

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

3
4 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
5 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
6 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
7

8 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
9 Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and
10 Procedures:

- 11
- 12 Subchapter A. Vocational Rehabilitation General Rules, §§850.3 - 850.6, and 850.11
- 13 Subchapter C. Councils, Board, and Committees, §§850.32 - 850.35
- 14 Subchapter D. Privacy and Confidentiality, §§850.50 and 850.51
- 15 Subchapter F. Memorandum of Understanding, §§850.130 - 850.132
- 16

17 TWC proposes the repeal of the following sections of Chapter 850, relating to Vocational
18 Rehabilitation Services Administrative Rules and Procedures:

- 19
- 20 Subchapter A. Vocational Rehabilitation General Rules, §§850.1, 850.2, and §§850.7 -
- 21 850.10
- 22 Subchapter B. Historically Underutilized Businesses, §§850.20 - 850.23
- 23 Subchapter C. Councils, Board, and Committees, §§850.30, 850.31, 850.40 - 850.43
- 24

25 TWC proposes the repeal of the following subchapter of Chapter 850, relating to Vocational
26 Rehabilitation Services Administrative Rules and Procedures, in its entirety:

- 27
- 28 Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures, §§850.60
- 29 - 850.84 and §§850.100 - 850.111
- 30

31 TWC proposes the following new subchapter of Chapter 850, relating to Vocational
32 Rehabilitation Services Administrative Rules and Procedures:

- 33
- 34 Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures,
- 35 §§850.60 - 850.89
- 36

- 37 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 38 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 39 PART III. IMPACT STATEMENTS
- 40 PART IV. COORDINATION ACTIVITIES
- 41

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

43 The purpose of the proposed Chapter 850 rule change is to align the chapter with TWC's
44 operation of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002
45 transferred the administration of VR services from the Texas Department of Assistive and
46 Rehabilitative Services (DARS) to TWC, effective September 1, 2016.

1
2 To ensure continuity and avoid any impacts on customers, the administrative rules shared by all
3 DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of
4 the programs. Because the rules established DARS' administrative framework and served all DARS
5 programs, they overlap certain existing TWC administrative rules and contain numerous references
6 to programs that were not transferred to TWC.
7

8 In order to streamline TWC rules and accurately reflect TWC's program administration, several
9 amendments are necessary to integrate and align overlapping sections and update outdated terms and
10 procedures to align with TWC's current program operation.
11

12 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

13 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
14 therefore, are not discussed in the Explanation of Individual Provisions.)
15

16 **SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES**

17 **TWC proposes the following amendments to Subchapter A:**
18

19 **§850.1. Purpose**

20 Section 850.1 is repealed to align with current TWC rulemaking practices, in which purpose and
21 legal authority are provided in a rule's preamble text.
22

23 **§850.2. Legal Authority**

24 Section 850.2 is repealed to align with current TWC rulemaking practices, in which purpose and
25 legal authority are provided in a rule's preamble text.
26

27 **§850.3. Definitions**

28 Section 850.3 is amended to remove a reference to "DARS", replace with "Agency" and replace
29 a reference to the two former DARS divisions with "Vocational Rehabilitation Division (VRD)."
30

31 **§850.4. Opportunities for Citizen Participation**

32 Section 850.4 is amended to replace "DARS" with "Agency" and "Commission," as appropriate,
33 and "people" with "individuals."
34

35 **§850.5. Complaints**

36 Section 850.5 is amended to reflect TWC's operation of the program and to replace "DARS" with
37 "Agency" and "Commission," as appropriate, "consumer" with "customer," and "person" with
38 "individual." Subsections (d) and (e) of this section are repealed as they relate to services which
39 did not transfer to TWC.
40

41 **§850.6. Cooperation with Other Public Agencies**

42 Section 850.6 is amended to replace "DARS" with "Agency" and "people" with "individuals."
43

44 **§850.7. Criminal History Information on Applicants for Employment**

45 Section 850.7 is repealed because it concerns internal procedures addressed within TWC's
46 Human Resources procedures and therefore is unnecessary.

1
2 **§850.8. Use of Criminal History Information in Contracting**

3 Section 850.8 is repealed because it concerns VR contracting, which is addressed in Chapter 858
4 and is being updated and amended in a separate rulemaking, and therefore is unnecessary.

5
6 **§850.9. Fees for Department Publications**

7 Section 850.9 is repealed because it is inconsistent with TWC's practice of providing TWC
8 publications for free and therefore is unnecessary.

9
10 **§850.10. Gifts and Donations to TWC**

11 Section 850.10 is repealed because it overlaps existing TWC rules and therefore is unnecessary.

12
13 **§850.11. Qualified Vocational Rehabilitation Counselor**

14 Section 850.11 is amended to replace references to the two former DARS divisions with
15 "Vocational Rehabilitation Division (VRD)" and to reflect current TWC job titles.

16
17 **SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES**

18 **TWC proposes the following amendments to Subchapter B:**

19
20 **§850.20. Purpose**

21 Section 850.20 is repealed because it overlaps existing TWC rules that are being updated and
22 amended in a separate rulemaking and therefore is unnecessary.

23
24 **§850.21. Legal Authority**

25 Section 850.21 is repealed because it overlaps existing TWC rules that are being updated and
26 amended in a separate rulemaking and therefore is unnecessary.

27
28 **§850.22. Definitions**

29 Section 850.22 is repealed because it overlaps existing TWC rules that are being updated and
30 amended in a separate rulemaking and therefore is unnecessary.

31
32 **§850.23. Adoption of Rules**

33 Section 850.23 is repealed because it overlaps existing TWC rules that are being updated and
34 amended in a separate rulemaking and therefore is unnecessary.

35
36 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

37 **TWC proposes the following amendments to Subchapter C:**

38
39 **§850.30. Purpose**

40 Section 850.30 is repealed to align with current TWC rulemaking practices, in which purpose
41 and legal authority are provided in a rule's preamble text.

42
43 **§850.31. Legal Authority**

44 Section 850.31 is repealed to align with current TWC rulemaking practices, in which purpose
45 and legal authority are provided in a rule's preamble text.

1 **§850.32. Definitions**

2 Section 850.32 is amended to replace "DARS" with "Agency."
3

4 **§850.33. Tasks**

5 Section 850.33 is amended to replace references to the former DARS divisions with "Vocational
6 Rehabilitation Division (VRD)" and to replace "consumer" with "customer" and "people" with
7 "individuals."
8

9 **§850.34. Reports**

10 Section 850.34 is amended to replace (DARS) "commissioner" with "Commission."
11

12 **§850.35. Funding**

13 Section 850.35 is amended to replace "DARS" with "Agency."
14

15 **DIVISION 2**

16 **BET ELECTED COMMITTEE OF MANAGERS (ECM)**

17
18 **§850.40. Purpose**

19 Section 850.40 is repealed because it overlaps existing TWC rules that are being updated and
20 amended in a separate rulemaking and therefore is unnecessary.
21

22 **§850.41. Legal Authority**

23 Section 850.41 is repealed because it overlaps existing TWC rules that are being updated and
24 amended in a separate rulemaking and therefore is unnecessary.
25

26 **§850.42. Definitions**

27 Section 850.42 is repealed because it overlaps existing TWC rules that are being updated and
28 amended in a separate rulemaking and therefore is unnecessary.
29

30 **§850.43. Substantive Rules**

31 Section 850.43 is repealed because it overlaps existing TWC rules that are being updated and
32 amended in a separate rulemaking and therefore is unnecessary.
33

34 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**

35 **TWC proposes the following amendments to Subchapter D:**

36
37 **§850.50. Privacy Policies**

38 Section 850.50 is amended to replace "DARS" with "Agency" and "person" with "individual;" to
39 update the address for submitting requests for correction of information; to remove a reference to
40 social security disability determination cases which did not transfer to TWC; and to update
41 procedures relating to verifying documentation for submitting requests for correction of
42 information.
43

44 **§850.51. Confidentiality of Consumer Information in Vocational Rehabilitation Services**

45 **Program**

46 Section 850.51 is amended to replace "DARS" with "Agency" and "consumer" with "customer."

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

4 **TWC proposes new Subchapter E:**

5
6 **§850.60. Scope**

7 New §850.60 retains the provisions of §850.101, concurrently proposed for repeal, renaming it
8 with modifications to clarify the content and to update cross-references, terminology, and
9 citations.

10
11 **§850.61. Definitions**

12 New §850.61(1), the definition of "Act," retains the provisions of §850.62(1), concurrently
13 proposed for repeal.

14
15 New §850.61(2), the definition of "appellant," retains without modification the provisions of
16 §850.62(2), concurrently proposed for repeal.

17
18 New §850.61(3), the definition of "applicant," retains the provisions of §850.62(3), concurrently
19 proposed for repeal, with modifications to align with the federal definitions at 34 CFR Part 361.

20
21 New §850.61(4), the definition of "authorized representative," retains the provisions of
22 §850.62(4), concurrently proposed for repeal, with modifications to replace "person" with
23 "individual".

24
25 New §850.61(5), the definition of "counselor," retains the provisions of §850.3(2), concurrently
26 proposed for repeal, with modifications to replace "DARS" with "Agency".

27
28 New §850.61(6), the definition of "customer," is added to mean an applicant or an individual
29 who is receiving VR services.

30
31 New §850.61(7), the definition of "discovery," retains without modification the provisions of
32 §850.62(8), concurrently proposed for repeal.

33
34 New §850.61(8), the definition of "eligible individual," retains the provisions of §850.62(9),
35 concurrently proposed for repeal, with modifications to replace "DARS" with "Agency".

36
37 New §850.61(9), the definition of "hearing," retains the provisions of §850.62(10), concurrently
38 proposed for repeal, with modifications to update chapter reference.

39
40 New §850.61(10), the definition of "impartial hearing officer," retains the provisions of
41 §850.62(11), concurrently proposed for repeal.

42
43 New §850.61(11), the definition of "Individualized Plan for Employment," is added to mean a
44 plan developed for each individual determined to be eligible for VR services, in accordance with
45 34 CFR Part 361.

1 New §850.61(12), the definition of "parent," retains the provisions of §850.62(12), concurrently
2 proposed for repeal, with modifications to update terminology.

3
4 New §850.60(13), the definition of "party," retains the provisions of §850.62(13), concurrently
5 proposed for repeal, with modifications to update terminology.

6
7 New §850.61(14), the definition of "record," retains the provisions of §850.62(15), concurrently
8 proposed for repeal, with modifications to update terminology.

9
10 New §850.61(15), the definition of "State Plan," retains the provisions of §850.3(3), concurrently
11 proposed for repeal, with modifications to update terminology.

12
13 **§850.62. Filing a Request for Review**

14 New §850.62, the process for filing a request for review, retains the provisions of §850.103,
15 concurrently proposed for repeal, with modifications to replace "DARS" with "Agency" and to
16 update the location for the hearings coordinator. Additionally, per 34 CFR §361.57(a), wording
17 is clarified to indicate that a request for review may also be filed by an individual's authorized
18 representative.

19
20 **§850.63. Informal Dispute Resolution**

21 New §850.63 is added to reflect TWC's development of an informal process for resolving a
22 request for review without conducting mediation or a formal hearing, consistent with 34 CFR
23 §361.57(c) and internal Agency practice.

24
25 **§850.64. Time for Hearing**

26 New §850.64 retains the provisions of §850.64, concurrently proposed for repeal, with
27 modifications to replace "DARS" with "Agency" and to integrate references to the two previous
28 VR divisions.

29
30 **§850.65. Mediation Procedures**

31 New §850.65 retains the provisions of §850.83, concurrently proposed for repeal, with
32 modifications to replace "DARS" with "Agency," and wording is clarified to provide instructions
33 for filing mediation requests and to indicate that a request for mediation may also be filed by an
34 individual's authorized representative and that parties may present evidence and other
35 information to support their position.

36
37 **§850.66. Assignment of Impartial Hearing Officer**

38 New §850.66 retains the provisions of §850.65, concurrently proposed for repeal, with
39 modifications to replace "DARS" with "Agency" and to integrate references to the two previous
40 VR divisions. Outdated references to programs no longer at TWC have been removed, and cross-
41 references have been updated.

42
43 **§850.67. Powers and Duties of Impartial Hearing Officer**

44 New §850.67 retains the provisions of §850.66, concurrently proposed for repeal, with
45 modifications to remove an outdated reference to the DARS commissioner and to update
46 terminology.

1
2 **§850.68. Substitution of Impartial Hearing Officer**

3 New §850.68 retains the provisions of §850.67, concurrently proposed for repeal, with
4 modifications to update terminology and to clarify options for withdrawal or reassignment.
5

6 **§850.69. Reasonable Accommodations**

7 New §850.69 retains the provisions of §850.68, concurrently proposed for repeal, with
8 modifications to remove an outdated reference to programs no longer at TWC, replace "DARS"
9 with "Agency," and to update terminology.
10

11 **§850.70. Appearance of Parties at Hearings; Representation**

12 New §850.70 retains the provisions of §850.69, concurrently proposed for repeal, with
13 modifications to replace "DARS" with "Agency" and to update terminology.
14

15 **§850.71. Failure to Attend Hearing and Default**

16 New §850.71 retains the provisions of §850.70, concurrently proposed for repeal, with
17 modifications to update terminology.
18

19 **§850.72. Witness Fees**

20 New §850.72 retains the provisions of §850.71, concurrently proposed for repeal, with
21 modifications to replace "DARS" with "Agency" and to update terminology.
22

23 **§850.73. Prehearing Conferences**

24 New §850.73 retains the provisions of §850.72, currently proposed for repeal, with modifications
25 to update terminology.
26

27 **§850.74. Dismissal without Hearing**

28 New §850.74 retains the provisions of §850.73, concurrently proposed for repeal, with
29 modifications to update terminology.
30

31 **§850.75. Conduct of Hearing**

32 New §850.75 retains the provisions of §850.74, concurrently proposed for repeal, with
33 modifications to update terminology.
34

35 **§850.76. Order of Proceedings**

36 New §850.76 retains the provisions of §850.75, concurrently proposed for repeal, with
37 modifications to replace "DARS" with "Agency," integrate references to the two former DARS
38 VR divisions, and update terminology. Subsection (c) is removed, as it contains outdated
39 references to programs no longer at TWC. Subsections are re-lettered.
40

41 **§850.77. Rules of Evidence**

42 New §850.77 retains the provisions of §850.76, concurrently proposed for repeal, with
43 modifications to replace "DARS" with "Agency" and to update terminology.
44

45 **§850.78. Transcription of Proceedings**

1 New §850.78 retains the provisions of §850.77, concurrently proposed for repeal, with
2 modifications to replace "DARS" with "Agency" and to update terminology.

3
4 **§850.79. Prepared Testimony**

5 New §850.79 retains the provisions of §850.78, concurrently proposed for repeal, with
6 modifications to update terminology.

7
8 **§850.80. Pleadings**

9 New §850.80 is amended to replace "DARS" with "Agency," incorporate §850.104(a),
10 concurrently proposed for repeal, into subsection (d), replace subsection (g) with subsection (c)
11 of §850.104, relating to Filings and concurrently proposed for repeal, and update terminology.

12
13 **§850.81. Discovery and Mandatory Disclosures**

14 New §850.81 retains the provisions of §850.105, relating to Discovery and Mandatory
15 Disclosures, and concurrently proposed for repeal, replaces "DARS" with "Agency," and updates
16 terminology. New wording clarifies that the copy to be provided to the appellant of the
17 appellant's record of services is provided to the extent pertinent to the determination that is the
18 subject of the request for review.

19
20 **§850.82 Documentary Evidence and Official Notice**

21 New §850.82 retains the provisions of §850.106, relating to Documentary Evidence and Official
22 Notice, concurrently proposed for repeal. "DARS" is replaced with "Agency," references to the
23 two previous VR divisions are consolidated, citations are updated to clarify the applicability of
24 the chapter to proceedings related to the Independent Living Services for Older Individuals Who
25 Are Blind program and the Business Enterprises of Texas program. Additionally, terminology is
26 updated.

27
28 **§850.83. Continuance**

29 New §850.83 retains and re-letters the provisions of §850.80, relating to Continuance, and
30 concurrently proposed for repeal, with modifications to update terminology.

31
32 **§850.84. Impartial Hearing Officer Decision**

33 New §850.84 retains the provisions of §850.107, relating to Impartial Hearing Officer Decision
34 and concurrently proposed for repeal, replaces "DARS" with "Agency," updates locations and
35 titles, integrates references to the two previous VR divisions, and updates citations and
36 terminology.

37
38 **§850.85. Finality of the Hearing Officer's Decision**

39 New §850.85 retains the provisions of §850.108, relating to Finality of the Hearing Officer's
40 Decision, and concurrently proposed for repeal, replacing "DARS" with "Agency" and updating
41 terminology.

