- 3
- 4 (4) Upon a customer's request, the Agency releases information to the customer or,
5 as appropriate, his or her parent, guardian, or other representative. If, in the
6 opinion of the counselor, release to the customer of a particular document in
7 the customer case file will have a harmful effect on the customer, the customer
8 will be notified that there is information in the case file that can be released
9 only to an appropriate representative designated in writing by the customer.
- 10
- 11 (5) All customer information is the property of the Agency.

12

13 (b) Other records.

- 14
- 15 (1) Release of customer records must be made in accordance with federal law and
16 regulations.
- 17
- 18 (2) The Agency may provide to and receive from any state agency other
19 nonconfidential information for the purpose of increasing and enhancing
20 services to customers and improving agency operations.

21

22 *The provisions of this §850.51 adopted to be effective March 12, 2012, 37 TexReg 1706;*
23 *duplicated effective September 1, 2016, as published in the Texas Register September 2, 2016,*
24 *41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*

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28 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
29 **HEARING PROCEDURES**

30

31 **§850.60. Scope.**

- 32
- 33 (a) The following statutes and regulations authorize the procedures established by this
34 subchapter:
- 35
- 36 (1) The Rehabilitation Act of 1973, as amended, 29 United States Code §701 et
37 seq. and regulations of the United States Department of Education,
38 Rehabilitation Services Administration, 34 Code of Federal Regulations (CFR)
39 Part 361, as amended, relating to the State Vocational Rehabilitation Services
40 Program;
- 41
- 42 (2) 34 CFR Part 367, as amended, relating to the Independent Living Services for
43 Older Individuals Who Are Blind (ILS-OIB); and
- 44
- 45 (3) 34 CFR Part 370, as amended, relating to the Client Assistance Program.
- 46

- 1 (b) The procedures in this subchapter apply to those determinations made by Agency
2 personnel that affect the provision of vocational rehabilitation (VR) services and
3 ILS-OIB.
4
- 5 (1) Unless the determination concerns the denial, reduction, suspension, or
6 termination of VR services or ILS-OIB, it is not subject to review under the
7 procedures of this subchapter.
8
- 9 (2) The following decisions or determinations are not subject to review under this
10 subchapter:
11
- 12 (A) Administrative decisions that are made by Agency supervisors or
13 managers without reference to any specific applicant or customer and
14 that apply generally to the provision of VR services to applicants or
15 customers, including to decisions concerning the assignment of
16 personnel;
17
- 18 (B) Decisions, diagnoses, judgments, actions, or omissions of third-party
19 vendors or service providers;
20
- 21 (C) Decisions concerning the content of an applicant's or customer's record
22 of service for which remedies are provided under 34 CFR §361.38(c)(4)
23 and §361.47(a)(12); and
24
- 25 (D) Decisions allegedly violating any state or federal antidiscrimination or
26 civil rights statute (as amended), including the provisions of Texas Labor
27 Code, Chapter 21; the Rehabilitation Act of 1973, as amended; the
28 Americans with Disabilities Act, Section 504; or the Age Discrimination
29 in Employment Act.
30
- 31 (c) Ineligibility. The following may challenge a determination of ineligibility through
32 the procedures of this subchapter:
33
- 34 (1) Applicants who are found not to be eligible for VR services; and
35
- 36 (2) Previously eligible individuals who have been determined no longer eligible
37 for VR services under 34 CFR §361.43.
38
- 39 (d) An individual's decision to seek an informal resolution of matters about which the
40 individual is dissatisfied shall not prevent, compromise, or delay the individual's
41 access to formal resolution procedures in this subchapter.
42
- 43 (e) The Agency shall not suspend, reduce, or terminate VR services being provided to an
44 applicant or customer, including evaluation and assessment services and the
45 development of an Individualized Plan for Employment, pending a resolution of the
46 applicant's or customer's appeal by mediation or hearing, unless:

- 1
- 2 (1) the applicant or customer requests a suspension, reduction, or termination of
- 3 services; or
- 4
- 5 (2) the Agency has evidence that the applicant or customer obtained the services
- 6 through misrepresentation, fraud, collusion, or criminal conduct.
- 7

8 *The provisions of this §850.60 adopted to be effective May 13, 2019, 44 TexReg 2364;*
9 *amended to be effective December 26, 2022, 47 TexReg 8738*

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11 **§850.61. Definitions.**

12
13 The following words and terms, when used in this subchapter, have the following
14 meanings unless the context clearly indicates otherwise. The use of the singular or plural
15 case is not meant to be limiting unless the context clearly indicates otherwise.

