

CHAPTER 856. DIVISION FOR REHABILITATION SERVICES

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON OCTOBER 17, 2017, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **November 3, 2017**

The rules will take effect: **November 6, 2017**

The Texas Workforce Commission (TWC) adopts the following new sections to Chapter 856, relating to the Division for Rehabilitation Services, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4257):

Subchapter B. Eligibility, §856.19

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

Subchapter D. Consumer Participation, §856.59

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

TWC adopts amendments to the following sections of Chapter 856, relating to the Division for Rehabilitation Services, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4257):

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

Subchapter B. Eligibility, §§856.20 - 856.24

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

Subchapter D. Consumer Participation, §856.60

Subchapter E. Comparable Benefits, §856.71

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

TWC adopts the repeal of the following sections of Chapter 856, relating to the Division for Rehabilitation Services, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4257):

Subchapter A. Vocational Rehabilitation Services Program, §856.2

Subchapter E. Comparable Benefits, §856.70

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

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

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

TWC adopts revisions to Chapter 856 to contain all rules for the integrated VR program. In a separate, but concurrent rulemaking adoption, TWC adopts the repeal of Chapter 854, Subchapter B. Language that is unique to VR services for individuals with visual impairments in Chapter 854, Subchapter B would be incorporated into Chapter 856 and expanded to apply to all VR customers or retained to ensure the specialization of blind services, as appropriate. Where there are differences between the two rule chapters, TWC adopts incorporating into Chapter 856 the version of the language from either chapter that is most representative of best practices in the VR program.

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

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

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES PROGRAM

TWC adopts the following amendments to Subchapter A, including changing the name of Subchapter A to "Vocational Rehabilitation Services: Program and Purpose."

§856.1. Purpose

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

§856.2. Legal Authority

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

§856.3. Definitions

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

§856.5. Consultation Regarding the Administration of the State Plan

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

SUBCHAPTER B. ELIGIBILITY

TWC adopts the following amendments to Subchapter B:

§856.19. Application

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

§856.20. Eligibility

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

§856.21. Prohibited Factors

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

§856.22. Extended Evaluation

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

§856.23. Determination of Ineligibility

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

§856.24. Case Closure

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

SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

TWC adopts the following amendments to Subchapter C:

§856.40. Provision of Services

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

§856.41. Assessment

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

§856.42. Counseling, Guidance, and Referral

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

§856.43. Physical Restoration Services

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

§856.44. Mental Restoration Services

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

§856.45. Vocational and Other Training Services

Section 856.45 adds the applicable requirements from §854.43, with a modification to remove the reference to Gallaudet University in subsection (b)(5)(C) because it is not inclusive of the many colleges and universities that offer specialized services to students with disabilities. The

amendment also updates the division name, replaces the word "consumer" with "customer," and deletes subsection (d) because the requirements added from §854.43(b) are more comprehensive on the subject of paying for out-of-state tuition.

§856.46. Maintenance

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

§856.47. Transportation

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

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

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

§856.49. Job Development, Placement and Retention

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

§856.50. Post-Employment Services

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

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

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

§856.52. Individualized Plan for Employment

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

§856.53. Consumers Determined to Have Achieved Employment Outcome

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

§856.54. Services to Family Members

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

§856.55. Reader Services

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

--update the division name;

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

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

§856.56. Assistive Technology Devices

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

SUBCHAPTER D. CONSUMER PARTICIPATION

TWC adopts the following amendments to Subchapter A, including changing the name of Subchapter D to "Customer Participation."

§856.59. Purpose of Customer Participation

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

§856.60. Basic Living Requirements (BLR)

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

SUBCHAPTER E. COMPARABLE BENEFITS

TWC adopts the following amendments to Subchapter G:

§856.70. Comparable Services and Benefits

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

§856.71. Availability of Comparable Services and Benefits

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

SUBCHAPTER F. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

TWC adopts the following amendments to Subchapter F:

§856.80. Statewide Studies and Program Evaluation

Section 856.80 updates the division name.

§856.81. Annual Evaluation

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

§856.82. Order of Selection

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

SUBCHAPTER G. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

TWC adopts new Subchapter G, as follows:

§856.90. Purpose

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

§856.91. Definitions

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

§856.92. Eligibility

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

No comments were received.

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

The rules are adopted under Texas Labor Code §352.101, which requires TWC to adopt rules as necessary to integrate the vocational rehabilitation programs, and §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

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

Chapter 856. VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES: PROGRAM AND PURPOSE

§856.1. Purpose.

The Vocational Rehabilitation Services Program is a joint state- and federal-funded program administered by the Texas Workforce Commission (TWC), Vocational Rehabilitation Division (VRD) to assess, plan, develop, and provide vocational rehabilitation services for eligible individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that these individuals can prepare for and engage in competitive integrated employment and achieve economic self-sufficiency. In accordance with the Rehabilitation Act of 1973, as amended, the Vocational Rehabilitation Division is the single designated state unit for the VR program.