42
43 **§850.86. Implementation of Final Decision**

44 New §850.86 retains the provisions of §850.109, relating to Implementation of Final Decision
45 and concurrently proposed for repeal, with modifications to update terminology.

1 **§850.87. Motion for Reconsideration**

2 New §850.87 retains and re-letters the provisions of §850.81, relating to Motion for
3 Reconsideration, and concurrently proposed for repeal, removes a reference to a program that
4 was not transferred to TWC, replaces "DARS" with "Agency," updates the location for filing the
5 motion for reconsideration with the hearings coordinator, with modifications to update
6 terminology. Additionally, new §850.86 incorporates §850.110, also relating to Motion for
7 Reconsideration, concurrently proposed for repeal.

8
9 **§850.88. Civil Action**

10 New §850.88 retains and re-letters the provisions of §850.82, relating to Civil Action, and
11 concurrently proposed for repeal, with modifications to update terminology. Additionally, new
12 §850.87 incorporates §850.111, relating to Appeal of Final Decision, concurrently proposed for
13 repeal.

14
15 **§850.89. Computation of Time**

16 New §850.89 retains and re-letters the provisions of §850.84, relating to Computation of Time,
17 and concurrently proposed for repeal, with modifications to update terminology.

18
19 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
20 **HEARING PROCEDURES**

21 **TWC proposes the repeal of Subchapter E in its entirety.** The relevant portions of this
22 content are consolidated with related content repealed in other subchapters and reorganized as
23 proposed new Subchapter E.

24
25 Division 1. General Rules

26 §850.60 Purpose

27 §850.61 Legal Authority

28 §850.62 Definitions

29 §850.63 Filing a Request for Review

30 §850.64 Time for Hearing

31 §850.65 Assignment of Impartial Hearing Officer

32 §850.66 Powers and Duties of Impartial Hearing Officer

33 §850.67 Substitution of Impartial Hearing Officer

34 §850.68 Reasonable Accommodations

35 §850.69 Appearance of Parties at Hearings; Representation

36 §850.70 Failure to Attend Hearing and Default

37 §850.71 Witness Fees

38 §850.72 Prehearing Conferences

39 §850.73 Dismissal Without Hearing

40 §850.74 Conduct of Hearing

41 §850.75 Order of Proceedings

42 §850.76 Rules of Evidence

43 §850.77 Transcription of Proceedings

44 §850.78 Prepared Testimony

45 §850.79 Pleadings

46 §850.80 Continuance

- 1 §850.81 Motion for Reconsideration
- 2 §850.82 Civil Action
- 3 §850.83 Mediation Procedures
- 4 §850.84 Computation of Time

- 5 Division 2. Division for Blind Services and Division for Rehabilitation Services
- 6 §850.100 Purpose
- 7 §850.101 Legal Authority
- 8 §850.102 Definitions
- 9 §850.103 Filing a Request for Review
- 10 §850.104 Filings
- 11 §850.105 Discovery and Mandatory Disclosures
- 12 §850.106 Documentary Evidence and Official Notice
- 13 §850.107 Impartial Hearing Officer Decision
- 14 §850.108 Finality of the Hearing Officer's Decision
- 15 §850.109 Implementation of Final Decision
- 16 §850.110 Motion for Reconsideration
- 17 §850.111 Appeal of Final Decision

18
 19 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**

20 **TWC proposes the following amendments to Subchapter F:**

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

24 Section 850.130 is amended to replace references to "DARS" with "Agency," and update
 25 citations and titles.

26
 27 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**
 28 **Public Awareness Information**

29 Section 850.131 is amended to replace references to "DARS" with "Agency," update agency
 30 names, and update citations.

31
 32 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
 33 **Disabled Persons**

34 Section 850.132 is amended to remove references to DARS, update agency names, and update
 35 citations and terminology.

36
 37 **PART III. IMPACT STATEMENTS**

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

40
 41 There are no additional estimated costs to the state and to local governments expected as a result
 42 of enforcing or administering the rules.

43
 44 There are no estimated cost reductions to the state and to local governments as a result of
 45 enforcing or administering the rules.

1
2 There are no estimated losses or increases in revenue to the state or to local governments as a
3 result of enforcing or administering the rules.

4
5 There are no foreseeable implications relating to costs or revenue of the state or local
6 governments as a result of enforcing or administering the rules.

7
8 There are no anticipated economic costs to individuals required to comply with the rules.

9
10 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
11 communities as a result of enforcing or administering the rules.

12
13 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
14 that the requirement to repeal or amend a rule, as required by Texas Government Code
15 §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code §352.101
16 requires TWC's three-member Commission (Commission) to adopt rules necessary to integrate
17 the VR programs, including recommending adopting rules to implement the integration.
18 Therefore, the exception identified in §2001.0045(c)(9) applies.

19
20 Takings Impact Assessment

21 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
22 affects private real property, in whole or in part or temporarily or permanently, in a manner that
23 requires the governmental entity to compensate the private real property owner as provided by
24 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
25 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
26 would otherwise exist in the absence of the governmental action, and is the producing cause of a
27 reduction of at least 25 percent in the market value of the affected private real property,
28 determined by comparing the market value of the property as if the governmental action is not in
29 effect and the market value of the property determined as if the governmental action is in
30 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
31 action under Texas Government Code, §2007.043. The primary purpose of this proposed
32 rulemaking action, as discussed elsewhere in this preamble, is to align Chapter 850 with TWC's
33 operation of the VR services program.

34
35 The proposed rulemaking action will not create any additional burden on private real property.
36 The proposed rulemaking action will not affect private real property in a manner that would
37 require compensation to private real property owners under the United States Constitution or the
38 Texas Constitution. The proposal also will not affect private real property in a manner that
39 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
40 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
41 Government Code, Chapter 2007.

42
43 Government Growth Impact Statement

44 TWC has determined that during the first five years the amendments will be in effect:
45 --the proposed amendments will not create or eliminate a government program;

- 1 --implementation of the proposed amendments will not require the creation or elimination of
- 2 employee positions;
- 3 --implementation of the proposed amendments will not require an increase or decrease in future
- 4 legislative appropriations to TWC;
- 5 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 6 --the proposed amendments will not create a new regulation;
- 7 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 8 --the proposed amendments will not change the number of individuals subject to the rules; and
- 9 --the proposed amendments will not positively or adversely affect the state's economy.

10
11 Economic Impact Statement and Regulatory Flexibility Analysis

12 TWC has determined that the rules will not have an adverse economic impact on small
13 businesses or rural communities, as these rules place no requirements on small businesses or
14 rural communities.

15
16 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
17 significant negative impact upon employment conditions in the state as a result of the rules.

18
19 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of
20 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
21 rules will be to align Chapter 850 with TWC's operation of the VR services program.

22
23 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
24 within TWC's legal authority to adopt.

25
26 **PART IV. COORDINATION ACTIVITIES**

27 In the development of these rules for publication and public comment, TWC sought the
28 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule
29 amendments to the Boards for consideration and review on June 14, 2018. TWC also conducted
30 a conference call with Board executive directors and Board staff on June 22, 2018, to discuss the
31 concept paper. During the rulemaking process, TWC considered all information gathered in
32 order to develop rules that provide clear and concise direction to all parties involved.

33
34 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
35 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin,
36 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
37 Comments must be received or postmarked no later than 30 days from the date this proposal is
38 published in the *Texas Register*.

39
40 The rules are proposed under the authority of the Rehabilitation Act of 1973, as amended (29
41 USC §701 et seq.), and regulations of the US Department of Education, 34 CFR Parts 361, 363,
42 367, 395, and 397. Texas Labor Code §352.101(b)(5) requires TWC to recommend the adoption
43 of any rules necessary to implement the requirement to integrate the VR programs. Texas Labor
44 Code §301.0015 and §302.002(d) provide TWC with the authority to adopt, amend, or repeal
45 such rules as it deems necessary for the effective administration of TWC services and activities.

1 The proposed rules affect Title 4, Texas Labor Code, Chapters, 301, 302, 352, and 355.
2

1 **CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE**
2 **RULES AND PROCEDURES**
3

4 **SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES**
5

6 **§850.1. Purpose.**
7

- 8 ~~(a) DARS is the principal authority in the state on matters relating to rehabilitation of~~
9 ~~people with disabilities. All other state agencies engaged in rehabilitation activities~~
10 ~~and related services to people must coordinate those activities and services with~~
11 ~~DARS.~~
12
13 ~~(b) The State of Texas provides rehabilitation and related services to eligible people with~~
14 ~~disabilities so that they may prepare for and engage in a gainful occupation or~~
15 ~~achieve maximum personal independence for the person.~~
16
17 ~~(c) DARS provides services subject to the availability of funds in accordance with the~~
18 ~~state plans required by federal law and regulation, policies established by DARS, and~~
19 ~~contracts with the providers of such services.~~
20
21 ~~(d) Under operational policies established by DARS, the commissioner is responsible for~~
22 ~~the administration, supervision, planning, and direction of all rehabilitation service~~
23 ~~programs.~~
24
25 ~~(e) Any person who believes that he or she is eligible for rehabilitation services may~~
26 ~~contact any DARS office or employee for assistance.~~
27

28 **§850.2. Legal Authority.**
29

30 ~~DARS implements its general powers and duties pursuant to its statutory authority~~
31 ~~promulgated in Texas Human Resources Code, Chapter 73 (relating to Interagency~~
32 ~~Council on Early Childhood Intervention Services); Chapter 81 (relating to Texas~~
33 ~~Commission for the Deaf and Hard of Hearing); Chapter 91 (relating to Texas~~
34 ~~Commission for the Blind); Chapter 111, Texas Rehabilitation Commission; and Chapter~~
35 ~~117 (relating to Department of Assistive and Rehabilitative Services); as well as pursuant~~
36 ~~to federal authority.~~
37

38 **§850.3. Definitions.**
39

40 The following words and terms, when used in this subchapter, have the following
41 meanings, unless the context clearly indicates otherwise:
42

- 43 ~~(1) DARS The Texas Department of Assistive and Rehabilitative Services.~~
44

1 (1)(2) Counselor--~~An Agency A DARS~~ employee who is trained to provide
2 vocational guidance and counseling and meets the minimum qualifications
3 designated in a functional job description.

4
5 (2)(3) State Plan--The plan for vocational rehabilitation services submitted by the
6 Vocational Rehabilitation Division (VRD) ~~the DARS Division for~~
7 ~~Rehabilitation Services and the DARS Division for Blind Services~~ in
8 compliance with Title I of the Rehabilitation Act of 1973, as amended, ~~Title I.~~
9

10 §850.4. Opportunities for Citizen Participation.

11 In addition to other procedures listed in Part 2 of this title (relating to Department of
12 Assistive and Rehabilitative Services), individuals ~~people~~ with disabilities, parents of
13 infants and toddlers with disabilities, and other citizens have the opportunity to:

- 14 (1) voice concerns through public representation on Agency ~~DARS~~ committees,
15 councils, and boards;
16
17 (2) attend and make public comments at public meetings (notices of all public
18 meetings and agenda items are published in the *Texas Register*);
19
20 (3) comment on all proposed rules; and
21
22 (4) submit a petition requesting the adoption of rules.

23
24 (A) All petitions proposing the adoption of Agency ~~DARS~~ rules shall be
25 submitted in writing to the Commission ~~DARS commissioner~~. The
26 petition must contain the following:

- 27
28 (i) the text of the proposed rule prepared in a manner to indicate the
29 words to be added or deleted from the current text, if any;
30
31 (ii) a statement of the statutory or other authority under which the rule
32 is to be promulgated; and
33
34 (iii) the public benefits anticipated as a result of adopting the rule or
35 the anticipated implications that could result from the failure to
36 adopt the proposed rule.
37

38 (B) Agency ~~DARS~~ staff ~~members~~ review the requests and present
39 recommendations to the Commission ~~DARS~~ for action.
40

41 §850.5. Complaints.

- 42
43 (a) Complaints may be filed with the Agency ~~DARS~~ either in writing through mail, e-
44 mail, or facsimile or by videotape for individuals ~~people~~ who use sign language to

1 communicate. Complaints should be directed to the customer's local VR office or
2 may be submitted via email to customers@twc.state.tx.us. ~~DARS customer service~~
3 ~~representative or to the commissioner.~~

4
5 (b) For the purpose of directing complaints to the Agency~~DARS~~, ~~DARS~~ the Agency may
6 notify customers ~~consumers~~ and service recipients of its name, mailing address, and
7 telephone number by including the information:

8
9 (1) on each registration form, application, or written contract relating to
10 participation in a program that is funded in any part by money derived from or
11 through the Agency~~DARS~~;

12
13 (2) on a sign that is prominently displayed in the place of business of each
14 individual ~~person~~ or entity engaging in a program that is funded in any part by
15 money derived from or through the Agency~~DARS~~;

16
17 (3) in a bill for service provided by an individual ~~a person~~ or entity engaging in a
18 program that is funded in any part by money derived from or through the
19 Agency~~DARS~~; or

20
21 (4) ~~in~~ other media for dissemination of information as determined by the
22 Agency~~DARS~~.

23
24 (c) Ordinarily, the Agency~~DARS~~ resolves complaints within 60 days.

25
26 ~~(d) Information about complaints specifically related to early childhood intervention~~
27 ~~services may be found in Chapter 108 of this title (relating to Division for Early~~
28 ~~Childhood Intervention Services).~~

29
30 ~~(e) Information about complaints specifically related to Blind Children's Vocational~~
31 ~~Discovery and Development Program may be found in Chapter 106 of this title~~
32 ~~(relating to Division for Blind Services).~~

33 34 **§850.6. Cooperation with Other Public Agencies.**

35
36 The Agency ~~DARS~~ enters into appropriate cooperative arrangements with, and uses the
37 services and facilities of, other federal, state, and local public agencies providing services
38 related to rehabilitation of individuals ~~people~~ with disabilities. The Agency~~DARS~~ also
39 works toward maximum coordination and consultation with programs for and relating to
40 rehabilitation of veterans with disabilities.

41 42 ~~§850.7. Criminal History Information on Applicants for Employment.~~

43
44 ~~(a) DARS may use Criminal History Conviction information obtained from the Texas~~
45 ~~Department of Public Safety when evaluating applicants for employment.~~

1 ~~(b) In addition to or instead of that described in subsection (a) of this section, DARS may~~
2 ~~use Criminal History Record Information obtained from the Texas Department of~~
3 ~~Public Safety when evaluating the applications of the following applicants, in~~
4 ~~accordance with Texas Government Code, §§411.0985, 411.1131, 411.1142, and~~
5 ~~411.117:~~

6 -
7 ~~(1) Applicants for positions in the Division for Rehabilitation Services and the~~
8 ~~Division for Disability Determination Services: All applicants whose potential~~
9 ~~duties include direct contact with consumers of Vocational Rehabilitation~~
10 ~~Services, Comprehensive Rehabilitation Services, and Independent Living~~
11 ~~Services in the Division for Rehabilitation Services.~~

12
13 ~~(2) Applicants for positions in the Division for Early Childhood Intervention~~
14 ~~Services: All applicants whose potential employment involves the delivery of~~
15 ~~early childhood intervention services or involves direct interactions with or the~~
16 ~~opportunity to interact and associate with children.~~

17
18 ~~(3) Applicants for positions in the Division for Blind Services and DARS~~
19 ~~Headquarters Administration: All applicants for employment.~~

20
21 ~~(c) DARS will deny employment to applicants whose criminal history contains a felony~~
22 ~~criminal conviction which has been determined by the Commissioner or Assistant~~
23 ~~Commissioner to make the applicant unfit or unsafe to perform the functions of the~~
24 ~~job.~~

25
26 ~~(d) Criminal history information other than that described in subsection (b) of this~~
27 ~~section shall not be disqualifying for employment, but may be considered by DARS~~
28 ~~in determining the best qualified candidate for a position.~~

29
30 ~~§850.8. Use of Criminal History Information in Contracting.~~

31
32 ~~DARS may obtain criminal history information from the Texas Department of Public~~
33 ~~Safety and may use it in connection with award and administration of DARS contracts.~~
34 ~~When DARS uses the information, DARS includes the terms and conditions of use in the~~
35 ~~affected contracts.~~

36
37 ~~§850.9. Fees for Department Publications.~~

38
39 ~~DARS establishes and charges reasonable fees for DARS publications to cover the~~
40 ~~publication costs. However, DARS will waive the fee for a person who is disabled and~~
41 ~~financially unable to pay for the publication. The determination whether a person is~~
42 ~~financially unable to pay for a publication will be based on a review of the circumstances~~
43 ~~including information submitted by the person who is disabled.~~