- 16 (1) Act--The Rehabilitation Act of 1973 as amended, 29 United States Code §701,
17 et seq.
- 18
- 19 (2) Appellant--An applicant, eligible individual, authorized representative, or
20 parent who has initiated formal procedures under this subchapter.
- 21
- 22 (3) Applicant--An individual who submits an application for vocational
23 rehabilitation services in accordance with 34 Code of Federal Regulations Part
24 361.
- 25
- 26 (4) Authorized representative--An attorney authorized to practice law in the State
27 of Texas, or an individual designated by a party to represent the party in
28 hearing procedures. The term includes a parent or an individual made legally
29 responsible for a child by a court of competent jurisdiction.
- 30
- 31 (5) Customer--An applicant or an individual with a disability who is receiving
32 vocational rehabilitation services.
- 33
- 34 (6) Discovery--The process by which a party, before any final hearing on the
35 merits, may obtain evidence and other information that is relevant to a claim or
36 defense in the appeal.
- 37
- 38 (7) Eligible individual--Any individual with a disability determined to be eligible
39 to receive vocational rehabilitation services.
- 40
- 41 (8) Hearing--A formal review conducted under this subchapter. This term includes
42 prehearing conferences.
- 43
- 44
- 45
- 46

- 1 (9) Impartial hearing officer (IHO)--An individual who is appointed to conduct a
2 hearing under this subchapter.
3
- 4 (10) Individualized Plan for Employment--A plan developed for each individual
5 determined to be eligible for vocational rehabilitation services, in accordance
6 with 34 Code of Federal Regulations Part 361.
7
- 8 (11) Parent--The term "parent," whether singular or plural, means a minor child's
9 natural or adoptive parent, the spouse of the minor child's natural or adoptive
10 parent, the minor child's surrogate or foster parent, the spouse of the surrogate
11 or foster parent, or other individual made legally responsible for the minor
12 child by a court.
13
- 14 (12) Party--An individual or agency named or admitted to participate in a formal
15 hearing.
16
- 17 (13) Record--The official record of a hearing, including all arguments, briefs,
18 pleadings, motions, intermediate rulings, orders, evidence received or
19 considered, statements of matters officially noticed, questions and offers of
20 proof, objections and rulings on objections, proposed findings of fact,
21 conclusions of law, and IHO decision; any other decision, opinion, or report by
22 the IHO or Commission; and all memoranda or data, including customer and
23 applicant files, submitted to or considered by the IHO.
24

25 *The provisions of this §850.61 adopted to be effective May 13, 2019, 44 TexReg 2364; amended*
26 *to be effective December 26, 2022, 47 TexReg 8738*
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30 **§850.62. Filing a Request for Review.**
31

- 32 (a) Any applicant or eligible individual who is dissatisfied with a determination made by
33 the Agency, as described in §850.60 of this subchapter (relating to Scope), may
34 request, or, if appropriate, may request through the individual's authorized
35 representative, a review of the determination. Although no prescribed form is
36 required to file a request, preprinted forms for this purpose are available on request
37 within the Agency's Office of General Counsel or at any Agency vocational
38 rehabilitation office.
39
- 40 (b) The request for a review shall be filed within 180 calendar days from the date of the
41 determination and shall be filed in writing with the hearings coordinator within the
42 Agency's Office of General Counsel. A request shall be considered filed on the day
43 that it is received by the hearings coordinator within the Agency's Office of General
44 Counsel.
45
- 46 (c) On receiving a request for review, the hearings coordinator within the Agency's

1 Office of General Counsel shall, within five working days, mail the appellant:
2

- 3 (1) the name, address, and telephone number of the Client Assistance Program
4 established under federal law that can, among other things, assist and advocate
5 for customers during an appeal and informal dispute resolution;
6
7 (2) the name of the IHO appointed to hear the appeal, and the date, time, and place
8 of any prehearing;
9
10 (3) a copy of applicable hearing procedures; and
11
12 (4) notice that the appellant has the right to request mediation procedures.
13

14 *The provisions of this §850.62 adopted to be effective May 13, 2019, 44 TexReg 2364;*
15 *amended to be effective December 26, 2022, 47 TexReg 8738*
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19 **§850.63. Informal Dispute Resolution.**
20

- 21 (a) The Agency shall provide an opportunity for informal resolution of an appeal.
22
23 (b) Informal resolution may include, but is not limited to:
24
25 (1) informal meetings with VR counselors or their supervisors;
26
27 (2) second reviews of the case file and case decisions by VR management;
28
29 (3) telephone calls to or conference calls that include the affected parties; or
30
31 (4) written explanations or summaries of the policies, laws, or regulations
32 involved in the complaint.
33
34 (c) If the informal resolution procedure results in a final agreement between the parties,
35 no hearing shall be held.
36
37 (d) If no final informal resolution is reached, the Agency shall provide an opportunity
38 for a hearing to resolve an appeal.