§856.3. Definitions.

In addition to the definitions contained in Texas Labor Code §352.001 and 34 CFR §361.5 vocational rehabilitation, the following words and terms, when used in this chapter, shall have the following meanings.

- (1) Applicant--An individual who applies to VRD for vocational rehabilitation services.
- (2) Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.
- (3) Customer--An individual with a disability who has applied for, or is receiving vocational rehabilitation services.
- (4) Visually Impaired--A visual acuity of not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees.

§856.5. Consultation Regarding the Administration of the State Plan.

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

- (1) individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;
 - (2) personnel working in the field of vocational rehabilitation;
 - (3) providers of vocational rehabilitation services;
 - (4) the Client Assistance Program (CAP) director; and
 - (5) the Rehabilitation Council of Texas.
- (b) The state plan must specifically describe the manner in which VRD will take into account the views regarding state policy and administration of the state plan that are expressed in the customer satisfaction surveys conducted by the Rehabilitation Council of Texas under 34 CFR §361.17(h)(4) or by VRD.

SUBCHAPTER B. ELIGIBILITY

§856.19. Application.

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

- (1) has completed and signed the VRD application form or has otherwise requested services;
- (2) has provided the information necessary to initiate an assessment to determine eligibility and priority for services; and
- (3) is available to complete the assessment process.

§856.20. Eligibility.

- (a) VRD bases eligibility for vocational rehabilitation (VR) services on the following requirements only.
- (b) Within 60 days of application, VRD must:
 - (1) determine that the applicant has a physical or mental impairment;
 - (2) determine that the impairment constitutes or results in a substantial impediment to employment for the applicant;
 - (3) establish that the applicant requires VR services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths,

resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

- (4) presume that the applicant is capable of achieving an employment outcome, unless there is a demonstration by clear and convincing evidence in trial work that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.
- (c) Social Security disability recipients and beneficiaries are presumed eligible for VR services, unless there is a demonstration by clear and convincing evidence in trial work that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.
- (d) Eligibility or ineligibility must be determined no later than 60 days after the applicant, or the applicant's representative, as appropriate, has signed and submitted an application for VR services in accordance with the provisions of §856.19 of this subchapter (relating to Application).
- (e) Exceptions to the 60-day time frame for determining eligibility or ineligibility may occur only when:
 - (1) VRD notifies the applicant that unforeseen circumstances beyond the control of VRD preclude it from completing the determination in 60 days;
 - (2) the applicant, or the applicant's representative, as appropriate, agrees to a specific extension of time; or
 - (3) VRD requires further time exploring an applicant's abilities, capabilities, and capacity to perform in work situations through trial work.
- (f) Eligibility must be determined before applying Subchapter F of this chapter, if appropriate (relating to Methods of Administration of Vocational Rehabilitation) and Subchapter D of this chapter (relating to Customer Participation).

§856.21. Prohibited Factors.

- (a) VRD does not impose, as part of determining eligibility under this subchapter, a duration-of-residence requirement that excludes from services any applicant who is present in the state.
- (b) In determining eligibility under this subchapter, VRD ensures that:
 - (1) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

- (2) The eligibility requirements are applied without regard to the:
 - (A) age, sex, race, color, or national origin of the applicant;
 - (B) type of expected employment outcome;
 - (C) source of referral for vocational rehabilitation services;
 - (D) particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;
 - (E) applicants' employment history or current employment status; and
 - (F) applicants' educational status or current educational credential.

§856.22. Trial Work.

- (a) Trial work is used only to determine whether an applicant with a significant disability is capable of achieving an employment outcome.
- (b) VRD provides only the vocational rehabilitation services necessary to determine if the applicant is capable of achieving an employment outcome. Services are provided in the most integrated setting possible, consistent with the informed choice of the applicant.
- (c) VRD may terminate trial work services when:
 - (1) there is sufficient evidence to conclude that the applicant can achieve an employment outcome;
 - (2) the applicant is found ineligible for any additional vocational rehabilitation services on the basis of clear and convincing evidence that the applicant cannot be expected to benefit in terms of an employment outcome from vocational rehabilitation services; or
 - (3) the applicant is unavailable for services.
- (d) When an applicant is determined ineligible for vocational rehabilitation services after trial work, VRD conducts a periodic review at least annually of the ineligibility decision in which the applicant is afforded a clear opportunity for full consultation in the reconsideration of the decision. A periodic review is not required when the applicant has refused services, the applicant has refused a periodic review, the

applicant is no longer present in the state, the applicant's whereabouts are unknown, or the applicant's medical condition is rapidly progressive or terminal.

§856.23. Determination of Ineligibility.