44
45 ~~§850.10. Gifts and Donations to TWC.~~

- 1 ~~(a) DARS may receive and use gifts and donations for carrying out its purposes as~~
 2 ~~authorized in statute.~~
 3
- 4 ~~(b) Only the commissioner may accept gifts or donations of real estate or permanent~~
 5 ~~improvements to real estate.~~
 6
- 7 ~~(c) Other gifts or donations with a value of \$500 or more may be accepted by the~~
 8 ~~commissioner, deputy commissioner, assistant commissioners, or chief financial~~
 9 ~~officer. They may delegate in writing the authority to accept.~~
 10
- 11 ~~(d) The chief financial officer sets, by DARS policy, the procedures concerning:~~
 12 ~~—~~
- 13 ~~(1) accepting all gifts and donations; and~~
 14
- 15 ~~(2) delegating the authority to accept gifts and donations with value of less than~~
 16 ~~\$500.~~
 17
- 18 ~~(e) DARS has no current relationship with a private organization that exists to further~~
 19 ~~the purposes of DARS.~~
 20
- 21 ~~(f) If DARS desires to form such a relationship, it will enter into a memorandum of~~
 22 ~~understanding with the organization and will adopt rules for the relationship in~~
 23 ~~accordance with Texas Government Code, Chapter 2255.~~
 24

25 **§850.11. Qualified Vocational Rehabilitation Counselor ~~vocational rehabilitation~~**
 26 **~~counselor (QVRC).~~**
 27

- 28 (a) The Vocational Rehabilitation Division (VRD) ~~helps Division for Rehabilitation~~
 29 ~~Services (DRS) and Division for Blind Services (DBS) help~~ counselors to meet the
 30 Comprehensive System of Personnel Development (CSPD) standard by making
 31 funds available through the Qualified Vocational Rehabilitation Counselor (QVRC)
 32 program for the required graduate education except when:
 33
- 34 (1) unforeseen circumstances occur that may restrict or prohibit the funding; or
 35
- 36 (2) management discontinues a counselor's participation in the program in the best
 37 interests of the division.
 38
- 39 (b) The VRD director ~~regional director (DRS), director of program management (DBS),~~
 40 or designee must approve QVRC financial assistance. This financial assistance is
 41 contingent on:
 42
- 43 (1) funding;
 44
- 45 (2) management approval; and
 46

1 (3) compliance with qualifications for participation.
2

3 (c) Qualifications for participation in the QVRC ~~program~~Program require that vocational
4 rehabilitation counselors, transition vocational rehabilitation counselors, VRD
5 vocational rehabilitation coordinators (~~DBS~~) or VRD unit program specialists (~~DRS~~)
6 applying for assistance must:
7

8 (1) have completed the initial training year;

9
10 (2) be meeting or exceeding job performance expectations;

11
12 (3) obtain the appropriate approvals to pursue a graduate degree or prescribed
13 coursework;

14
15 (4) apply for Rehabilitation Services Administration (RSA) scholarship and
16 university stipend funding; and

17
18 (5) be accepted by the appropriate institution of higher education.
19

20 (d) A counselor who meets the CSPD standard is considered a Qualified Vocational
21 Rehabilitation Counselor.
22

23 (e) A counselor is expected to meet the CSPD standard within seven years from
24 completion of the initial training year. Divisions must conduct transcript reviews
25 and/or confirm certifications to determine compliance with standards or to outline
26 coursework to be completed by the counselor.
27

28 (f) A counselor is expected to pay all costs or expenses:
29

30 (1) associated with the college application and admission except one GRE fee;

31
32 (2) related to tuition, fees, and books for any coursework that must be repeated
33 because of failure to successfully complete; and

34
35 (3) related to completing work necessary to remove any grade of "I" (Incomplete)
36 within three months, unless there are valid reasons (for example, serious
37 illness, or university regulations to the contrary).
38

39 ~~**SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES**~~

40
41 ~~**§850.20. Purpose.**~~

42
43 ~~The purpose of this subchapter is to establish the authority and responsibility to promote~~
44 ~~full and equal business opportunities for all businesses in an effort to remedy disparity in~~
45 ~~state procurement and contracting in accordance with the HUB goals specified in the~~
46 ~~State of Texas Disparity Study. The State of Texas and the Department of Assistive and~~

1 ~~Rehabilitative Services (DARS) encourage the use of historically underutilized~~
2 ~~businesses (HUBs) and implement this responsibility without bias regarding race,~~
3 ~~ethnicity, or gender.~~

4
5
6 **~~§850.21. Legal Authority.~~**
7

8 ~~This subchapter applies to all contracts and purchase orders established under Government~~
9 ~~Code, Chapter 2155. It also applies to all bids, proposals, offers, or other applicable~~
10 ~~expressions of interest over \$100,000 as defined in Government Code, Chapter 2161,~~
11 ~~Subchapter F (relating to Subcontracting), and 34 TAC §20.14 (relating to Subcontracts).~~

12
13 **~~§850.22. Definitions.~~**

14 ~~The following words and terms, when used in this division, have the following meanings,~~
15 ~~unless the context clearly indicates otherwise:~~

16 ~~(1) DARS—The Texas Department of Assistive and Rehabilitative Services.~~

17 ~~—~~

18 ~~(2) Economically Disadvantaged Person—An eligible HUB owner as defined in 34~~
19 ~~TAC §20.11 (relating to Definitions) whose business has not exceeded the~~
20 ~~graduation size standards established by 34 TAC §20.23 (relating to~~
21 ~~Graduation Procedures).~~

22
23 ~~(3) Good Faith Effort (GFE)—A procurement effort in which prime contractors~~
24 ~~take certain steps to promote inclusion of HUBs in contracts with an expected~~
25 ~~value of \$100,000 or more as defined in 34 TAC §20.13 (relating to Statewide~~
26 ~~Annual HUB Utilization Goals) and §20.14 (relating to Subcontracts). When~~
27 ~~applied to agency GFE, the state auditor considers whether the agency has~~
28 ~~adopted rules under §2161.003, Government Code; has used the Texas~~
29 ~~Comptroller of Public Accounts, Texas Procurement and Support Services~~
30 ~~directory and other resources to identify HUBs that are able to contract with~~
31 ~~the agency; has made good faith, timely efforts to contact identified HUBs~~
32 ~~regarding contracting opportunities; has conducted its procurement program in~~
33 ~~accordance with the good faith methods set out in the comptroller's rules; and~~
34 ~~has established agency specific goals for contracting with HUBs in each~~
35 ~~procurement category based on scheduled fiscal year expenditures, the~~
36 ~~availability of HUBs in each category, the agency's historic utilization of~~
37 ~~HUBs, and other relevant factors as determined by rules adopted under~~
38 ~~§2161.002, Government Code.~~

39
40 ~~(4) Historically Underutilized Business (HUB)—A business entity as defined in 34~~
41 ~~TAC §20.11 that is certified by the State of Texas and has not exceeded the~~
42 ~~size standards established by 34 TAC §20.23 with its principal place of~~
43 ~~business in Texas.~~

1
2 ~~(5) HUB Subcontracting Plan (HSP) a written plan regarding the use of~~
3 ~~subcontractors that must be submitted with all responses to agency contracts~~
4 ~~with an expected value of \$100,000 or more where subcontracting~~
5 ~~opportunities have been determined by the agency to be probable as defined in~~
6 ~~34 TAC §20.13 and §20.14.~~

7
8 **§850.23. Adoption of Rules.**

9
10 ~~In accordance with Government Code §2161.003, the Department of Assistive and~~
11 ~~Rehabilitative Services adopts the rules of the Texas Comptroller of Public Accounts,~~
12 ~~Texas Procurement and Support Services at 34 TAC Chapter 20, Subchapter B (relating~~
13 ~~to Historically Underutilized Business Program). These rules were promulgated by the~~
14 ~~Texas Comptroller of Public Accounts under Government Code, §2161.002.~~

15
16 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

17
18 **DIVISION 1**

19 **REHABILITATION COUNCIL OF TEXAS**

20
21 **§850.30. Purpose.**

22
23 ~~The Rehabilitation Council of Texas (RCT) advises the DARS Division for Rehabilitation~~
24 ~~Services and the DARS Division for Blind Services in performing their responsibilities to~~
25 ~~provide vocational rehabilitation services for people with disabilities.~~

26
27 **§850.31. Legal Authority.**

28
29 ~~The Rehabilitation Council of Texas (RCT) is created pursuant to the Rehabilitation Act~~
30 ~~of 1973, as amended, 29 United States Code §725, and the Human Resource Code,~~
31 ~~§111.016. Federal law requires DARS to establish the RCT in order to receive federal~~
32 ~~financial assistance. Failure to establish the RCT would prohibit DARS from receiving~~
33 ~~federal financial assistance. In accordance with Human Resources Code, §111.0161, the~~
34 ~~RCT reports to and advises the executive commissioner or designee on the RCT's activities~~
35 ~~and the results of the RTC's work. In performing its advisory functions, the RCT works~~
36 ~~with the DARS commissioner, the DARS staff, and the executive commissioner or~~
37 ~~designee.~~

38
39 **§850.32. Definitions.**

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

- 42 (1) Agency DARS--The Texas Workforce Commission ~~Department of Assistive and~~
43 ~~Rehabilitative Services.~~
44

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

2
3 ~~(3) Divisions--The DARS Division for Rehabilitation Services (DRS) and the DARS~~
4 ~~Division for Blind Services (DBS).~~

5
6 **§850.33. Tasks.**

7 Tasks. The ~~RCT council~~ shall:

- 8 (1) review, analyze, and advise the ~~VRD divisions~~ about their performance of
9 responsibilities, particularly those relating to:
10
11 (A) eligibility determination (including order of selection);
12
13 (B) the extent, scope, and effectiveness of services provided; and
14
15 (C) functions performed by ~~VRD the divisions~~ that potentially affect the
16 ability of ~~individuals~~ ~~people~~ with disabilities to achieve rehabilitation
17 goals and objectives;
18
19 (2) advise the Vocational Rehabilitation Division (VRD) ~~divisions~~ and, at its
20 discretion, ~~helps~~ prepare the State Plan for Vocational Rehabilitation Services;
21 amendments to the plan; and applications, reports, needs assessments, and
22 evaluations required;
23
24 (3) to the extent feasible, review and analyze the effectiveness of, and
25 ~~customer~~ ~~consumer~~ satisfaction with:
26
27 (A) the functions performed by state agencies and other public and private
28 entities responsible for performing functions for ~~individuals~~ ~~people~~ with
29 disabilities; and
30
31 (B) vocational rehabilitation services:
32
33 (i) provided, or paid for from funds made available, under 29 ~~United~~
34 ~~States Code~~ USC §725, or through other public or private sources;
35 and
36
37 (ii) provided by state agencies and other public and private entities
38 responsible for providing vocational rehabilitation services to
39 ~~individuals~~ ~~people~~ with disabilities; and
40
41 (C) the employment outcomes achieved by ~~individuals~~ ~~people~~ who receive
42 services under 29 ~~United States Code~~ USC §725, including the
43 availability of health and other employment benefits in connection with
44 those employment outcomes;

- 1
2 (4) coordinate with other councils in the state, including the State Independent
3 Living Council established under 29 ~~United States Code~~ USC §796d; the
4 advisory panel established under §612(a)(20) of the Individuals with
5 Disabilities Education Act 20 ~~USC U.S.C.~~ § 1412(a)(21); the State Council on
6 Developmental Disabilities described in 42 ~~USC United States Code~~ § 15025;
7 the State Mental Health Planning Council established under 42 ~~USC United~~
8 ~~States Code~~ §300x-3(a); and the state workforce investment board;
9
10 (5) advise ~~the divisions~~ VRD and coordinates working relationships between the
11 divisions and the State Independent Living Council and centers for
12 independent living within the state; and
13
14 (6) perform other comparable functions consistent with the Rehabilitation Act of
15 1973, as amended, that the ~~RCT~~ RTC determines to be appropriate.
16

17 **§850.34. Reports.**

18 The ~~Rehabilitation Council of Texas~~ (RCT) shall:

- 19 (1) prepare and submit an annual report to the governor or appropriate state entity
20 and the Commission ~~commissioner~~ on the status of vocational rehabilitation
21 programs operated within the state, and make the report available to the public;
22 and
23
24 (2) submit to the commissioner of the Rehabilitation Services Administration,
25 United States Department of Education, periodic reports that the commissioner
26 may reasonably request, and keep records that the commissioner finds
27 necessary to verify those reports.
28

29 **§850.35. Funding.**

30
31 The Rehabilitation Council of Texas (RCT) is funded primarily by federal funds, and its
32 existence is required in order for the Agency ~~DARS~~ to receive and expend federal funds.
33

34 **~~DIVISION 2~~**

35 **~~BET ELECTED COMMITTEE OF MANAGERS (ECM)~~**

36
37 **~~§850.40. Purpose.~~**

38
39 ~~The purpose of the Elected Committee of Managers (ECM) is to comply with the~~
40 ~~Randolph Sheppard Act, which requires the agency, as the state licensing agency in~~
41 ~~Texas under the Act, to provide for the biennial election of a State Committee of Blind~~
42 ~~Vendors which, to the extent possible, is fully representative of all blind vendors in the~~
43 ~~state.~~
44

1 **§850.41. Legal Authority.**

2
3 The Elected Committee of Managers (ECM) is created pursuant to 20 U.S.C.A. §107b(1)
4 of Chapter 6A of Title 20, known as the Randolph Sheppard Act.

5
6 **§850.42. Definitions.**

7 The following words and terms, when used in this division, have the following meanings
8 unless the context clearly indicates otherwise:

9 ~~-(1) DARS—The Texas Department of Assistive and Rehabilitative Services.~~

10 ~~—~~

11 ~~-(2) DBS—Division for Blind Services.~~

12
13 ~~-(3) BET—Business Enterprises of Texas.~~

14
15 ~~-(4) ECM—Elected Committee of Managers.~~

16
17 **§850.43. Substantive Rules.**

18
19 ~~DARS rules relating to the duties, authority, and responsibilities of the BET Elected~~
20 ~~Committee of Managers are set forth in Chapter 106, Subchapter G of this title (relating to~~
21 ~~Business Enterprises of Texas).~~

22
23 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**

24
25 **§850.50. Privacy Policies.**

26 In accordance with Chapter 559, Government Code, the Agency~~DARS~~ adheres to the
27 following privacy policies.

28 (1) Right to be informed about information collected. An individual ~~A person~~ has
29 the right to be informed about information that the Agency ~~DARS~~ collects
30 about the individual ~~person~~ unless the Agency ~~DARS~~ is allowed to withhold
31 the information from the individual ~~person~~ under Government Code,
32 §552.023(b).

33
34 (2) Right to receive notice about certain information laws and practices.

35
36 (A) When the Agency ~~DARS~~ collects information about an individual ~~a~~
37 ~~person~~ by means of a form that the individual ~~person~~ completes and files
38 with the Agency ~~DARS~~, the Agency ~~DARS~~ informs the individual ~~person~~
39 of his or her rights related to the information collected. If the form is in a
40 paper format, the Agency ~~DARS~~ posts a prominent notice of the
41 individual's ~~person's~~ rights on the form. Or if the form is in an electronic
42 format on an Internet site, the Agency ~~DARS~~ prominently posts the

1 notice on the Internet site in connection with the electronic form. The
2 notice states that:

3
4 (i) with few exceptions, the individual person is entitled on request to
5 be informed about the information that the Agency DARS collects
6 about the individual person;

7
8 (ii) under the Government Code, §552.021 and §552.023, the
9 individual person may receive and review the information; and

10
11 (iii) under the Government Code, §559.004, the individual person may
12 have the Agency DARS correct information about the
13 individual person that is incorrect.

14
15 (B) When Agency staff DARS uses an Internet site to collect information
16 about an individual a person or about the computer network location or
17 identity of a user of the site, the Agency DARS prominently posts on the
18 site what information the Agency DARS is collecting, including such
19 information being collected by means that are not obvious.

20
21 (3) Right to correction of incorrect information. The Agency DARS has
22 established a procedure under which an individual a person may have the
23 Agency DARS correct information that the Agency DARS possesses about the
24 individual person and that is incorrect. The individual person should send a
25 written request to the Agency DARS, including his or her full name and
26 mailing address; identify the incorrect information; and provide the correct
27 information. If the information to be corrected is related ~~to a social security~~
28 ~~disability determination,~~ to a vocational rehabilitation case, or to an Agency a
29 DARS personnel or employment record, documentation establishing the
30 individual's person's social security number identity should be included. The
31 individual person should attach to the request any additional material needed to
32 identify the incorrect information or verify the correct information. The
33 individual person may choose to should include with the request contact
34 information such as address, a daytime telephone number and an email address
35 in case the Agency DARS needs to ~~call to~~ clarify the request. The
36 individual person must sign and mail the request to Records Management
37 Center Department of Assistive and Rehabilitative Services, ATTN: Records
38 Management Officer, 4405A Springdale Road, 4900 North Lamar Boulevard,
39 Austin, Texas 78723-6050 78751-2316. The Agency DARS will acknowledge
40 receipt of the request, and will notify the individual person of final action taken.