- 1
2 (e) Either a final agreement resulting from informal resolution or a hearing and impartial
3 hearing officer decision shall be completed within 60 calendar days of the original
4 filing of the appeal, unless the parties agree to a specific extension of time.
5

6 *The provisions of this §850.63 adopted to be effective May 13, 2019, 44 TexReg 2364*
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10 **§850.64. Time for Hearing.**
11

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

19 *The provisions of this §850.64 adopted to be effective May 13, 2019, 44 TexReg 2364*
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23 **§850.65. Mediation Procedures.**
24

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

1 the provision of VR services, ILS-OIB, or the Business Enterprises of Texas
2 program, whichever may apply to the dispute.
3

- 4 (e) Sessions in the mediation process shall be coordinated by the mediator in a timely
5 manner at a location convenient to both parties in the dispute. Parties shall be
6 provided an opportunity to submit evidence and other information that supports their
7 positions.
8
- 9 (f) All discussions that occur during the mediation sessions are confidential and shall
10 not be used as evidence in any subsequent due process hearing or civil proceeding.
11 The mediator may require the parties to sign a confidentiality pledge before the start
12 of the mediation process.
13
- 14 (g) Any agreement reached through the mediation process shall be documented in a
15 written mediation agreement and signed by the parties to the dispute. Copies shall be
16 provided to both parties. The agreement then becomes a part of the customer record.
17

18 *The provisions of this §850.65 adopted to be effective May 13, 2019, 44 TexReg 2364*
19

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21

22 **§850.66. Assignment of Impartial Hearing Officer.**
23

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

1
2 (d) Despite the provisions in subsection (a) of this section, if in a subsequent appeal, the
3 appellant raises factual issues or claims that were previously adjudicated or could
4 have been adjudicated in a prior appeal:

5
6 (1) the hearings coordinator may appoint the same IHO that heard the prior appeal
7 to hear the subsequent appeal; or

8
9 (2) the IHO, on Agency motion, reassigns the appeal to the IHO who heard the
10 prior appeal.
11

12 *The provisions of this §850.66 adopted to be effective May 13, 2019, 44 TexReg 2364*

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15
16 **§850.67. Powers and Duties of Impartial Hearing Officer.**

17
18 (a) The IHO has the authority and duty to:

19
20 (1) conduct a full and impartial hearing;

21
22 (2) take action to avoid unnecessary delay in the disposition of the proceeding; and

23
24 (3) maintain order.
25

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

27
28 (1) administer oaths;

29
30 (2) take testimony;

31
32 (3) rule on questions of evidence;

33
34 (4) rule on discovery issues;

35
36 (5) issue orders relating to hearing and prehearing matters, including orders
37 granting motions to subpoena witnesses and imposing nonmonetary sanctions
38 regarding discovery;

39
40 (6) admit or deny party status;

41
42 (7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably
43 limit the time for presentations;

44
45 (8) grant continuances;
46

1
2 (9) request parties to submit legal memoranda, proposed findings of fact, and
3 conclusions of law; and

4
5 (10) issue decisions based on findings of fact and conclusions of law.
6

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

11
12 (d) Discovery conducted under subsection (b) of this section is subject to these rules and
13 the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001,
14 Subchapter D.
15

16 *The provisions of this §850.67 adopted to be effective May 13, 2019, 44 TexReg 2364*
17

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20

21 **§850.68. Substitution of Impartial Hearing Officer.**
22

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

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

32 *The provisions of this §850.68 adopted to be effective May 13, 2019, 44 TexReg 2364*
33

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35

36 **§850.69. Reasonable Accommodations.**
37

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

44 (1) the suitability of any proposed facilities for a hearing, including the ability of
45 the appellant and any witnesses to gain physical access to the proceedings and
46 facilities; and

1
2 (2) the comparative distances and times required to travel from places of work or
3 residence to a proposed hearing location by parties and witnesses.
4

5 (b) The Agency shall, upon reasonable notice, provide the appellant with readers or
6 interpreters. Reasonable notice shall be considered to be no fewer than five working
7 days prior to the proceeding, unless good cause for a shorter period exists in the
8 judgment of the IHO.
9

10 (c) A copy of a transcript prepared during hearing proceedings and all notices and
11 documents shall be provided to the appellant in an accessible format on request.
12

13 (d) The Agency shall bear the costs related to providing reasonable accommodations for
14 hearings or proceedings conducted under this subchapter.
15

16 *The provisions of this §850.69 adopted to be effective May 13, 2019, 44 TexReg 2364; amended*
17 *to be effective December 26, 2022, 47 TexReg 8738*
18

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20

21 **§850.70. Appearance of Parties at Hearings: Representation.**
22

23 (a) An individual may represent himself or herself.
24

25 (b) A party may be represented by an attorney authorized to practice law in Texas or by
26 any other representative authorized by the party to represent the party.
27

28 (c) A party's authorized representative shall be copied on all notices, pleadings, and
29 other correspondence.
30

31 (d) A party's authorized representative remains the representative of record in absence of
32 a formal request to withdraw and an order approving such withdrawal issued by the
33 IHO.
34

35 (e) The Agency is not responsible for expenses incurred by appellants seeking remedy
36 under this subchapter and representation and attorney fees and related expenses are
37 the responsibility of the individual parties.
38

39 *The provisions of this §850.70 adopted to be effective May 13, 2019, 44 TexReg 2364*
40

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1 **§850.71. Failure to Attend Hearing and Default.**

2
3 If, after receiving notice of a hearing, a party or the party's authorized representative fails
4 to attend the hearing, the IHO may proceed and, when appropriate, issue a default
5 decision against the absent party.
6

7 *The provisions of this §850.71 adopted to be effective May 13, 2019, 44 TexReg 2364*

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10
11 **§850.72. Witness Fees.**

- 12
13 (a) Any witness or deponent who is not a party to, and who is subpoenaed or otherwise
14 appears at, any hearing or proceeding at the request of the Agency is entitled to
15 receive reimbursement as provided under Texas Government Code §2001.103.
16
17 (b) The Agency is not responsible for expenses incurred by any witness or deponent
18 who is not a party to, and who is subpoenaed or otherwise appears at, any hearing or
19 proceeding at the request of the appellant.
20
21 (c) The party calling or deposing an expert witness is responsible for all fees and
22 expenses charged by the expert witness.
23

24 *The provisions of this §850.72 adopted to be effective May 13, 2019, 44 TexReg 2364*

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27
28 **§850.73. Prehearing Conferences.**

- 29
30 (a) The IHO may hold a prehearing conference to resolve matters preliminary to the
31 hearing. At the discretion of the IHO, a prehearing conference may be held by
32 telephone (directly or by relay). A prehearing conference may be convened to
33 address any or all of the following matters:
34
35 (1) notice of jurisdiction or the IHO's authority;
36
37 (2) scope or party status;
38
39 (3) the date and location of the final hearing;
40
41 (4) factual and legal issues;
42
43 (5) motions;
44
45 (6) issuance of subpoenas;
46

- 1 (7) discovery disputes;
2
3 (8) scheduling;
4
5 (9) stipulations;
6
7 (10) settlement conferences;
8
9 (11) requests for official notice;
10
11 (12) identification and exchange of documentary evidence;
12
13 (13) admissibility of evidence;
14
15 (14) identification and qualification of witnesses;
16
17 (15) order of presentation; and
18
19 (16) other matters that promote the orderly and prompt conduct of the hearing.
20
21 (b) Within five business days of the date on which the IHO receives the appellant's
22 petition or request for review, the IHO shall notify the appellant in writing of any
23 other matters that the IHO considers expedient for an orderly conduct of the
24 prehearing, including the following:
25
26 (1) the final or merits hearing will be held within 60 days after the date when the
27 hearings coordinator received the petition or request for review;
28
29 (2) the appellant's right to request mediation;
30
31 (3) the reasons for the prehearing conference;
32
33 (4) the way the appellant might request a continuance of the prehearing
34 conference;
35
36 (5) the effect of failing to participate in a prehearing conference; and
37
38 (6) the appellant's right to be represented.
39

40 *The provisions of this §850.73 adopted to be effective May 13, 2019, 44 TexReg 2364*

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42 **§850.74. Dismissal without Hearing.**
43
44
45

- 1 (a) The IHO may entertain motions for dismissal without a hearing for the following
2 reasons:
3
4 (1) failure to pursue the hearing;
5
6 (2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;
7
8 (3) withdrawal of the request for hearing;
9
10 (4) moot questions;
11
12 (5) lack of jurisdiction;
13
14 (6) failure to raise a material issue in the pleading;
15
16 (7) failure of a party or authorized representative to appear at a scheduled hearing;
17
18 (8) failure to respond to a discovery request; and
19
20 (9) failure to respond to any order by the IHO, including an order to disclose the
21 identities of witnesses and exhibits.
22
23 (b) If the IHO finds that a motion for dismissal should be granted, he or she may enter a
24 final order of dismissal.
25

26 *The provisions of this §850.74 adopted to be effective May 13, 2019, 44 TexReg 2364*
27

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29

30 **§850.75. Conduct of Hearing.**
31

- 32 (a) On a genuine issue in a contested case, each party or authorized representative is
33 entitled to:
34
35 (1) call witnesses, including other parties;
36
37 (2) offer evidence;
38
39 (3) cross-examine any witness called by another party; and
40
41 (4) make opening and closing statements.
42
43 (b) Once the hearing has begun, the parties and authorized representatives shall only be
44 off the record when the IHO permits. If the discussion off the record is pertinent,
45 then the IHO summarizes the discussion for the record.
46

- 1 (c) Objections shall be noted in the record in a timely manner.
- 2
- 3 (d) The IHO may continue a hearing from time to time and from place to place. If the
- 4 time and place for the hearing to reconvene are not announced at the hearing, a
- 5 notice shall be mailed stating the time and place of the hearing.
- 6
- 7 (e) The IHO may question witnesses and parties and/or direct the submission of
- 8 supplemental evidence.
- 9

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

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12 **§850.76. Order of Proceedings.**