41
42 (4) Applicability of Public Information Law. Government Code, Chapter 552,
43 governs the charges that the Agency DARS may impose on an individual a
44 person who requests information that the Agency DARS collects about himself

1 or herself. However, the Agency~~DARS~~ does not charge an individual~~a person~~
2 to correct information about the individual~~person~~.
3

4 **§850.51. Confidentiality of Customer~~Consumer~~ Information in Vocational**
5 **Rehabilitation Services Program.**
6

7 (a) Customer~~Consumer~~ records.
8

- 9 (1) All personal information available to Agency~~DARS~~ employees as they
10 administer rehabilitation services programs, including names, addresses, and
11 records of customer~~consumer~~ evaluations, is confidential.
12
- 13 (2) The Agency~~DARS~~ may use such information and records only for purposes
14 directly connected with administering the vocational rehabilitation programs.
15
- 16 (3) The Agency~~DARS~~ may directly or indirectly disclose information only in
17 administering the rehabilitation programs, except with the
18 customer's~~consumer's~~ written consent, in compliance with a court order, or in
19 accordance with a federal or state law or regulation. The Agency~~DARS~~ may
20 not share information containing identifiable personal information with
21 advisory or other bodies that do not have official responsibilities for
22 administration of the programs.
23
- 24 (4) Upon a customer's~~consumer's~~ request, the Agency~~DARS~~ releases information
25 to the customer~~a consumer~~ or, as appropriate, his or her parent, guardian, or
26 other representative. If, in the opinion of the counselor, release to the
27 customer~~consumer~~ of a particular document in the customer~~consumer~~ case file
28 will have a harmful effect on the customer~~consumer~~, the customer~~consumer~~
29 will be notified that there is information in the case file that can be released
30 only to an appropriate representative designated in writing by the
31 customer~~consumer~~.
32
- 33 (5) All customer~~consumer~~ information is the property of the Agency~~DARS~~.
34

35 (b) Other records.
36

- 37 (1) Release of customer~~consumer~~ records must be made in accordance with
38 federal law and regulations.

- 1
2 (2) The Agency ~~DARS~~ may provide to and receive from any state agency other
3 nonconfidential information for the purpose of increasing and enhancing
4 services to customers~~consumer~~ and improving agency operations.
5

6 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
7 **HEARING PROCEDURES**

8
9 **§850.60. Scope.**

10
11 (a) The following statutes and regulations authorize the procedures established by this
12 chapter:

13
14 (1) The Rehabilitation Act of 1973, as amended, 29 USC §701 et seq. and
15 regulations of the US Department of Education, Rehabilitation Services
16 Administration, 34 CFR Part 361, as amended, relating to State Vocational
17 Rehabilitation Services;

18 (2) 34 CFR Part 395, as amended, relating to Vending Facility Program for the Blind
19 on Federal and Other Property; and

20 (3) 34 CFR Part 367, as amended, relating to Independent Living Services for Older
21 Individuals Who Are Blind (ILS-OIB); and.

22
23 ~~(2) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001,~~
24 ~~as amended.~~

25
26 (b) The procedures in this subchapter apply to those determinations made by Agency
27 personnel that affect the provision of vocational rehabilitation (VR) services,
28 independent living services for older individuals who are blind, and the Business
29 Enterprises of Texas program.

30
31 (1) Unless the determination concerns the denial, reduction, suspension, or
32 termination of VR services, independent living services for older individuals
33 who are blind, or comprehensive rehabilitation services by the Agency, it is not
34 subject to review under the procedures of this subchapter.

35
36 (2) The following decisions or determinations are not subject to review under this
37 subchapter:

38
39 (A) administrative decisions that are made by Agency supervisors or
40 managers without reference to any specific applicant or customer and
41 that apply generally to the provision of VR services to applicants or
42 customers, including to decisions concerning the assignment of
43 personnel;
44

1 (B) decisions, diagnoses, judgments, actions, or omissions of third-party
2 vendors or service providers;

3
4 (C) decisions concerning the content of an applicant's or customer's record
5 of service for which remedies are provided under 34 C.F.R.
6 §361.38(c)(4) and §361.47(a)(12); and

7
8 (D) decisions allegedly violating any state or federal antidiscrimination or
9 civil rights statute (as amended), including the provisions of Texas Labor
10 Code, Chapter 21; the Rehabilitation Act of 1973, as amended; Section
11 504, the Americans with Disabilities Act; or the Age Discrimination in
12 Employment Act.

13
14 (c) Ineligibility. The following may challenge a determination of ineligibility through
15 the procedures of this division:

16
17 (1) applicants who are found not to be eligible for VR services; and

18
19 (2) previously eligible individuals who have been determined no longer eligible
20 for VR services under 34 CFR §361.43.

21
22 (d) An individual's decision to seek an informal resolution of matters about which the
23 individual is dissatisfied shall not prevent, compromise, or delay the individual's
24 access to formal resolution procedures in this division.

25
26 (e) The Agency shall not suspend, reduce, or terminate VR services being provided to
27 an applicant or customer, including evaluation and assessment services and the
28 development of an Individualized Plan for Employment, pending a resolution of the
29 applicant's or customer's appeal by mediation or hearing, unless:

30
31 (1) the applicant or customer requests a suspension, reduction, or termination of
32 services; or

33
34 (2) the Agency has evidence that the applicant or customer obtained the services
35 through misrepresentation, fraud, collusion, or criminal conduct.

36
37 **§850.61. Definitions.**

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

41 (1) Act--The Rehabilitation Act of 1973 as amended, 29 USC §701, et seq.
42

- 1 (2) Appellant--An applicant, eligible individual, authorized representative, or
2 parent who has initiated formal procedures under this subchapter.
- 3
- 4 (3) Applicant--An individual who submits an application for VR services in
5 accordance with 34 CFR Part 361.
- 6
- 7 (4) Authorized representative--An attorney authorized to practice law in the State
8 of Texas, or an individual designated by a party to represent the party in
9 hearing procedures. The term includes a parent or an individual made legally
10 responsible for a child by a court of competent jurisdiction.
- 11
- 12 (5) Counselor--An Agency employee who is trained to provide vocational
13 guidance and counseling and meets the minimum qualifications designated in a
14 functional job description.
- 15
- 16 (6) Customer--An applicant or an individual with a disability who is receiving VR
17 services.
- 18
- 19 (7) Discovery--The process by which a party, before any final hearing on the
20 merits, may obtain evidence and other information that is relevant to a claim or
21 defense in the appeal.
- 22
- 23 (8) Eligible individual--Any individual with a disability determined to be eligible
24 to receive VR services.
- 25
- 26 (9) Hearing--A formal review conducted under this chapter. This term includes
27 prehearing conferences.
- 28
- 29 (10) Impartial hearing officer (IHO)--An individual who is appointed to conduct a
30 hearing under this chapter.
- 31
- 32 (11) Individualized Plan for Employment--A plan developed for each individual
33 determined to be eligible for VR services, in accordance with 34 CFR Part 361.
- 34
- 35 (12) Parent--The term "parent," whether singular or plural, means a minor child's
36 natural or adoptive parent, the spouse of the minor child's natural or adoptive
37 parent, the minor child's surrogate or foster parent, the spouse of the surrogate
38 or foster parent, or other individual made legally responsible for the minor
39 child by a court.
- 40
- 41 (13) Party--An individual or agency named or admitted to participate in a formal
42 hearing.
- 43
- 44 (14) Record--The official record of a hearing, including all arguments, briefs,
45 pleadings, motions, intermediate rulings, orders, evidence received or
46 considered, statements of matters officially noticed, questions and offers of

1 proof, objections and rulings on objections, proposed findings of fact,
2 conclusions of law, and hearing officer decision; any other decision, opinion,
3 or report by the hearing officer or Commission; and all memoranda or data,
4 including customer and applicant files, submitted to or considered by the
5 impartial hearing officer.
6

7 (15) State Plan--The plan for VR services submitted by the Agency's Vocational
8 Rehabilitation Division in compliance with the Act.
9

10 **§850.62. Filing a Request for Review.**
11

12 (a) Any applicant or eligible individual who is dissatisfied with a determination made by
13 the Agency, as described in §850.60 of this subchapter (relating to Scope), may
14 request, or, if appropriate, may request through the individual's authorized
15 representative, a review of the determination. Although no prescribed form is
16 required to file a request, preprinted forms for this purpose are available on request at
17 any Agency VR office.
18

19 (b) The request for a review shall be filed in writing with the hearings coordinator within
20 the Agency's Office of General Counsel.
21

22 (1) A request shall be considered filed on the day that it is received by the hearings
23 coordinator within the Agency's Office of General Counsel.
24

25 (2) Preprinted forms for this purpose are available on request from the hearings
26 coordinator within the Agency's Office of General Counsel or any Agency VR
27 office.
28

29 (c) On receiving a request for review, the hearings coordinator within the Agency's
30 Office of General Counsel shall, within five working days, mail the appellant:
31

32 (1) the name, address, and telephone number of the Client Assistance Program
33 established under federal law;
34

35 (2) the name of the IHO appointed to hear the appeal, and the date, time, and place
36 of any prehearing;
37

38 (3) a copy of applicable hearing procedures; and
39

40 (4) notice that the appellant has the right to request mediation procedures.
41

42 **§850.63. Informal Dispute Resolution.**
43

44 (a) The Agency shall provide an opportunity for informal resolution of an appeal.
45

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

- 1
2 (1) informal meetings with VR counselors or their supervisors;
3
4 (2) second reviews of the case file and case decisions by VR management;
5
6 (3) telephone calls to or conference calls that include the affected parties; or
7
8 (4) written explanations or summaries of the policies, laws, or regulations involved
9 in the complaint.

- 10
11 (c) If the informal resolution procedure results in a final agreement between the parties,
12 no hearing shall be held.
13
14 (d) If no final informal resolution is reached, the Agency shall provide an opportunity
15 for a hearing to resolve an appeal.
16
17 (e) Either a final agreement resulting from informal resolution or a hearing and impartial
18 hearing officer decision shall be completed within 60 calendar days of the original
19 filing of the appeal, unless the parties agree to a specific extension of time.
20

21 **§850.64. Time for Hearing.**

22
23 A hearing conducted under this chapter by an IHO selected in accordance with §850.65
24 of this subchapter, relating to (Mediation Procedures), will be held within 60 days of an
25 applicant's or eligible individual's request for review of an Agency determination that
26 affects the provision of VR services to the individual, unless informal resolution or a
27 mediation agreement is achieved before the 60th day or the parties agree to a specific
28 extension of time.
29

30 **§850.65. Mediation Procedures.**

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

- 1 (c) The Agency shall bear all costs related to the mediation process, consistent with this
2 subchapter.
- 3
- 4 (d) The request for mediation shall be filed in writing with the hearings coordinator
5 within the Agency's Office of General Counsel. On receiving a request for mediation
6 from the parties, the hearings coordinator shall randomly select an individual from a
7 list of qualified mediators who are knowledgeable in laws and regulations relating to
8 the provision of VR services, ILS-OIB, or the Business Enterprises of Texas
9 program, whichever may apply to the dispute.
- 10
- 11 (e) Sessions in the mediation process shall be coordinated by the mediator in a timely
12 manner at a location convenient to both parties in the dispute. Parties shall be
13 provided an opportunity to submit evidence and other information that supports their
14 positions.
- 15
- 16 (f) All discussions that occur during the mediation sessions are confidential and shall
17 not be used as evidence in any subsequent due process hearing or civil proceeding.
18 The mediator may require the parties to sign a confidentiality pledge before the start
19 of the mediation process.
- 20
- 21 (g) Any agreement reached through the mediation process shall be documented in a
22 written mediation agreement and signed by the parties to the dispute. Copies shall be
23 provided to both parties. The agreement then becomes a part of the customer record.
- 24
- 25

26 **§850.66. Assignment of Impartial Hearing Officer.**

27

- 28 (a) The hearings coordinator, as described in §850.62 of this subchapter, relating to
29 (Filing a Request for Review), shall select, on a random basis, or by agreement
30 between the Agency and the appellant, or if appropriate, the appellant's authorized
31 representative or a parent, an IHO from a list of qualified IHOs maintained by the
32 Agency.
- 33
- 34 (b) The IHO shall be an individual who:
- 35
- 36 (1) is not an employee of a public agency (other than an administrative law judge,
37 hearing examiner, or employee of an institution of higher education);
- 38
- 39 (2) has knowledge of the delivery of VR services, the state plan, and the federal
40 and state regulations governing appeals under this chapter;
- 41
- 42 (3) has received training specified by the Agency with respect to the performance
43 of official duties; and
- 44

1 (4) has no personal, professional, or financial interest that would conflict with his
2 or her objectivity in the hearing.

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

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

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

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

17
18
19 **§850.67. Powers and Duties of Impartial Hearing Officer.**

20
21 (a) The IHO has the authority and duty to:

22
23 (1) conduct a full and impartial hearing;

24
25 (2) take action to avoid unnecessary delay in the disposition of the proceeding; and

26
27 (3) maintain order.

28
29 (b) The IHO has the power to regulate the course of the hearing, including the power to:

30
31 (1) administer oaths;

32
33 (2) take testimony;

34
35 (3) rule on questions of evidence;

36
37 (4) rule on discovery issues;

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

42
43 (6) admit or deny party status;

44

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

3
4 (8) grant continuances;

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

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

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

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

19
20 **§850.68. Substitution of Impartial Hearing Officer.**

21
22 (a) If for any reason an IHO is unable to continue presiding over a pending hearing, or
23 issue a decision after the conclusion of the hearing, another IHO shall be designated
24 as a substitute to complete the hearing and render a decision in accordance with these
25 rules. Reasons may include, but are not limited to, withdrawal or reassignment to
26 avoid the appearance of impropriety or partiality.

27
28 (b) The substitute IHO may use the existing record and may conduct further proceedings
29 as necessary and proper to conclude the hearing and render a decision.

30
31 **§850.69. Reasonable Accommodations.**

32
33 (a) Any hearing or proceedings conducted under this subchapter shall be held, whenever
34 feasible, by telephone (directly or by relay), at a time and place reasonably accessible
35 to the appellant and any witnesses, and convenient for parties. In considering the
36 physical location of a hearing or proceeding, the IHO shall consider, among other
37 factors:

38
39 (1) the suitability of any proposed facilities for a hearing, including the ability of
40 the appellant and any witnesses to gain physical access to the proceedings and
41 facilities; and

42
43 (2) the comparative distances and times required to travel from places of work or
44 residence to a proposed hearing location by parties and witnesses.

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

5
6 (c) A copy of a transcript prepared during hearing proceedings and all notices and
7 documents shall be provided to the appellant in an accessible format on request.

8
9 **§850.70. Appearance of Parties at Hearings; Representation.**

10
11 (a) An individual may represent himself or herself.

12
13 (b) A party may be represented by an attorney authorized to practice law in Texas or by
14 any other representative authorized by the party to represent the party.

15
16 (c) A party's authorized representative shall be copied on all notices, pleadings, and
17 other correspondence.

18
19 (d) A party's authorized representative remains the representative of record in absence of
20 a formal request to withdraw and an order approving such withdrawal issued by the
21 IHO.

22
23 (e) The Agency is not responsible for expenses incurred by appellants seeking remedy
24 under this subchapter and representation and attorney fees and related expenses are
25 the responsibility of the individual parties.

26
27 **§850.71. Failure to Attend Hearing and Default.**

28
29 If, after receiving notice of a hearing, a party or the party's authorized representative fails
30 to attend the hearing, the IHO may proceed and, when appropriate, issue a default
31 decision against the absent party.

32
33 **§850.72. Witness Fees.**

34
35 (a) Any witness or deponent who is not a party to, and who is subpoenaed or otherwise
36 appears at, any hearing or proceeding at the request of the Agency is entitled to
37 receive reimbursement as provided under Texas Government Code §2001.103.

38
39 (b) The Agency is not responsible for expenses incurred by any witness or deponent who
40 is not a party to, and who is subpoenaed or otherwise appears at, any hearing or
41 proceeding at the request of the appellant.

1 (c) The party calling or deposing an expert witness is responsible for all fees and
2 expenses charged by the expert witness.

3
4 **§850.73. Prehearing Conferences.**

5
6 (a) The IHO may hold a prehearing conference to resolve matters preliminary to the
7 hearing. At the discretion of the IHO, a prehearing conference may be held by
8 telephone (directly or by relay). A prehearing conference may be convened to
9 address any or all of the following matters:

10
11 (1) notice of jurisdiction or the IHO's authority;

12
13 (2) scope or party status;

14
15 (3) the date and location of the final hearing;

16
17 (4) factual and legal issues;

18
19 (5) motions;

20
21 (6) issuance of subpoenas;

22
23 (7) discovery disputes;

24
25 (8) scheduling;

26
27 (9) stipulations;

28
29 (10) settlement conferences;

30
31 (11) requests for official notice;

32
33 (12) identification and exchange of documentary evidence;

34
35 (13) admissibility of evidence;

36
37 (14) identification and qualification of witnesses;

38
39 (15) order of presentation; and

40
41 (16) other matters that promote the orderly and prompt conduct of the hearing.