- 13
- 14
- 15
- 16 (a) A case shall be called to order by the IHO.
- 17
- 18 (b) Proceedings under this subchapter are conducted according to the following
- 19 provisions:
- 20
- 21 (1) The appellant may briefly state the nature of the claim or defense, what the
- 22 appellant expects to prove, and the relief sought. Immediately thereafter, the
- 23 Agency may make a similar statement, and any other parties are afforded
- 24 similar rights as determined by the IHO. The IHO may limit the time available
- 25 for each party or authorized representative with respect to such statement.
- 26
- 27 (2) Evidence is introduced by the appellant. The Agency, or its authorized
- 28 representative, and any other parties may cross-examine each of the appellant's
- 29 witnesses.
- 30
- 31 (3) Cross-examination is not limited solely to matters raised on direct
- 32 examination. Parties or authorized representatives are entitled to redirect and
- 33 recross-examination.
- 34
- 35 (4) Unless the statement has already been made, the Agency or its authorized
- 36 representative may briefly state the nature of the claim or defense, what the
- 37 Agency expects to prove, and the relief sought.
- 38
- 39 (5) Evidence, if any, is introduced by the Agency. The appellant and any other
- 40 parties may cross-examine each of the Agency's witnesses.
- 41
- 42 (6) Any other parties may make statements and introduce evidence. The appellant
- 43 and the Agency may cross-examine the other parties' witnesses.
- 44
- 45 (7) The parties may present rebuttal evidence.
- 46

1 (8) The parties may be allowed to make either oral or written closing statements at
2 the discretion of the IHO.

3
4 (9) The IHO may examine any witness and party.

5
6 (c) The IHO may permit deviations from this order of procedure in the interest of justice
7 or to expedite the proceedings.

8
9 (d) Parties shall provide four copies of each exhibit offered.

10
11 (e) Burden of proof. The party seeking affirmative relief, either on the case as a whole
12 or on an issue, bears the burden of proof to prove the affirmative of the issue, or the
13 party's case as a whole, by a preponderance of the evidence.

14
15 *The provisions of this §850.76 adopted to be effective May 13, 2019, 44 TexReg 2364*

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18
19 **§850.77. Rules of Evidence.**

20
21 (a) The rules of evidence as applied in nonjury civil cases by the district courts of the
22 State of Texas apply to a hearing under this subchapter.

23
24 (b) Exceptions--evidence inadmissible under the rules of evidence applied in nonjury
25 civil cases by the district courts of the State of Texas may be admitted:

26
27 (1) if it consists of any documents contained in any Agency file related to the
28 appellant; or

29
30 (2) if it is:

31
32 (A) necessary to ascertain the facts not reasonably susceptible of proof under
33 those rules;

34
35 (B) not precluded by statute; and

36
37 (C) of a type on which reasonably prudent individuals commonly rely in the
38 conduct of their affairs.

39
40 (c) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

41
42 *The provisions of this §850.77 adopted to be effective May 13, 2019, 44 TexReg 2364*

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4 **§850.78. Transcription of Proceedings.**
5

- 6 (a) Unless precluded by law, the hearing shall be recorded electronically by tape
7 recorder or similar device either by the IHO or by someone designated by the IHO.
8 The recording is the official record of the testimony offered as evidence during the
9 hearing. Any party, however, may request, at the party's expense, that the hearing be
10 recorded by a court reporter if the request is made no later than 10 days before the
11 date of the hearing.
12
- 13 (b) In lieu of a recording of the testimony electronically or of the reporting of testimony
14 by a court reporter, the parties to a hearing may agree upon a statement of the
15 evidence, agree to use recorded transcriptions as a statement of the testimonial
16 evidence, or agree to the summarization of testimony before the IHO, provided,
17 however, that proceedings or any part of them shall be transcribed on written request
18 of any party.
19
- 20 (c) Unless otherwise provided in this subchapter, the party requesting a transcription of
21 any electronic recording of the proceedings shall bear the cost for transcribing any
22 such electronically recorded testimony. Nothing provided for in this section limits
23 the Agency to a stenographic record of the proceedings.
24

25 *The provisions of this §850.78 adopted to be effective May 13, 2019, 44 TexReg 2364*
26

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29 **§850.79. Prepared Testimony.**
30

31 In all proceedings and after all parties of record have been given copies, the prepared
32 testimony of a witness on direct examination may be incorporated in the record as if read
33 or received as an exhibit. The prepared testimony may be in narrative or question-and-
34 answer form. The witness shall be sworn and shall identify the testimony. The witness is
35 subject to cross-examination, and the prepared testimony is subject to a motion to strike
36 in whole or in part.
37

38 *The provisions of this §850.79 adopted to be effective May 13, 2019, 44 TexReg 2364*
39

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42 **§850.80. Pleadings.**
43

- 44 (a) In a formal appeal, all pleadings, for which no other form is prescribed, shall
45 contain:
46

- 1 (1) the name of the party making the pleading;
2
3 (2) the names of all other known parties;
4
5 (3) a concise statement of the facts alleged and relied upon;
6
7 (4) a request stating the type of relief, action, or order desired;
8
9 (5) any other matter required by law;
10
11 (6) a certificate of service, as required by these rules; and
12
13 (7) the signature of the party or the party's authorized representative making the
14 pleading.
15

16 (b) Any pleading filed in a formal appeal may be amended up to 14 days before the date
17 of the hearing. Amendments filed after that time may be accepted at the discretion of
18 the IHO.
19

20 (c) Any pleading may adopt and incorporate, by specific reference, any part of any
21 document or entry in the official files and records of the Agency.
22

23 (d) All pleadings relating to any matter pending before the Agency shall be sent to
24 Texas Workforce Commission, Office of General Counsel, 101 E. 15th Street, Room
25 608, Austin, Texas 78778-0001, with the notation "Attention: Hearings
26 Coordinator," or delivered to the Agency at that address to be filed with the IHO and
27 all parties.
28

29 (e) All pleadings shall be in a format and medium reasonably calculated to provide the
30 required information and must be clear and legible.
31

32 (f) Pleadings shall contain the name, address, and telephone number of the party filing
33 the document or the name, telephone number, and business address of the authorized
34 representative.
35

36 (g) A certificate of service shall be contained in or attached to all filings. The certificate
37 shall be signed by the individual making the filing, show the manner of service, state
38 that the filing has been served on all other parties, and identify those parties. The
39 certificate is prima facie evidence of service.
40

41 *The provisions of this §850.80 adopted to be effective May 13, 2019, 44 TexReg 2364*
42

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45 **§850.81. Discovery and Mandatory Disclosures.**
46

- 1 (a) Written Discovery. Requests for disclosure of information shall be the only form of
2 written discovery that the parties are entitled to make. Unless a party is ordered by
3 the IHO during a pretrial conference to disclose other information in addition to the
4 items in this section, a party may request in writing that the other party disclose or
5 produce the following:
6
7 (1) the names, addresses, and telephone numbers of individuals having knowledge
8 of relevant facts, including those who might be called as witnesses and any
9 expert who might be called to testify;
10
11 (2) for any testifying expert:
12
13 (A) the subject matter on which the expert will testify;
14
15 (B) the expert's summary; and
16
17 (C) a brief summary of the substance of the expert's mental impressions and
18 opinions and the basis for them, along with all documents and tangible
19 items reflecting such information;
20
21 (3) the issues and the factual basis for a party's claims and defenses in the appeal;
22 and
23
24 (4) information concerning the appellant's employment, including the appellant's
25 job application with the appellant's current employer and any personnel
26 evaluations.
27
28 (b) Subject to the provisions in this section, parties may obtain discovery regarding any
29 matter that is relevant to a claim or defense in the appeal.
30
31 (c) All discovery requests shall be directed to the party from which discovery is being
32 sought.
33
34 (d) All disputes with respect to any discovery matter shall be filed with and resolved by
35 the IHO.
36
37 (e) All parties shall be afforded a reasonable opportunity to file objections and motions
38 to compel the IHO regarding any discovery requests.
39
40 (f) Copies of discovery requests and documents filed in response thereto shall be filed
41 on all parties, but should not be filed with the IHO or the hearings coordinator unless
42 directed to do so by the IHO or when in support of objections, motions to compel,
43 motions for protective order, or motions to quash.
44
45 (g) Any documents contained in any Agency file that are related to the appellant are
46 considered to be admissible. The Agency shall, without awaiting either an order or a

1 discovery request under subsection (a) of this section, provide to the appellant a
2 complete copy of the appellant's record of services, as described at 34 CFR §361.47,
3 including any electronically stored or preserved records, to the extent pertinent to the
4 determination that is the subject of the request for review.
5

6 *The provisions of this §850.81 adopted to be effective May 13, 2019, 44 TexReg 2364*
7

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10 **§850.82. Documentary Evidence and Official Notice.**
11

- 12 (a) Documentary evidence may be received in the form of copies or excerpts if the
13 original is not readily available. On request, parties shall be given an opportunity to
14 compare the original and the copy or excerpt.
15
- 16 (b) When numerous similar documents that are otherwise admissible are offered into
17 evidence, the IHO may limit the documents received to those that are typical and
18 representative. The IHO may also require that an abstract of relevant data from the
19 documents be presented in the form of an exhibit, provided that all parties are given
20 the right to examine the documents from which such abstracts were made.
21
- 22 (c) The following laws, rules, regulations, and policies are officially noticed:
23
- 24 (1) The Rehabilitation Act of 1973, as amended, 29 United States Code §701, et
25 seq.;
- 26
- 27 (2) United States Department of Education regulations, 34 Code of Federal
28 Regulations Parts 361 and 367;
- 29
- 30 (3) The Agency's State Plan for Vocational Rehabilitation Services;
- 31
- 32 (4) The Agency's Vocational Rehabilitation and Independent Living for Older
33 Individuals Who Are Blind policy manuals; and
34
- 35 (5) Texas Administrative Code, Title 40, Part 20, Texas Workforce Commission.
36
- 37 (d) Official notice also may be taken of:
38
- 39 (1) all facts that are judicially cognizable; and
40
- 41 (2) generally recognized facts within the area of the Agency's specialized
42 knowledge.