42
43 (b) Within five business days of the date on which the IHO receives the appellant's
44 petition or request for review, the IHO shall notify the appellant in writing of any
45 other matters that the IHO considers expedient for an orderly conduct of the

1 prehearing, including the following:

2
3 (1) the final or merits hearing will be held within 60 days after the date when the
4 hearings coordinator received the petition or request for review;

5
6 (2) the appellant's right to request mediation;

7
8 (3) the reasons for the prehearing conference;

9
10 (4) the way the appellant might request a continuance of the prehearing
11 conference;

12
13 (5) the effect of failing to participate in a prehearing conference; and

14
15 (6) the appellant's right to be represented.

16
17 **§850.74. Dismissal without Hearing.**

18
19 (a) The IHO may entertain motions for dismissal without a hearing for the following
20 reasons:

21
22 (1) failure to pursue the hearing;

23
24 (2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;

25
26 (3) withdrawal of the request for hearing;

27
28 (4) moot questions;

29
30 (5) lack of jurisdiction;

31
32 (6) failure to raise a material issue in the pleading;

33
34 (7) failure of a party or authorized representative to appear at a scheduled hearing;

35
36 (8) failure to respond to a discovery request; and

37
38 (9) failure to respond to any order by the IHO, including an order to disclose the
39 identities of witnesses and exhibits.

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

3
4 **§850.75. Conduct of Hearing.**

5
6 (a) On a genuine issue in a contested case, each party or authorized representative is
7 entitled to:

8
9 (1) call witnesses, including other parties;

10
11 (2) offer evidence;

12
13 (3) cross-examine any witness called by another party; and

14
15 (4) make opening and closing statements.

16
17 (b) Once the hearing has begun, the parties and authorized representatives shall only be
18 off the record when the IHO permits. If the discussion off the record is pertinent,
19 then the IHO summarizes the discussion for the record.

20
21 (c) Objections shall be noted in the record in a timely manner.

22
23 (d) The IHO may continue a hearing from time to time and from place to place. If the
24 time and place for the hearing to reconvene are not announced at the hearing, a
25 notice shall be mailed stating the time and place of the hearing.

26
27 (e) The IHO may question witnesses and parties and/or direct the submission of
28 supplemental evidence.

29
30 **§850.76. Order of Proceedings.**

31
32 (a) A case shall be called to order by the IHO.

33
34 (b) Proceedings under this subchapter are conducted according to the following
35 provisions:

36
37 (1) The appellant may briefly state the nature of the claim or defense, what the
38 appellant expects to prove, and the relief sought. Immediately thereafter, the
39 Agency may make a similar statement, and any other parties are afforded
40 similar rights as determined by the IHO. The IHO may limit the time available
41 for each party or authorized representative with respect to such statement.

42
43 (2) Evidence is introduced by the appellant. The Agency, or its authorized
44 representative, and any other parties may cross-examine each of the appellant's
45 witnesses.

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

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

8
9 (5) Evidence, if any, is introduced by the Agency. The appellant and any other
10 parties may cross-examine each of the Agency's witnesses.

11
12 (6) Any other parties may make statements and introduce evidence. The appellant
13 and the Agency may cross-examine the other parties' witnesses.

14
15 (7) The parties may present rebuttal evidence.

16
17 (8) The parties may be allowed to make either oral or written closing statements at
18 the discretion of the IHO.

19
20 (9) The IHO may examine any witness and party.

21
22 (c) The IHO may permit deviations from this order of procedure in the interest of justice
23 or to expedite the proceedings.

24
25 (d) Parties shall provide four copies of each exhibit offered.

26
27 (e) Burden of proof. The party seeking affirmative relief, either on the case as a whole
28 or on an issue, bears the burden of proof to prove the affirmative of the issue, or the
29 party's case as a whole, by a preponderance of the evidence.

30
31 **§850.77. Rules of Evidence.**

32
33 (a) The rules of evidence as applied in nonjury civil cases by the district courts of the
34 State of Texas apply to a hearing under this subchapter.

35
36 (b) Exceptions--evidence inadmissible under the rules of evidence applied in nonjury
37 civil cases by the district courts of the State of Texas may be admitted:

38
39 (1) if it consists of any documents contained in any Agency file related to the
40 appellant; or

41
42 (2) if it is:

43
44 (A) necessary to ascertain the facts not reasonably susceptible of proof under
45 those rules;
46

1 (B) not precluded by statute; and

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

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

7
8 **§850.78. Transcription of Proceedings.**

9
10 (a) Unless precluded by law, the hearing shall be recorded electronically by tape
11 recorder or similar device either by the IHO or by someone designated by the IHO.
12 The recording is the official record of the testimony offered as evidence during the
13 hearing. Any party, however, may request, at the party's expense, that the hearing be
14 recorded by a court reporter if the request is made no later than 10 days before the
15 date of the hearing.

16
17 (b) In lieu of a recording of the testimony electronically or of the reporting of testimony
18 by a court reporter, the parties to a hearing may agree upon a statement of the
19 evidence, agree to use recorded transcriptions as a statement of the testimonial
20 evidence, or agree to the summarization of testimony before the IHO, provided,
21 however, that proceedings or any part of them shall be transcribed on written request
22 of any party.

23
24 (c) Unless otherwise provided in this subchapter, the party requesting a transcription of
25 any electronic recording of the proceedings shall bear the cost for transcribing any
26 such electronically recorded testimony. Nothing provided for in this section limits
27 the Agency to a stenographic record of the proceedings.

28
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 **§850.80. Pleadings.**

39
40 (a) In a formal appeal, all pleadings, for which no other form is prescribed, shall
41 contain:

42
43 (1) the name of the party making the pleading;

44
45 (2) the names of all other known parties;

1 (3) a concise statement of the facts alleged and relied upon;

2
3 (4) a request stating the type of relief, action, or order desired;

4
5 (5) any other matter required by law;

6
7 (6) a certificate of service, as required by these rules; and

8
9 (7) the signature of the party or the party's authorized representative making the
10 pleading.

11
12 (b) Any pleading filed in a formal appeal may be amended up to 14 days before the date
13 of the hearing. Amendments filed after that time may be accepted at the discretion of
14 the IHO.

15
16 (c) Any pleading may adopt and incorporate, by specific reference, any part of any
17 document or entry in the official files and records of the Agency.

18
19 (d) All pleadings relating to any matter pending before the Agency shall be sent to
20 Texas Workforce Commission, Office of General Counsel, 101 E. 15th Street, Room
21 608, Austin, Texas 78778-0001, with the notation "Attention: Hearings
22 Coordinator," or delivered to the Agency at that address to be filed with the IHO and
23 all parties.

24
25 (e) All pleadings shall be in a format and medium reasonably calculated to provide the
26 required information and must be clear and legible.

27
28 (f) Pleadings shall contain the name, address, and telephone number of the party filing
29 the document or the name, telephone number, and business address of the authorized
30 representative.

31
32 (g) A certificate of service shall be contained in or attached to all filings. The certificate
33 shall be signed by the individual making the filing, show the manner of service, state
34 that the filing has been served on all other parties, and identify those parties. The
35 certificate is prima facie evidence of service.

36
37 **§850.81. Discovery and Mandatory Disclosures.**

38
39 (a) Written Discovery. Requests for disclosure of information shall be the only form of
40 written discovery that the parties are entitled to make. Unless a party is ordered by
41 the IHO during a pretrial conference to disclose other information in addition to the
42 items in this section, a party may request in writing that the other party disclose or
43 produce the following:

1 (1) the names, addresses, and telephone numbers of individuals having knowledge
2 of relevant facts, including those who might be called as witnesses and any
3 expert who might be called to testify;

4
5 (2) for any testifying expert:

6
7 (A) the subject matter on which the expert will testify;

8
9 (B) the expert's summary; and

10
11 (C) a brief summary of the substance of the expert's mental impressions and
12 opinions and the basis for them, along with all documents and tangible
13 items reflecting such information;

14
15 (3) the issues and the factual basis for a party's claims and defenses in the appeal;
16 and

17
18 (4) information concerning the appellant's employment, including the appellant's
19 job application with the appellant's current employer and any personnel
20 evaluations.

21
22 (b) Subject to the provisions in this section, parties may obtain discovery regarding any
23 matter that is relevant to a claim or defense in the appeal.

24
25 (c) All discovery requests shall be directed to the party from which discovery is being
26 sought.

27
28 (d) All disputes with respect to any discovery matter shall be filed with and resolved by
29 the IHO.

30
31 (e) All parties shall be afforded a reasonable opportunity to file objections and motions
32 to compel the IHO regarding any discovery requests.

33
34 (f) Copies of discovery requests and documents filed in response thereto shall be filed
35 on all parties, but should not be filed with the IHO or the hearings coordinator unless
36 directed to do so by the IHO or when in support of objections, motions to compel,
37 motions for protective order, or motions to quash.

38
39 (g) Any documents contained in any Agency file that are related to the appellant are
40 considered to be admissible. The Agency shall, without awaiting either an order or a
41 discovery request under subsection (a) of this section, provide to the appellant a
42 complete copy of the appellant's record of services, as described at 34 C.F.R.;

1 §361.47, including any electronically stored or preserved records, to the extent
2 pertinent to the determination that is the subject of the request for review.
3

4 **§850.82. Documentary Evidence and Official Notice.**
5

6 (a) Documentary evidence may be received in the form of copies or excerpts if the
7 original is not readily available. On request, parties shall be given an opportunity to
8 compare the original and the copy or excerpt.
9

10 (b) When numerous similar documents that are otherwise admissible are offered into
11 evidence, the IHO may limit the documents received to those that are typical and
12 representative. The IHO may also require that an abstract of relevant data from the
13 documents be presented in the form of an exhibit, provided that all parties are given
14 the right to examine the documents from which such abstracts were made.
15

16 (c) The following laws, rules, regulations, and policies are officially noticed:
17

18 (1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq.;
19

20 (2) US Department of Education regulations, 34 C.F.R. Parts 361, 367, and 395;
21

22 (3) The Agency's State Plan for Vocational Rehabilitation Services;
23

24 (4) The Agency's Vocational Rehabilitation, Independent Living for Older
25 Individuals Who Are Blind, and Rehabilitation policy manuals; and
26

27 (5) Texas Administrative Code, Title 40, Part 20, Texas Workforce Commission.
28

29 (d) Official notice also may be taken of:
30

31 (1) all facts that are judicially cognizable; and
32

33 (2) generally recognized facts within the area of the Agency's specialized
34 knowledge.
35

36 **§850.83. Continuance.**
37

38 (a) The IHO, at his or her discretion, may grant a continuance to further the interests of
39 justice. No motion for continuance shall be granted, unless it is made in writing or
40 stated in the record, and the motion shall set forth the specific grounds upon which
41 the party seeks the continuance.
42

43 (b) Unless made during a prehearing or hearing, a party seeking a continuance,
44 cancellation of a scheduled proceeding, or extension of an established deadline shall
45 file such motion no later than 10 days before the date or deadline in question. A
46 motion filed fewer than 10 days before the date or deadline in question shall contain

1 a certification that the requestor contacted the other party or party's authorized
2 representative and whether the request is opposed by the party or party's authorized
3 representative. Further, if a continuance to a certain date is sought, the motion shall
4 include a proposed date or dates and must indicate whether the other party or party's
5 authorized representative contacted agrees on the proposed new date or dates.
6

7 **§850.84. Impartial Hearing Officer Decision.**
8

9 (a) Within 30 days of the hearing completion date, the IHO shall issue a decision that is
10 based on the evidence and consistent with the provisions of the approved state plan;
11 the Act, as amended; federal vocational rehabilitation regulations, state regulations,
12 and policies that are consistent with federal requirements, and shall provide to the
13 appellant or, if appropriate, the appellant's authorized representative, and the
14 Agency's authorized representative or the Agency's Office of General Counsel, as
15 appropriate, a full written report of the findings of fact, conclusions of law, and any
16 other grounds for the decision.
17

18 (b) The hearing completion date is the date upon which the IHO receives the transcript,
19 if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of
20 the adjournment of the hearing.
21

22 (c) The decision shall address each issue considered by the IHO.
23

24 (d) The IHO may prescribe such remedies as are appropriate within the scope of, and
25 permitted by, as applicable, Texas Labor Code, Chapters 352 and 355; the Act, as
26 amended; the regulations of the Rehabilitation Services Administration of the US
27 Department of Education, 34 CFR Parts 361, 365, and 395; and the Agency's policies
28 and rules.
29

30 (1) The IHO shall not award restitutionary, compensatory, or monetary relief,
31 including monetary damages, to any party.
32

33 (2) The IHO shall not prescribe an action affecting the employment of an Agency
34 employee.

1
2 **§850.85. Finality of the Hearing Officer's Decision.**
3

4 The decision of the IHO is the final decision of the Agency, and, if no timely motion for
5 reconsideration is filed, becomes the final decision.
6

7 **§850.86. Implementation of Final Decision.**
8

9 If a party brings a civil action to challenge a final decision of an IHO, the final decision
10 involved shall be implemented pending review by the court.
11

12 **§850.87. Motion for Reconsideration.**
13

14 (a) Any party to a hearing may file a motion for reconsideration within 20 days after the
15 party is notified of the issuance of the IHO's decision. The motion shall be filed with
16 the hearings coordinator within the Agency's Office of General Counsel.
17

18 (b) The motion for reconsideration shall specify the matters in the IHO's decision that
19 the party considers to be erroneous. Any response to the motion for reconsideration
20 shall be filed no later than 30 days after a party, or a party's attorney or
21 representative, is notified of the IHO's issuance of the decision.
22

23 (c) The IHO shall rule on the motion for reconsideration no later than 15 days after
24 receipt of the motion for reconsideration, or after receipt of the response to the
25 motion for reconsideration, whichever comes later. If the motion for reconsideration
26 is granted, the IHO issues a decision upon reconsideration within an additional 15
27 days. If the IHO fails to rule on the motion for reconsideration within 15 days, the
28 motion for reconsideration is denied as a matter of law.
29

30 (d) Service. Service of the IHO's decision or of a motion for reconsideration or response
31 under this section shall be made by any of the following means to a party, a party's
32 attorney, or a party's representative:
33

34 (1) hand-delivery;

35 (2) courier-receipted delivery;

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

37 (4) e-mail or facsimile transmission before 5:00 p.m. on a business day to the
38 recipient's current e-mail address or telecopier number; or
39

40 (5) such other means as the IHO may direct.
41

42 (e) Date of service. The date of service is the date of hand-delivery, delivery by courier,
43 mailing, e-mailing, or facsimile transmission, unless otherwise required by law.
44
45
46

1 Unless the contrary is shown, a decision, motion, or response that is sent by regular
2 first-class mail is presumed to have been received within three days of the date of
3 postmark, if enclosed in a wrapper addressed to the recipient's last known address
4 with return address to the sender, stamped with the appropriate first-class postage,
5 and deposited with the US Postal Service on the date postmarked.

6
7 **§850.88. Civil Action.**

8
9 (a) Any party that disagrees with the findings and decision of an IHO has a right to
10 bring a civil action in any court of competent jurisdiction without regard to the
11 amount in controversy, consistent with 34 CFR §361.57(i).

12
13 (b) An individual must initiate a civil action for review of an IHO's decision by filing a
14 petition not later than the 30th day after the date on which the decision that is the
15 subject of complaint is final and appealable.

16
17 **§850.89. Computation of Time.**

18
19 (a) In computing any period of time prescribed or allowed by the rules in this
20 subchapter, by order of an IHO, or by any applicable statute, the day of the act,
21 event, or default after which the designated period of time begins to run is not
22 included.

23
24 (b) Unless otherwise provided by the rules in this subchapter, the last day of the period
25 so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which
26 event the period runs until the end of the next day that is not a Saturday, Sunday, or
27 legal holiday. Saturdays, Sundays, and legal holidays shall not be counted for any
28 purpose in any time period of five days or fewer.

29
30 (c) In computing the time periods required for filing a motion for reconsideration, as set
31 forth at §850.87 of this subchapter, relating to (Motion for Reconsideration), and for
32 appealing a final decision of an IHO to a court, as set forth at §850.88 of this
33 subchapter, relating to (Civil Action), Saturdays, Sundays, and legal holidays are
34 included.