1
2 *The provisions of this §850.82 adopted to be effective May 13, 2019, 44 TexReg 2364;*
3 *amended to be effective December 26, 2022, 47 TexReg 8738*
4

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7 **§850.83. Continuance.**
8

- 9 (a) The IHO, at his or her discretion, may grant a continuance to further the interests of
10 justice. No motion for continuance shall be granted, unless it is made in writing or
11 stated in the record, and the motion shall set forth the specific grounds upon which
12 the party seeks the continuance.
13
- 14 (b) Unless made during a prehearing or hearing, a party seeking a continuance,
15 cancellation of a scheduled proceeding, or extension of an established deadline shall
16 file such motion no later than 10 days before the date or deadline in question. A
17 motion filed fewer than 10 days before the date or deadline in question shall contain
18 a certification that the requestor contacted the other party or party's authorized
19 representative and whether the request is opposed by the party or party's authorized
20 representative. Further, if a continuance to a certain date is sought, the motion shall
21 include a proposed date or dates and must indicate whether the other party or party's
22 authorized representative contacted agrees on the proposed new date or dates.
23

24 *The provisions of this §850.83 adopted to be effective May 13, 2019, 44 TexReg 2364*
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28 **§850.84. Impartial Hearing Officer Decision.**
29

- 30 (a) Within 30 days of the hearing completion date, the IHO shall issue a decision that is
31 based on the evidence and consistent with the provisions of the approved State Plan;
32 the Act, as amended; federal vocational rehabilitation regulations, state regulations,
33 and policies that are consistent with federal requirements, and shall provide to the
34 appellant or, if appropriate, the appellant's authorized representative, and the
35 Agency's authorized representative or the Agency's Office of General Counsel, as
36 appropriate, a full written report of the findings of fact, conclusions of law, and any
37 other grounds for the decision.
38
- 39 (b) The decision shall address each issue considered by the IHO.
40
- 41 (c) The IHO may prescribe such remedies as are appropriate within the scope of, and
42 permitted by, as applicable, Texas Labor Code, Chapter 352; the Act, as amended;
43 the regulations of the Rehabilitation Services Administration of the United States
44 Department of Education, 34 Code of Federal Regulations Parts 361 and 365; and
45 the Agency's policies and rules.
46

- 1 (1) The IHO shall not award restitutionary, compensatory, or monetary relief,
2 including monetary damages, to any party.
3
- 4 (2) The IHO shall not prescribe an action affecting the employment of an Agency
5 employee.
6

7 *The provisions of this §850.84 adopted to be effective May 13, 2019, 44 TexReg 2364;*
8 *amended to be effective December 26, 2022, 47 TexReg 8738*
9

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12 **§850.85. Finality of the Hearing Officer Decision.**
13

14 The decision of the IHO is the final decision of the Agency, and, if no timely motion for
15 reconsideration is filed, becomes the final decision.
16

17 *The provisions of this §850.85 adopted to be effective May 13, 2019, 44 TexReg 2364*
18

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20

21 **§850.86. Implementation of Final Decision.**
22

23 If a party brings a civil action to challenge a final decision of an IHO, the final decision
24 involved shall be implemented pending review by the court.
25

26 *The provisions of this §850.86 adopted to be effective May 13, 2019, 44 TexReg 2364*
27

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30 **§850.87. Motion for Reconsideration.**
31

- 32 (a) Any party to a hearing may file a motion for reconsideration within 20 days after the
33 party is notified of the issuance of the IHO's decision. The motion shall be filed with
34 the hearings coordinator within the Agency's Office of General Counsel.
35
- 36 (b) The motion for reconsideration shall specify the matters in the IHO's decision that
37 the party considers to be erroneous. Any response to the motion for reconsideration
38 shall be filed no later than 30 days after a party, or a party's attorney or
39 representative, is notified of the IHO's issuance of the decision.
40
- 41 (c) The IHO shall rule on the motion for reconsideration no later than 15 days after
42 receipt of the motion for reconsideration, or after receipt of the response to the
43 motion for reconsideration, whichever comes later. If the motion for reconsideration
44 is granted, the IHO issues a decision upon reconsideration within an additional 15
45 days. If the IHO fails to rule on the motion for reconsideration within 15 days, the
46 motion for reconsideration is denied as a matter of law.

1
2 (d) Service. Service of the IHO's decision or of a motion for reconsideration or response
3 under this section shall be made by any of the following means to a party, a party's
4 attorney, or a party's representative:

5
6 (1) hand-delivery;

7
8 (2) courier-receipted delivery;

9
10 (3) regular first-class mail, certified mail, or registered mail;

11
12 (4) e-mail or facsimile transmission before 5:00 p.m. on a business day to the
13 recipient's current e-mail address or telecopier number; or

14
15 (5) such other means as the IHO may direct.