35
36 ~~**SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND HEARING**~~
37 ~~**PROCEDURES**~~

38
39 ~~**DIVISION 1**~~

40 ~~**GENERAL RULES**~~

41
42 ~~**§850.60. Purpose.**~~

43
44 ~~(a) This subchapter establishes procedures:~~

- 1 ~~(1) in Division 1 of this subchapter (relating to General Rules) that govern~~
2 ~~generally all administrative hearings and appeals;~~
3 ~~-~~
4 ~~(2) in Division 2 of this subchapter (relating to Division for Blind Services and~~
5 ~~Division for Rehabilitation Services) that govern appeals concerning the~~
6 ~~vocational rehabilitation, independent living, and comprehensive rehabilitation~~
7 ~~programs of the Division for Blind Services and Division for Rehabilitation~~
8 ~~Services;~~
9
10 ~~(3) in Division 3 of this subchapter (relating to Division for Early Childhood~~
11 ~~Intervention Services) that govern hearings concerning the provision of~~
12 ~~appropriate early intervention services to a child or child's family; and~~
13 ~~-~~
14 ~~(4) in Division 4 of this subchapter (relating to Office for Deaf and Hard of~~
15 ~~Hearing Services) that govern hearings concerning the suspension, revocation,~~
16 ~~or probation of a certificate holder's certificate granted under the provisions of~~
17 ~~Chapter 81, Human Resources Code and Chapter 57, Government Code.~~

18
19 ~~(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish,~~
20 ~~modify, or alter the jurisdiction, powers, or authority of DARS or the substantive~~
21 ~~rights of any person.~~

22
23 ~~(c) A person's decision to seek an informal resolution, under Divisions 2 and 4 of this~~
24 ~~subchapter, of matters about which the person is dissatisfied shall not prevent,~~
25 ~~compromise, or delay the person's access to formal resolution procedures in this~~
26 ~~subchapter.~~

27
28 **~~§850.61. Legal Authority.~~**

29 ~~The following statutes and regulations authorize the procedures established by this~~
30 ~~subchapter:~~

- 31 ~~(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq., and~~
32 ~~regulations of the Department of Education, 34 C.F.R. Parts 361, 363, 364,~~
33 ~~365, and 367 as amended;~~
34
35 ~~(2) Texas Human Resources Code, Chapter 91, Subchapter D (concerning~~
36 ~~vocational rehabilitation services of the blind);~~
37
38 ~~(3) Texas Human Resources Code, Chapter 111, Subchapter D (concerning~~
39 ~~vocational rehabilitation services);~~
40
41 ~~(4) The Individuals with Disabilities Education Act, as amended, 20 U.S.C. §1400~~
42 ~~et seq., and 34 C.F.R. §303.1 et seq., as amended (concerning early~~
43 ~~intervention services for children with disabilities and developmental delays);~~
44

- ~~-(5) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended;~~
- ~~-(6) Texas Human Resources Code, Chapters 81 and 82 (concerning services for people who are deaf); and~~
- ~~-(7) Texas Government Code, Chapter 57 (concerning court interpreter certification program for interpreters for people who are hearing impaired).~~

§850.62. Definitions.

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

- ~~-(1) Act The Rehabilitation Act of 1973 as amended, 29 U.S.C. §701, et seq.~~
- ~~-(2) Appellant An applicant, eligible individual, authorized representative, or parent who has initiated formal procedures under this subchapter.~~
- ~~-(3) Applicant A person who has applied for services but for whom an eligibility determination has not been made.~~
- ~~-(4) Authorized representative An attorney authorized to practice law in the State of Texas, or a person designated by a party to represent the party in hearing procedures. The term includes a parent or a person made legally responsible for the child by a court of competent jurisdiction.~~
- ~~-(5) Commissioner The chief executive officer of the Department of Assistive and Rehabilitative Services.~~
- ~~-(6) Consumer The term "consumer" refers to and includes a person who:
 - ~~—(A) under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services), has been determined eligible for and is receiving services from DARS;~~
 - ~~—(B) under Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services), is a parent, child, or the child's family;~~
 - ~~—(C) under Division 4 of this subchapter (relating to Office for Deaf and Hard of Hearing Services), not only has been determined eligible for and is receiving services from DARS, but also is an individual defined by §101.1205(e) of this subchapter (relating to Definitions).~~~~

1 ~~(7) DARS The Texas Department of Assistive and Rehabilitative Services, its~~
2 ~~officers, employees, and agents.~~

3 -

4 ~~(8) Discovery The process by which a party, before any final hearing on the~~
5 ~~merits, may obtain evidence and other information that is relevant to a claim or~~
6 ~~defense in the appeal.~~

7 -

8 ~~(9) Eligible individual Any individual person whom DARS has determined to be~~
9 ~~eligible to receive vocational rehabilitation services.~~

10
11 ~~(10) Hearing A formal review conducted under this chapter. This term includes~~
12 ~~prehearing conferences.~~

13
14 ~~(11) Impartial hearing officer (IHO) A person who is appointed to conduct a~~
15 ~~hearing under this chapter.~~

16
17 ~~(12) Parent~~

18
19 ~~—(A) Under Division 2 of this subchapter, the term "parent" whether in the~~
20 ~~singular or plural means a minor child's natural or adoptive parent, the~~
21 ~~spouse of the minor child's natural or adoptive parent, the minor child's~~
22 ~~surrogate or foster parent, the spouse of the surrogate or foster parent, or~~
23 ~~other person made legally responsible for the minor child by a court.~~

24
25 ~~—(B) Under Division 3 of this subchapter, the meaning of the term "parent" is~~
26 ~~as defined in §108.103 of this title (relating to Definitions).~~

27
28 ~~(13) Party A person or agency named or admitted to participate in a formal~~
29 ~~hearing.~~

30
31 ~~(14) Person Any individual, representative, corporation, or other entity, including~~
32 ~~any public or nonprofit corporation, or agency or instrumentality of federal,~~
33 ~~state, or local government.~~

34
35 ~~(15) Record The official record of a hearing, including all arguments, briefs,~~
36 ~~pleadings, motions, intermediate rulings, orders, evidence received or~~
37 ~~considered, statements of matters officially noticed, questions and offers of~~
38 ~~proof, objections and rulings on objections, proposed findings of fact,~~
39 ~~conclusions of law, and hearing officer decision; any other decision, opinion, or~~
40 ~~report by the hearing officer or commissioner; and all DARS memoranda or~~
41 ~~data, including consumer and applicant files, submitted to or considered by the~~
42 ~~impartial hearing officer.~~

43
44 **~~§850.63. Filing a Request for Review.~~**

45
46 ~~(a) Persons who may file a Request for Review.~~

- 1 -
2
3 ~~(1) Under Division 2 of this subchapter (relating to Division for Blind Services~~
4 ~~and Division for Rehabilitation Services), an applicant or eligible individual~~
5 ~~who is dissatisfied with a DARS determination made by staff of DARS that~~
6 ~~affects the provision of vocational rehabilitation services may request a review~~
7 ~~of the determination.~~
- 8
9 ~~(2) Under Division 3 of this subchapter (relating to Division for Early Childhood~~
10 ~~Intervention Services), a parent may initiate a hearing involving the~~
11 ~~identification, evaluation, placement, or provision of appropriate early~~
12 ~~intervention services to a child or child's family.~~
- 13 -
14 ~~(3) Under Division 4 of this subchapter (relating to Office for Deaf and Hard of~~
15 ~~Hearing Services), a certificate holder may request a review of a proposal by~~
16 ~~DARS to revoke or suspend a certificate or place a certificate holder on~~
17 ~~probation.~~

18 ~~(b) A request for a review brought:~~

- 19
20 ~~(1) under Division 2 of this subchapter, shall be filed, as provided in §101.1009 of~~
21 ~~this subchapter (relating to Filings) with the hearings coordinator, DARS Legal~~
22 ~~Services;~~
- 23
24 ~~(2) under Division 3 of this subchapter, is filed, as provided in §101.1107 of this~~
25 ~~subchapter (relating to Administrative Hearings Concerning Individual Child~~
26 ~~Rights) with the assistant commissioner for ECI or, with the hearings~~
27 ~~coordinator, DARS Legal Services, if that assistant commissioner so delegates;~~
28 ~~and~~
- 29
30 ~~(3) under Division 4 of this subchapter, is filed as provided in §101.1215 and~~
31 ~~§101.1217 of this subchapter (relating to Filing a Request for Hearing and~~
32 ~~Filings).~~

33
34 **~~§850.64. Time for Hearing.~~**

35
36 ~~A hearing conducted under Division 2 of this subchapter (relating to Division for Blind~~
37 ~~Services and Division for Rehabilitation Services), by an impartial hearing officer~~
38 ~~selected in accordance with this division, will be held within 60 days of an applicant's or~~
39 ~~eligible individual's request for review of a DARS determination that affects the~~
40 ~~provision of vocational rehabilitation services to the individual, unless informal~~

1 ~~resolution or a mediation agreement is achieved before the 60th day or the parties agree~~
2 ~~to a specific extension of time.~~

3
4 **~~§850.65. Assignment of Impartial Hearing Officer.~~**

5
6 ~~(a) The hearings coordinator as described in §101.1215 and §101.1217 of this~~
7 ~~subchapter (relating to Filing a Request for Hearing and Filings) shall select, on a~~
8 ~~random basis, or by agreement between DARS' authorized representative and the~~
9 ~~appellant, or if appropriate, the appellant's authorized representative or a parent.~~

10
11 ~~(b) The impartial hearing officer shall be an individual who:~~

12
13 ~~—(1) is not an employee of a public agency (other than an administrative law judge,~~
14 ~~hearing examiner, or employee of an institution of higher education);~~

15
16 ~~—(2) has knowledge of the delivery of vocational rehabilitation services, the state~~
17 ~~plan, and the federal and state regulations governing appeals under Division 2~~
18 ~~of this subchapter (relating to Division for Blind Services and Division for~~
19 ~~Rehabilitation Services);~~

20
21 ~~—(3) has received training specified by DARS with respect to the performance of~~
22 ~~official duties; and~~

23
24 ~~—(4) has no personal, professional, or financial interest that would conflict with his~~
25 ~~or her objectivity in the hearing.~~

26
27 ~~(c) An individual is not considered to be an employee of a public agency for the~~
28 ~~purposes of subsection (b) of this section solely because the individual is paid by the~~
29 ~~agency to serve as a hearing officer.~~

30
31 ~~(d) In addition to those qualifications in subsections (a) — (c) of this section, an impartial~~
32 ~~hearing officer who conducts hearings under Division 3 of this subchapter (relating~~
33 ~~to Division for Early Childhood Intervention Services) must have knowledge about~~
34 ~~the provisions of the Individuals with Disabilities Education Act; the rules~~
35 ~~promulgated under that act; and services available for eligible children and their~~
36 ~~families.~~

37
38 ~~(e) Despite the provisions in subsection (a) of this section, if in a subsequent appeal, the~~
39 ~~appellant raises factual issues or claims that either were previously adjudicated or~~
40 ~~could have been adjudicated in a prior appeal:~~

41
42 ~~—(1) the hearings coordinator may appoint the same IHO that heard the prior appeal~~
43 ~~to hear a subsequent appeal; or~~

1
2 ~~-(2) the IHO, on DARS' motion, reassigns the appeal to the IHO who heard the prior~~
3 ~~appeal.~~

4
5 **§850.66. Powers and Duties of Impartial Hearing Officer.**

6
7 ~~(a) The impartial hearing officer has the authority and duty to:~~

8 -
9 ~~(1) conduct a full and impartial hearing;~~

10
11 ~~(2) take action to avoid unnecessary delay in the disposition of the proceeding; and~~

12
13 ~~(3) maintain order.~~

14
15 ~~(b) The impartial hearing officer has the power to regulate the course of the hearing,~~
16 ~~including the power to:~~

17
18 ~~(1) administer oaths;~~

19
20 ~~(2) take testimony;~~

21
22 ~~(3) rule on questions of evidence;~~

23
24 ~~(4) rule on discovery issues;~~

25
26 ~~(5) issue orders relating to hearing and prehearing matters, including orders~~
27 ~~granting motions to subpoena witnesses and imposing nonmonetary sanctions~~
28 ~~regarding discovery;~~

29
30 ~~(6) admit or deny party status;~~

31
32 ~~(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably~~
33 ~~limit the time for presentations;~~

34
35 ~~(8) grant continuance(s);~~

36
37 ~~(9) request parties to submit legal memoranda, proposed findings of fact, and~~
38 ~~conclusions of law; and~~

39
40 ~~(10) issue decisions based on findings of fact and conclusions of law.~~

41
42 ~~(c) Unless required for the disposition of ex parte matters authorized by law, the~~
43 ~~impartial hearing officer may not directly or indirectly communicate in connection~~
44 ~~with any issue of fact or law with the commissioner or any party or a party's~~
45 ~~authorized representative, except on notice and opportunity for each party to~~
46 ~~participate.~~

1
2 ~~(d) The authority of the impartial hearing officer concerning any discovery under~~
3 ~~subsection (b) of this section is subject to the authority granted by these rules or the~~
4 ~~Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.~~
5

6 **~~§850.67. Substitution of Impartial Hearing Officer.~~**
7

8 ~~(a) If for any reason an impartial hearing officer is unable to continue presiding over a~~
9 ~~pending hearing, or issue a decision after the conclusion of the hearing, another~~
10 ~~impartial hearing officer shall be designated as a substitute to complete the hearing~~
11 ~~and render a decision in accordance with these rules.~~

12 ~~(b) The substitute impartial hearing officer may use the existing record and may conduct~~
13 ~~further proceedings as are necessary and proper to conclude the hearing and render a~~
14 ~~decision.~~
15

16 **~~§850.68. Reasonable Accommodations.~~**
17

18 ~~(a) Any hearing or proceedings conducted under this subchapter shall be held, whenever~~
19 ~~feasible, by telephone (directly or by relay), but at a time and place reasonably~~
20 ~~accessible either to the appellant or the certificate holder and any witnesses, and~~
21 ~~convenient for parties. In considering the physical location of a hearing or~~
22 ~~proceeding, the impartial hearing officer considers, among other factors:~~
23

24 ~~—(1) the suitability of any proposed facilities for a hearing, including such~~
25 ~~accommodations as the ability either of the appellant or the certificate holder~~
26 ~~and any witnesses to gain physical to the proceedings and facilities; and~~
27

28 ~~—(2) the comparative distances and times required to travel from places of work or~~
29 ~~residence to a proposed hearing location by parties and witnesses.~~
30

31 ~~(b) DARS shall, upon reasonable notice, provide the appellant with readers or~~
32 ~~interpreters. Reasonable notice shall be considered to be no fewer than five working~~
33 ~~days prior to the proceeding unless good cause for a shorter period shall exist in the~~
34 ~~judgment of the impartial hearing officer.~~
35

36 ~~(c) A copy of a transcript prepared during hearing proceedings and all notices and~~
37 ~~documents are provided to the appellant in an accessible format upon request.~~
38

39 **~~§850.69. Appearance of Parties at Hearings; Representation.~~**
40

41 ~~(a) An individual may represent himself or herself.~~
42

43 ~~(b) A party may be represented by an attorney authorized to practice law in Texas or by~~
44 ~~any other representative authorized by the party to represent him or her.~~
45

1 ~~(c) A party's authorized representative shall be copied on all notices, pleadings, and~~
2 ~~other correspondence.~~

3
4 ~~(d) A party's authorized representative remains the representative of record in absence of~~
5 ~~a formal request to withdraw and an order approving such withdrawal issued by the~~
6 ~~impartial hearing officer.~~

7
8 ~~(e) DARS is not responsible for expenses incurred by appellants seeking remedy through~~
9 ~~this subchapter, and representation and attorney fees and related expenses are the~~
10 ~~responsibility of the individual parties.~~

11
12 **~~§850.70. Failure to Attend Hearing and Default.~~**

13
14 ~~If, after receiving a notice of a hearing, a party or the party's authorized representative fails~~
15 ~~to attend the hearing, the impartial hearing officer may proceed and, where appropriate,~~
16 ~~may issue a default decision against the absent party.~~

17
18 **~~§850.71. Witness Fees.~~**

19
20 ~~(a) Any witness or deponent who is not a party to and who is subpoenaed or otherwise~~
21 ~~appears at any hearing or proceeding at the request of DARS is entitled to receive~~
22 ~~reimbursement as provided in the Texas Government Code, §2001.103.~~

23
24 ~~(b) DARS is not responsible for expenses incurred by any witness or deponent who is~~
25 ~~not a party to and who is subpoenaed or otherwise appears at any hearing or~~
26 ~~proceeding at the request of the appellant.~~

27
28 ~~(c) The party calling or deposing an expert witness is responsible for all fees and~~
29 ~~expenses charged by the expert witness.~~

30
31 **~~§850.72. Prehearing Conferences.~~**

32
33 ~~(a) The impartial hearing officer may hold a prehearing conference to resolve matters~~
34 ~~preliminary to the hearing. At the discretion of the impartial hearing officer, a~~
35 ~~prehearing conference may be held by telephone (directly or by relay). A prehearing~~
36 ~~conference may be convened to address any or all of the following matters:~~

37 -
38 ~~(1) notice of jurisdiction or the impartial hearing officer's authority;~~

39
40 ~~(2) scope or party status;~~

41
42 ~~(3) the date and location of the final hearing;~~

43
44 ~~(4) factual and legal issues;~~

45
46 ~~(5) motions;~~

- ~~(6) issuance of subpoenas;~~
- ~~(7) discovery disputes;~~
- ~~(8) scheduling;~~
- ~~(9) stipulations;~~
- ~~-~~
- ~~(10) settlement conferences;~~
- ~~(11) requests for official notice;~~
- ~~(12) identification and exchange of documentary evidence;~~
- ~~(13) admissibility of evidence;~~
- ~~(14) identification and qualification of witnesses;~~
- ~~(15) order of presentation; and~~
- ~~-~~
- ~~(16) other matters that promote the orderly and prompt conduct of the hearing.~~

~~(b) Within five business days of the date on which the IHO receives the appellant's petition or request for review, the impartial hearing officer shall notify the appellant in writing of any other matters the impartial hearing officer considers expedient for an orderly conduct of the prehearing, including the following:~~

- ~~(1) the final or merits hearing will be held within 60 days after the date when the hearings coordinator received the petition or request for review;~~
- ~~(2) the appellant's right to request mediation;~~
- ~~(3) the reasons for the prehearing conference;~~
- ~~(4) the way the appellant might request a continuance of the prehearing conference;~~
- ~~(5) the effect of failing to participate in a prehearing conference; and~~
- ~~(6) the appellant's right to be represented.~~

~~**§850.73. Dismissal Without Hearing.**~~

~~(a) The impartial hearing officer may entertain motions for dismissal without a hearing for the following reasons:~~

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-

- ~~(1) failure to pursue the hearing;~~
-
- ~~(2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;~~
- ~~(3) withdrawal of the request for hearing;~~
- ~~(4) moot questions;~~
- ~~(5) lack of jurisdiction;~~
- ~~(6) failure to raise a material issue in the pleading;~~
- ~~(7) failure of a party or authorized representative to appear at a scheduled hearing;~~
- ~~(8) failure to respond to a discovery request; and~~
- ~~(9) failure to respond to any order by the impartial hearing officer including an order to disclose the identities of witnesses and exhibits.~~

~~(b) If the impartial hearing officer finds that a motion for dismissal should be granted, the impartial hearing officer may enter a final order of dismissal.~~

§850.74. Conduct of Hearing.

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

-

- ~~(1) call witnesses, including parties;~~
- ~~(2) offer evidence;~~
- ~~(3) cross examine any witness called by another party; and~~
- ~~(4) make opening and closing statements.~~

~~(b) Once the hearing is begun, the parties and authorized representatives may be off the record only when the impartial hearing officer permits. If the discussion off the record is pertinent, then the impartial hearing officer summarizes the discussion for the record.~~

~~(c) Objections shall be timely noted in the record.~~

~~(d) The impartial hearing officer may continue a hearing from time to time and from place to place. If the time and place for the hearing to reconvene are not announced at the hearing, a notice is mailed stating the time and place of the hearing.~~

1
2 ~~(e) The impartial hearing officer may question witnesses and parties and/or direct the~~
3 ~~submission of supplemental evidence.~~

4
5 **§850.75. Order of Proceedings.**

6
7 ~~(a) A case shall be called to order by the impartial hearing officer.~~

8
9 ~~(b) Proceedings under Divisions 2 and 3 of this subchapter (relating to Division for~~
10 ~~Blind Services and Division for Rehabilitation Services and Division for Early~~
11 ~~Childhood Intervention Services) are conducted according to the following:~~

12 -
13 ~~(1) The appellant may state briefly the nature of the claim or defense, what the~~
14 ~~appellant expects to prove, and the relief sought. Immediately thereafter,~~
15 ~~DARS may make a similar statement, and any other parties are afforded~~
16 ~~similar rights as determined by the impartial hearing officer. The impartial~~
17 ~~hearing officer may limit the time available for each party or authorized~~
18 ~~representative with respect to such statement.~~

19
20 ~~(2) Evidence is then introduced by the appellant. DARS, or its authorized~~
21 ~~representative, and any other parties may cross examine each of the appellant's~~
22 ~~witnesses.~~

23
24 ~~(3) Cross examination is not limited solely to matters raised on direct~~
25 ~~examination. Parties or authorized representatives are entitled to redirect and~~
26 ~~recross examination.~~

27
28 ~~(4) Unless the statement has already been made, the DARS or its authorized~~
29 ~~representative may briefly state the nature of the claim or defense, what DARS~~
30 ~~expects to prove, and the relief sought.~~

31 -
32 ~~(5) Evidence, if any, is introduced by DARS. The appellant and any other parties~~
33 ~~may cross examine each of DARS' witnesses.~~

34 -
35 ~~(6) Any other parties may make statements and introduce evidence. The appellant~~
36 ~~and DARS may cross examine the other parties' witnesses.~~

37 -
38 ~~(7) The parties may present rebuttal evidence.~~

39
40 ~~(8) The parties may be allowed to make either oral or written closing statements at~~
41 ~~the discretion of the impartial hearing officer.~~

42
43 ~~(9) The impartial hearing officer may examine any witness and party.~~

44
45 ~~(e) The order of proceedings set out in subsection (b) of this section applies to~~
46 ~~proceedings under Division 4 of this subchapter (relating to Office for Deaf and Hard~~

1 of Hearing Services), except that DARS bears the burden of proof and is entitled to
2 present its case first subject to cross-examination by the certificate holder and any
3 other parties. Once DARS rests, the certificate holder may present his or her case.
4

5 ~~(d) The impartial hearing officer may permit deviations from this order of procedure in~~
6 ~~the interest of justice or to expedite the proceedings.~~
7

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

10 ~~(f) Burden of proof. The party seeking affirmative relief, either on the case as a whole or~~
11 ~~on an issue, bears the burden of proof to prove the affirmative of the issue, or the~~
12 ~~party's case as a whole, by a preponderance of the evidence. In cases brought under~~
13 ~~Division 4 of this subchapter, DARS bears the burden of proof.~~
14

15 **~~§850.76. Rules of Evidence.~~**
16

17 ~~(a) The rules of evidence as applied in nonjury civil cases by the district courts of the~~
18 ~~state of Texas apply to a hearing under this subchapter.~~
19

20 ~~(b) Exceptions: evidence inadmissible under the rules of evidence applied in nonjury~~
21 ~~civil cases by the district courts of the state of Texas may be admitted:~~
22

23 ~~—(1) if it consists of any documents contained in any file of DARS related to the~~
24 ~~appellant; or~~
25

26 ~~—(2) if it is:~~
27

28 ~~—(A) necessary to ascertain the facts not reasonably susceptible of proof under~~
29 ~~those rules;~~
30

31 ~~—(B) not precluded by statute; and~~
32

33 ~~—(C) of a type on which reasonably prudent persons commonly rely in the~~
34 ~~conduct of their affairs.~~
35

36 ~~(c) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.~~
37

38 **~~§850.77. Transcription of Proceedings.~~**
39

40 ~~(a) Unless precluded by law, the hearing shall be recorded electronically by tape~~
41 ~~recorder or similar device either by the IHO or by someone designated by the IHO.~~
42 ~~The tape recording is the official record of the testimony offered as evidence during~~
43 ~~the hearing. Any party, however, may request, at the party's expense, that the hearing~~
44 ~~be recorded by a court reporter if the request is made within ten days of the date for~~
45 ~~the hearing.~~
46

1 ~~(b) In lieu either of a recording of the testimony electronically or of the reporting of~~
2 ~~testimony by a court reporter, the parties to a hearing may agree upon a statement of~~
3 ~~the evidence, agree to use taped transcriptions as a statement of the testimonial~~
4 ~~evidence, or agree to the summarization of testimony before the impartial hearing~~
5 ~~officer; provided, however, that proceedings or any part of them must be transcribed~~
6 ~~on written request of any party.~~

7
8 ~~(c) Unless otherwise provided in this subchapter, the party requesting a transcription of~~
9 ~~any electronic recording of the proceedings shall bear the cost for transcribing any~~
10 ~~such electronically recorded testimony. Nothing provided for in this section limits~~
11 ~~DARS to a stenographic record of the proceedings.~~

12
13 **~~§850.78. Prepared Testimony.~~**

14
15 ~~In all proceedings and after all parties of record have been given copies, the prepared~~
16 ~~testimony of a witness upon direct examination may be incorporated in the record as if~~
17 ~~read or received as an exhibit. The prepared testimony may be either in narrative or~~
18 ~~question and answer form. The witness must be sworn and must identify the testimony.~~
19 ~~The witness is subject to cross-examination, and the prepared testimony is subject to a~~
20 ~~motion to strike in whole or in part.~~

21
22 **~~§850.79. Pleadings.~~**

23
24 ~~(a) In a formal appeal, all pleadings, for which no other form is prescribed, shall~~
25 ~~contain:~~

- 26 —
- 27 ~~(1) the name of the party making the pleading;~~
 - 28 ~~(2) the names of all other known parties;~~
 - 29 ~~(3) a concise statement of the facts alleged and relied upon;~~
 - 30 ~~(4) a request stating the type of relief, action, or order desired;~~
 - 31 ~~(5) any other matter required by law;~~
 - 32 ~~(6) a certificate of service, as required by these rules; and~~
 - 33 ~~(7) the signature of the party or the party's authorized representative making the~~
34 ~~pleading.~~

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41
42 ~~(b) Any pleading filed in a formal appeal may be amended up to 14 days before the date~~
43 ~~of the hearing. Amendments filed after that time may be accepted at the discretion of~~
44 ~~the impartial hearing officer.~~

- 1 ~~(c) Any pleading may adopt and incorporate, by specific reference, any part of any~~
2 ~~document or entry in the official files and records of DARS.~~
3
4 ~~(d) All pleadings relating to any matter pending before DARS shall be filed with the~~
5 ~~impartial hearing officer and all parties.~~
6
7 ~~(e) All pleadings must be in a format and medium reasonably calculated to provide the~~
8 ~~required information and must be clear and legible.~~
9
10 ~~(f) Pleadings shall contain the name, address, and telephone number of the party filing~~
11 ~~the document or the name, telephone number, and business address of the authorized~~
12 ~~representative.~~
13
14 ~~(g) The party or the party's authorized representative filing the pleading shall include a~~
15 ~~signed certification that a true and correct copy of the pleading has been served on~~
16 ~~every other party.~~
17

18 **~~§850.80. Continuance.~~**
19

- 20 ~~(a) The impartial hearing officer, at his or her discretion, may grant a continuance to~~
21 ~~further the interests of justice. No motion for continuance shall be granted, unless it~~
22 ~~is made in writing or stated in the record, and the motion shall set forth the specific~~
23 ~~grounds upon which the party seeks the continuance.~~
24
25 ~~(b) Unless made during a prehearing or hearing, a party seeking a continuance,~~
26 ~~cancellation of a scheduled proceeding, or extension of an established deadline must~~
27 ~~file such motion no later than 10 days before the date or deadline in question. A~~
28 ~~motion filed fewer than 10 days before the date or deadline in question must contain~~
29 ~~a certification that the movant contacted the other party or party's authorized~~
30 ~~representative and whether it is opposed by the party or party's authorized~~
31 ~~representative. Further, if a continuance to a certain date is sought, the motion must~~
32 ~~include a proposed date or dates and must indicate whether the other party or party's~~
33 ~~authorized representative contacted agrees on the proposed new date or dates.~~
34

35 **~~§850.81. Motion for Reconsideration.~~**
36

- 37 ~~(a) Any party to a hearing, except as provided in Division 3 of this chapter (relating to~~
38 ~~Division for Early Childhood Intervention Services), may file a motion for~~
39 ~~reconsideration within 20 days after the party is notified of the issuance of the~~
40 ~~decision of the impartial hearing officer. The motion shall be filed with the hearings~~
41 ~~coordinator, DARS Legal Services.~~
42
43 ~~(b) The motion for reconsideration must specify the matters in the decision of the~~
44 ~~impartial hearing officer that the party considers to be erroneous. Any response to~~
45 ~~the motion for reconsideration must be filed no later than 30 days after a party, or a~~

1 party's attorney or representative, is notified of the impartial hearing officer's
2 issuance of the decision.
3

4 ~~(c) The impartial hearing officer shall rule on the motion for reconsideration no later
5 than 15 days after receipt of the motion, or after receipt of the response to the motion
6 for reconsideration, whichever comes later. If the motion is granted, the IHO issues a
7 decision upon reconsideration within an additional 15 days. If the impartial hearing
8 officer fails to rule on the motion for reconsideration within 15 days, the motion is
9 denied as a matter of law.~~

10
11 ~~(d) Service. Service of the impartial hearing officer's decision or of a motion or response
12 under this section shall be made by any of the following means to a party, a party's
13 attorney, or representative:~~

14 -
15 ~~(1) hand delivery;~~

16
17 ~~(2) courier receipted delivery;~~

18
19 ~~(3) regular first class mail, certified, or registered mail;~~

20 -
21 ~~(4) email or facsimile transmission before 5:00 p.m. on a business day to the
22 recipient's current email address or telecopier number; or~~

23
24 ~~(5) such other means as the impartial hearing officer may direct.~~

25
26 ~~(e) Date of service. The date of service is the date of hand delivery, of delivery by
27 courier, of mailing, of emailing, or of facsimile transmission, unless otherwise
28 required by law. Unless the contrary is shown, a decision, motion, or response that is
29 sent by regular first class mail is presumed to have been received within three days
30 of the date of postmarking, if enclosed in a wrapper addressed to the recipient's last
31 known address with return address to the sender, stamped with the appropriate first-
32 class postage, and deposited with the U.S. Postal Service on the date postmarked.~~

33 34 **~~§850.82. Civil Action.~~**

35
36 ~~(a) Any party who disagrees with the findings and decision of an impartial hearing
37 officer has a right to bring a civil action in any court of competent jurisdiction
38 without regard to the amount in controversy. (b) A person must initiate a civil action
39 for review of an impartial hearing officer's decision by filing a petition not later than the
40 30th day after the date on which the decision that is the subject of complaint is final and
41 appealable.~~

42 43 **~~§850.83. Mediation Procedures.~~**

44
45 ~~(a) An applicant, eligible individual, or parent who has initiated a proceeding under this
46 subchapter may request mediation to resolve the dispute. DARS, with the consent of~~

1 ~~the applicant, eligible individual, or parent, may also originate the request for~~
2 ~~mediation.~~

3
4 ~~(b) Mediation is voluntary on the part of the parties; must not be used to deny or delay~~
5 ~~the right of an individual to a hearing under this subchapter, or to deny any other~~
6 ~~right afforded by the Rehabilitation Act; and shall be conducted by a qualified and~~
7 ~~impartial mediator who is trained in effective mediation techniques.~~

8
9 ~~(c) DARS shall bear all costs related to the mediation process.~~

10
11 ~~(d) Upon receiving a request for mediation from the parties, the hearings coordinator~~
12 ~~shall select an individual from a list of qualified mediators who are knowledgeable in~~
13 ~~laws and regulations relating to the provision of vocational rehabilitation,~~
14 ~~independent living services, comprehensive rehabilitation services, or the provision~~
15 ~~of services by Early Childhood Intervention Services, whichever may apply to the~~
16 ~~dispute.~~

17
18 ~~(e) Sessions in the mediation process shall be coordinated by the mediator in a timely~~
19 ~~manner at a location convenient to both parties in the dispute.~~

20
21 ~~(f) All discussions that occur during the mediation sessions are confidential and may not~~
22 ~~be used as evidence in any subsequent due process hearing or civil proceeding. The~~
23 ~~mediator may require the parties to sign a confidentiality pledge before the start of~~
24 ~~the mediation process.~~

25
26 ~~(g) Any agreement reached through the mediation process is documented in a written~~
27 ~~mediation agreement and signed by the parties to the dispute. The agreement then~~
28 ~~becomes a part of the consumer record.~~

29
30 ~~**§850.84. Computation of Time.**~~

31
32 ~~(a) In computing any period of time prescribed or allowed by the rules in this~~
33 ~~subchapter, by order of an IHO, or by any applicable statute, the day of the act,~~
34 ~~event, or default after which the designated period of time begins to run is not~~
35 ~~included.~~

36
37 ~~(b) Unless otherwise provided by the rules in this subchapter, the last day of the period~~
38 ~~so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which~~
39 ~~event the period runs until the end of the next day that is not a Saturday, Sunday, or~~
40 ~~legal holiday. Saturdays, Sundays, and legal holidays are not counted for any~~
41 ~~purpose in any time period of five days or less in the rules under this subchapter.~~