16
17 (e) Date of service. The date of service is the date of hand-delivery, delivery by courier,
18 mailing, e-mailing, or facsimile transmission, unless otherwise required by law.
19 Unless the contrary is shown, a decision, motion, or response that is sent by regular
20 first-class mail is presumed to have been received within three days of the date of
21 postmark, if enclosed in a wrapper addressed to the recipient's last known address
22 with return address to the sender, stamped with the appropriate first-class postage,
23 and deposited with the US Postal Service on the date postmarked.

24
25 *The provisions of this §850.87 adopted to be effective May 13, 2019, 44 TexReg 2364*

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28
29 **§850.88. Civil Action.**

30
31 (a) Any party that disagrees with the findings and decision of an IHO has a right to
32 bring a civil action in any court of competent jurisdiction without regard to the
33 amount in controversy, consistent with 34 CFR §361.57(i).

34
35 (b) An individual must initiate a civil action for review of an IHO's decision by filing a
36 petition not later than the 30th day after the date on which the decision that is the
37 subject of complaint is final and appealable.

38
39 *The provisions of this §850.88 adopted to be effective May 13, 2019, 44 TexReg 2364*

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42
43 **§850.89. Computation of Time.**

44
45 (a) In computing any period of time prescribed or allowed by the rules in this
46 subchapter, by order of an IHO, or by any applicable statute, the day of the act,

1 event, or default after which the designated period of time begins to run is not
2 included.

3
4 (b) Unless otherwise provided by the rules in this subchapter, the last day of the period
5 so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which
6 event the period runs until the end of the next day that is not a Saturday, Sunday, or
7 legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any
8 purpose in any time period of five days or fewer.

9
10 (c) In computing the time periods required for filing a motion for reconsideration, as set
11 forth at §850.87 of this subchapter (relating to Motion for Reconsideration), and for
12 appealing a final decision of an IHO to a court, as set forth at §850.88 of this
13 subchapter (relating to Civil Action), Saturdays, Sundays, and legal holidays are
14 included.

15
16 *The provisions of this §850.89 adopted to be effective May 13, 2019, 44 TexReg 2364*

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19
20 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**

21
22 **§850.130. Memorandum of Understanding Regarding Continuity of Care for Physically**
23 **Disabled Inmates.**

24
25 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
26 the Texas Department of Criminal Justice, Texas Department of Aging and
27 Disability Services, and Texas Department of State Health Services. The MOU
28 contains the agreement required by Texas Health and Safety Code §§614.014 -
29 614.015 to establish the respective responsibilities of these agencies to institute a
30 continuity of care and service program for offenders in the criminal justice system
31 who are physically disabled, terminally ill, or significantly ill.

32
33 (b) The text of the MOU is in rule 37 TAC, Part 6, §159.19 (relating to Continuity of
34 Care and Services Program for Offenders who are Elderly, Terminally Ill,
35 Significantly Ill or with a Physical Disability or Having a Mental Illness).

36
37 *The provisions of this §850.130 adopted to be effective December 10, 2012, 37 TexReg 9643;*
38 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
39 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*

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42
43 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**
44 **Public Awareness Information.**

- 1 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
2 the Texas Health and Human Services Commission, the Texas Department of Aging
3 and Disability Services, and the Texas Department of State Health Services.
4
5 (b) The MOU is the agreement required by Texas Human Resources Code §22.013,
6 which authorizes and requires the exchange and distribution among the agencies of
7 public awareness information relating to services provided by or through the
8 agencies.
9
10 (c) The text of the MOU is located in 40 TAC, Part 1, §72.301 (relating to Authorization
11 and Requirement to Exchange and Distribute Public Awareness Information).
12

13 *The provisions of this §850.131 adopted to be effective December 10, 2012, 37 TexReg 9643;*
14 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
15 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
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18

19 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
20 **Individuals with Disabilities.**
21

- 22 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
23 the Texas Health and Human Services Commission, the Texas Department of Aging
24 and Disability Services, the Texas Department of State Health Services, the Texas
25 Department of Family and Protective Services, and the Texas Education Agency.
26
27 (b) The MOU is the agreement required by Texas Human Resources Code §22.011, to
28 facilitate the coordination of services to individuals with disabilities by establishing
29 the respective responsibilities of the agencies regarding the coordination of services
30 to individuals with disabilities.
31
32 (c) The text of the MOU is located in 40 TAC Part 1, §§72.201 - 72.212 (relating to
33 Memorandum of Understanding Concerning Coordination of Services to Persons
34 With Disabilities).
35

36 *The provisions of this §850.132 adopted to be effective December 10, 2012, 37 TexReg 9643;*
37 *duplicated effective September 1, 2016, as published in the Texas Register September 2,*
38 *2016, 41 TexReg 6773; amended to be effective May 13, 2019, 44 TexReg 2364*
39

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