42
43 ~~(c) In computing the time periods required for filing a motion for reconsideration~~
44 ~~(§101.943 of this subchapter (relating to Motion for Reconsideration)) and for~~
45 ~~appealing a final decision of an IHO to a court (§101.945 of this subchapter (relating~~
46 ~~to Civil Action)), Saturdays, Sundays, and legal holidays are included.~~

1
2 **DIVISION 2**
3 **DIVISION FOR BLIND SERVICES AND DIVISION FOR REHABILITATION**
4 **SERVICES**

5
6 **§850.100. Purpose.**

7
8 ~~(a) This division establishes procedures under which an applicant or eligible person may~~
9 ~~appeal a determination made either by the Division for Blind Services or by the~~
10 ~~Division for Rehabilitation Services that affects the provision of vocational~~
11 ~~rehabilitation services, independent living services, and comprehensive rehabilitation~~
12 ~~services for that applicant or eligible person.~~

13
14 ~~(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish,~~
15 ~~modify, or alter the jurisdiction, powers, or authority of DARS or the substantive~~
16 ~~rights of any person.~~

17
18 **§850.101. Legal Authority.**

19
20 ~~(a) The following statutes and regulations authorize the procedures established by this~~
21 ~~chapter:~~

22 -
23 ~~(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq. and~~
24 ~~regulations of the Department of Education, Rehabilitation Services~~
25 ~~Administration, 34 C.F.R. §361.57 et seq., as amended;~~

26 -
27 ~~(2) Texas Human Resources Code, Chapter 91 (concerning vocational~~
28 ~~rehabilitation services for the people who are blind and visually impaired);~~

29
30 ~~(3) Texas Human Resources Code, Chapter 111 (concerning vocational~~
31 ~~rehabilitation services for people with disabilities); and~~

32
33 ~~(4) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001,~~
34 ~~as amended.~~

35
36 ~~(b) The procedures in this division apply to those determinations made by DARS'~~
37 ~~personnel that affect the provision of vocational rehabilitation services, independent~~
38 ~~living services, or comprehensive rehabilitation services by DARS.~~

39 -
40 ~~(1) Unless the determination concerns the denial, reduction, suspension or~~
41 ~~termination of vocational rehabilitation services, independent living or~~
42 ~~comprehensive rehabilitation services by the Department, it is not subject to~~
43 ~~review under the procedures of this subchapter.~~

44
45 ~~(2) The following decisions or determinations are not subject to review under this~~
46 ~~subchapter:~~

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~~(A) administrative decisions that are made by DARS' supervisors or managers without reference to any specific applicant or consumer and that apply generally to the provision of vocational rehabilitation services to applicants or consumers, including to those concerning the assignment of personnel;~~

~~(B) decisions, diagnoses, or judgments made by, or actions or omissions of third party vendors or service providers;~~

~~(C) decisions concerning the content of an applicant's or consumer's record of service for which remedies are provided under 34 C.F.R. §361.38(e)(4) and §361.47(a)(12); and~~

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

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

~~(1) applicants who are found not to be eligible for vocational rehabilitation services; and~~

~~(2) previously eligible individuals who have been determined no longer eligible for vocational rehabilitation services under 34 C.F.R. §361.43.~~

~~(d) A person's decision to seek an informal resolution to matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this division.~~

~~(e) DARS shall not suspend, reduce, or terminate vocational rehabilitation services being provided to an applicant or consumer, including evaluation and assessment services and the development of an Individualized Plan for Employment, pending a resolution of the applicant's or consumer's appeal by mediation or hearing unless:~~

~~(1) the applicant or consumer requests a suspension, reduction, or termination of services; or~~

1 ~~(2) DARS has evidence that the applicant or consumer obtained the services~~
2 ~~through misrepresentation, fraud, collusion, or criminal conduct.~~

3
4 **~~§850.102. Definitions.~~**

5
6 ~~The words and terms defined in §101.905 of this subchapter (relating to Definitions),~~
7 ~~when used in this division, have the same meanings unless the context clearly indicates~~
8 ~~otherwise. The use of the singular or plural is not meant to be limiting unless the context~~
9 ~~clearly indicates otherwise.~~

10
11 **~~§850.103. Filing a Request for Review.~~**

12
13 ~~(a) Any applicant or eligible individual who is dissatisfied with a determination, as~~
14 ~~described in §101.1003 of this subchapter (relating to Legal Authority), made either~~
15 ~~by the Division for Blind Services or the Division for Rehabilitation Services may~~
16 ~~request a review of the determination. Although no prescribed form is required to file~~
17 ~~a request, preprinted forms for this purpose are maintained in every DARS office and~~
18 ~~are available upon request.~~

19
20 ~~(b) The request for a review shall be filed in writing with the hearings coordinator,~~
21 ~~DARS Legal Services.~~

22
23 ~~(1) A request shall be considered filed on the day that it is received by the hearings~~
24 ~~coordinator.~~

25
26 ~~(2) Preprinted forms for this purpose are available upon request either from the~~
27 ~~hearings coordinator, DARS Legal Services, or from any DARS office.~~

28
29 ~~(c) Upon receiving a request for review, the hearings coordinator, DARS Legal~~
30 ~~Services, shall, within five working days, mail the appellant:~~

31
32 ~~(1) the name, address, and phone number of the Client Assistance Program~~
33 ~~established under federal law;~~

34
35 ~~(2) the name of the impartial hearing officer appointed to hear the appeal, and the~~
36 ~~date, time, and place of any prehearing;~~

37 ~~-~~
38 ~~(3) a copy of applicable hearing procedures; and~~

39
40 ~~(4) notice that the appellant has the right to request mediation procedures.~~

41
42 **~~§850.104. Filings.~~**

43
44 ~~(a) All filings shall be sent to DARS, 4800 North Lamar, Suite 300, Austin, Texas~~
45 ~~78756, with the notation "Attention: Hearings Coordinator," or delivered to DARS at~~
46 ~~that address.~~

1
2 ~~(b) A copy of all filings shall be sent by mail or otherwise delivered to all parties.~~

3
4 ~~(c) A certificate of service shall be contained in or attached to all filings. The certificate~~
5 ~~must be signed by the person making the filing, show the manner of service, state~~
6 ~~that the filing has been served on all other parties, and identify those parties. The~~
7 ~~certificate is prima facie evidence of service.~~

8
9 ~~(d) Timeliness of a request for review. A request is considered timely if it is received by~~
10 ~~DARS no later than 180 days from the date of the determination that is the subject of~~
11 ~~an applicant's or eligible individual's request for review.~~

12
13 ~~§850.105. Discovery and Mandatory Disclosures.~~

14
15 ~~(a) Written Discovery. Requests for disclosure of information shall be the only form of~~
16 ~~written discovery that the parties are entitled to make. Unless a party is ordered by~~
17 ~~the IHO during a pretrial conference to disclose other information in addition to the~~
18 ~~items in this section, a party may request in writing that the other party disclose or~~
19 ~~produce the following:~~

20 -
21 ~~(1) the names, addresses, and phone numbers of persons having knowledge of~~
22 ~~relevant facts, including those who might be called as witnesses and any expert~~
23 ~~who might be called to testify;~~

24 -
25 ~~(2) for any testifying expert:~~

26
27 ~~(A) the subject matter on which the expert will testify;~~

28
29 ~~(B) the expert's summary; and~~

30
31 ~~(C) a brief summary of the substance of the expert's mental impressions and~~
32 ~~opinions and the basis for them; and all documents and tangible things~~
33 ~~reflecting such information;~~

34
35 ~~(3) the issues and in general the factual basis for a party's claims and defenses in~~
36 ~~the appeal; and~~

37 -
38 ~~(4) information concerning the appellant's employment, including the appellant's~~
39 ~~job application with the appellant's current employer and any personnel~~
40 ~~evaluations.~~

41
42 ~~(b) Subject to the provisions in this section, parties may obtain discovery regarding any~~
43 ~~matter that is relevant to a claim or defense in the appeal.~~

44
45 ~~(c) All discovery requests should be directed to the party from which discovery is being~~
46 ~~sought.~~

1
2 ~~(d) All disputes with respect to any discovery matter shall be filed with and resolved by~~
3 ~~the impartial hearing officer.~~

4
5 ~~(e) All parties shall be afforded a reasonable opportunity to file objections and motions~~
6 ~~to compel with the impartial hearing officer regarding any discovery requests.~~

7
8 ~~(f) Copies of discovery requests and documents filed in response thereto shall be filed~~
9 ~~on all parties, but should not be filed with the impartial hearing officer or the~~
10 ~~hearings coordinator unless directed to do so by the impartial hearing officer or when~~
11 ~~in support of objections, motions to compel, motions for protective order, or motions~~
12 ~~to quash.~~

13
14 ~~(g) Any documents contained in any file of DARS related to the appellant are~~
15 ~~considered to be admissible. DARS must, without awaiting either an order or a~~
16 ~~discovery request under subsection (a) of this section, provide to the appellant a~~
17 ~~complete copy of the appellant's record of services, as described in 34 C.F.R.~~
18 ~~§361.47, including any electronically stored or preserved records.~~

19
20 **~~§850.106. Documentary Evidence and Official Notice.~~**

21
22 ~~(a) Documentary evidence may be received in the form of copies or excerpts if the~~
23 ~~original is not readily available. On request, parties shall be given an opportunity to~~
24 ~~compare the original and the copy or excerpt.~~

25
26 ~~(b) When numerous similar documents that are otherwise admissible are offered into~~
27 ~~evidence, the impartial hearing officer may limit the documents received to those~~
28 ~~that are typical and representative. The impartial hearing officer may also require~~
29 ~~that an abstract of relevant data from the documents be presented in the form of an~~
30 ~~exhibit, provided that all parties be given the right to examine the documents from~~
31 ~~which such abstracts were made.~~

32
33 ~~(c) The following laws, rules, regulations, and policies are officially noticed:~~

34
35 ~~(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq.;~~

36
37 ~~(2) Department of Education regulations, 34 C.F.R. Parts 361, 363, 364, 365, and~~
38 ~~367;~~

39
40 ~~(3) Texas Human Resources Code, Chapter 91 and Chapter 111;~~

41
42 ~~(4) Department of Assistive and Rehabilitative Services, Division for Blind~~
43 ~~Services' and Division for Rehabilitation Services' State Plan for Vocational~~
44 ~~Rehabilitation Services;~~

1 ~~(5) Department of Assistive and Rehabilitative Services, Division for Blind~~
2 ~~Services, Vocational Rehabilitation and Independent Living Manuals; and~~
3 ~~Division for Rehabilitation Services, Rehabilitation Policy Manual;~~
4

5 ~~(6) Texas Administrative Code, Title 40, Part 2, Department of Assistive and~~
6 ~~Rehabilitative Services.~~
7

8 ~~(d) Official notice also may be taken of:~~
9

10 ~~(1) all facts that are judicially cognizable; and~~
11

12 ~~(2) generally recognized facts within the area of DARS' specialized knowledge.~~
13

14 **~~§850.107. Impartial Hearing Officer Decision.~~**
15

16 ~~(a) Within 30 days of the hearing completion date, the impartial hearing officer shall~~
17 ~~issue a decision that is based on the evidence and which is consistent with the~~
18 ~~provisions of the approved state plan; the Rehabilitation Act of 1973, as amended;~~
19 ~~federal vocational rehabilitation regulations and state regulations and policies that~~
20 ~~are consistent with federal requirements, and shall provide to the appellant or, if~~
21 ~~appropriate, the appellant's authorized representative, and DARS' authorized~~
22 ~~representative or DARS Legal Services, as appropriate, a full written report of the~~
23 ~~findings of fact, conclusions of law, and any other grounds for the decision.~~
24

25 ~~(b) The hearing completion date is the date upon which the impartial hearing officer~~
26 ~~receives the transcript, if any was prepared, of the oral hearing, or, if no transcript~~
27 ~~was prepared, the date of the adjournment of the hearing.~~
28

29 ~~(c) The decision shall address each issue considered by the impartial hearing officer.~~
30

31 ~~(d) The impartial hearing officer may prescribe such remedies as are appropriate within~~
32 ~~the scope of, and permitted by, the Human Resources Code, Chapters 91 and 111;~~
33 ~~Rehabilitation Act; the regulations of Rehabilitation Services Administration of the~~
34 ~~Department of Education; and DARS' policies and rules.~~
35

36 ~~(1) The impartial hearing officer may not award restitutionary, compensatory, or~~
37 ~~monetary relief, including monetary damages to any party.—~~

1 ~~(2) The impartial hearing officer may not prescribe an action affecting the~~
2 ~~employment of a DARS employee.~~

3
4 ~~**§850.108. Finality of the Hearing Officer's Decision.**~~

5
6 ~~The decision of the impartial hearing officer is the final decision of DARS, and, if no~~
7 ~~timely motion for reconsideration is filed, becomes the final decision of DARS.~~

8
9 ~~**§850.109. Implementation of Final Decision.**~~

10
11 ~~If a party brings a civil action to challenge a final decision of an impartial hearing officer,~~
12 ~~the final decision involved shall be implemented pending review by the court.~~

13
14 ~~**§850.110. Motion for Reconsideration.**~~

15
16 ~~Either party to a hearing may file a motion for reconsideration with the hearings~~
17 ~~coordinator, DARS Legal Services, as provided in §101.943 of this subchapter (relating~~
18 ~~to Motion for Reconsideration).~~

19
20 ~~**§850.111. Appeal of Final Decision.**~~

21
22 ~~A party aggrieved by a final decision may bring an action for judicial review as provided~~
23 ~~in §101.945 of this subchapter (relating to Civil Action).~~

24
25
26 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**

27
28 **§850.130. Memorandum of Understanding Regarding Continuity of Care for Physically**
29 **Disabled Inmates.**

- 30
31 (a) The ~~Agency~~Texas Department of Assistive and Rehabilitative Services (DARS)
32 adopts by reference the memorandum of understanding (MOU) between the Texas
33 Department of Criminal Justice, Texas Department of Aging and Disability Services,
34 and Texas Department of State Health Services. The MOU contains the agreement
35 required by Texas Health and Safety Code §§614.014 - 614.015 to establish the
36 respective responsibilities of these agencies to institute a continuity of care and
37 service program for offenders in the criminal justice system who are physically
38 disabled, terminally ill, or significantly ill.
39
40 (b) The text of the MOU is in rule 37 TAC, Part 6, §159.19 (relating to Continuity of
41 Care and Service Program for Offenders who are Elderly and Offenders with

1 Physical Disabilities, or Significant or Terminal Illnesses~~the Elderly, the~~
2 ~~Significantly or Terminally Ill and the Mentally Retarded~~).

3
4 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**
5 **Public Awareness Information.**
6

- 7 (a) The Agency~~Texas Department of Assistive and Rehabilitative Services (DARS)~~
8 adopts by reference the memorandum of understanding (MOU) between the Texas
9 Health and Human Services Commission~~Rehabilitation Commission (now Texas~~
10 ~~Department of Assistive and Rehabilitative Services)~~, the Texas Department of
11 ~~Human Services (now Texas Department of~~ Aging and Disability Services), and the
12 Texas Department of ~~Health (now Texas Department of State Health Services), the~~
13 ~~Texas Department of Mental Health and Mental Retardation (now Texas Department~~
14 ~~of Aging and Disability Services)~~.
- 15
- 16 (b) The MOU is the agreement required by Texas Human Resources Code §22.013,
17 which authorizes and requires the exchange and distribution among the agencies of
18 public awareness information relating to services provided by or through the
19 agencies.
20
- 21 (c) The text of the MOU is located in 40 TAC, Part 1, §72.301 ~~of this title~~ (relating to
22 Authorization and Requirement to Exchange and Distribute Public Awareness
23 Information).
24

25 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
26 **Individuals with Disabilities**~~Disabled Persons~~.
27

- 28 (a) The Agency~~Texas Department of Assistive and Rehabilitative Services (DARS)~~
29 adopts by reference the memorandum of understanding (MOU) between the Texas
30 Health and Human Services Commission, the Texas Department of ~~Human Services~~
31 ~~(now Texas Department of~~ Aging and Disability Services), the Texas Department of
32 ~~Health (now Texas Department of State Health Services), the Texas Department of~~
33 Family and Protective Services ~~the Texas Department of Mental Health and Mental~~
34 ~~Retardation (now Texas Department of Aging and Disability Services), the Texas~~
35 ~~Rehabilitation Commission (now Texas Department of Assistive and Rehabilitative~~
36 ~~Services), the Texas Commission for the Blind (now DARS' Division for Blind~~
37 ~~Services), the Texas Commission for the Deaf and Hard of Hearing (now DARS'~~
38 ~~Office for Deaf and Hard of Hearing Services), and the Texas Education Agency.~~
39
- 40 (b) The MOU is the agreement required by Texas Human Resources Code §22.011, to
41 facilitate the coordination of services to individuals with disabilities~~disabled persons~~
42 by establishing the respective responsibilities of the agencies regarding the
43 coordination of services to individuals ~~persons~~ with disabilities.

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