When an applicant is determined ineligible for vocational rehabilitation services or a customer receiving services under an individualized plan of employment (IPE) is no longer eligible for services, VRD must:

- (1) make the determination only after providing an opportunity for full consultation with the individual or the individual's representative, as appropriate;
- (2) inform the individual in writing of the ineligibility determination. The written determination, to be supplemented as necessary by other appropriate modes of communication consistent with the individual's informed choice, must include the reasons for that determination and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the VR counselor;
- (3) provide the individual with a description of services available from the Client Assistance Program established under 34 CFR Part 370 and information on how to contact that program;
- (4) refer the individual to:
 - (A) other programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act that can address the individual's training or employment-related needs; or
 - (B) local extended employment providers if the ineligibility determination is based on a finding that the individual is incapable of achieving, or has chosen not to pursue, an employment outcome; and
- (5) review within 12 months and annually thereafter, if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. It is not necessary that the review be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

§856.24. Case Closure.

- (a) VRD closes a case when the customer's rehabilitation plan has been completed and the customer has achieved and maintained continuous employment commensurate

with the established employment outcome for a minimum of 90 days. VRD closes the case sooner if:

- (1) VRD is unable to locate or contact the customer;
- (2) the customer's disability is so severely limiting that there is little chance the customer can be vocationally rehabilitated, as demonstrated by clear and convincing evidence in trial work, or the customer's medical condition is expected to progress to such a severely limiting degree in a fairly short period that rehabilitation services will be of little or no help;
- (3) the customer has refused services or further services;
- (4) the customer has died;
- (5) the customer has been institutionalized;
- (6) the customer has been determined to have no disabling condition;
- (7) the customer has refused to cooperate with VRD;
- (8) transportation is not feasible or available;
- (9) the customer has been determined to have no impediment to employment;
- (10) extended services for supported employment are not available;
- (11) the customer has chosen extended employment (for example, sheltered workshop); or
- (12) the customer's case has been transferred to another agency.

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

SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

§856.40. Provision of Services.

- (a) VRD, as appropriate to the vocational rehabilitation needs of each eligible individual, provides goods and services necessary to render a customer employable, subject to certain limitations prescribed in this subchapter and Subchapters D and E of this chapter (relating to Customer Participation; and Comparable Benefits).

- (b) Services are provided only as planned in advance and set forth in the customer's individualized plan for employment (IPE).

§856.41. Comprehensive Assessment.

- (a) After a customer has been found eligible, VRD conducts assessments for vocational rehabilitation needs and, if necessary, rehabilitation technology needs for each customer in order to develop an IPE that is designed to achieve the customer's employment outcome.
- (b) If more information is needed to determine the appropriate employment outcome and services required to achieve it, VRD, as appropriate in each case, conducts an assessment of the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the customer.
- (c) The assessment is limited to information that is necessary to identify the customer's rehabilitation needs and develop the IPE and may, to the extent needed, include:
 - (1) an analysis of medical, psychological, vocational, educational, and other related factors that bear on the customer's impediment to employment and rehabilitation needs. Additional examinations are authorized after services are initiated when conditions arise that jeopardize the customer's IPE;
 - (2) an analysis of the customer's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievement, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;
 - (3) an appraisal of the customer's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavioral patterns suitable for successful job performance; and
 - (4) an assessment, through provision of rehabilitation technology services, of the customer's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the customer's informed choice.

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

§856.42. Counseling, Guidance, and Referral.

VRD provides counseling, guidance, and referral services as necessary for the customer's vocational rehabilitation. Counseling is a process in which a VR counselor works with the customer to help the customer understand both problems and vocational potential. Counseling is a continuous process throughout the rehabilitation program to help the customer make the best possible vocational, personal, and social adjustment. Referral means referral of the customer to other agencies for assistance not available from VRD.

§856.43. Physical Restoration Services.

VRD provides physical restoration services that are necessary to correct or substantially modify the customer's physical condition within a reasonable period. The physical conditions for which the services are rendered must be stable or slowly progressive.

§856.44. Mental Restoration Services.

- (a) VRD provides mental restoration services for mental conditions that are stable or slowly progressive.
- (b) VRD provides psychiatric treatment as a limited service on a short-term basis only to support achievement of the employment outcome.
- (c) VRD provides psychotherapy as a limited service on a short-term basis only to support achievement of the employment outcome.

§856.45. Vocational and Other Training Services.

- (a) VRD purchases vocational and other training services for customers who require additional knowledge or skills to enter employment consistent with their aptitudes and ability, and compatible with their physical or mental impairments.
- (b) VRD purchases vocational and other training services through an appropriate facility. These facilities include accredited colleges and universities, certified public or private businesses, technical and vocational schools, on-the-job training, correspondence course training, tutorial training, and community rehabilitation program training.
- (c) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) is subject to the following:

- (1) Academic training in vocational schools and technical institutes must be provided only in schools that are certified by the State of Texas.
- (2) No vocational rehabilitation funds may be used to pay for academic training unless VRD and the customer have made maximum efforts to secure grant assistance in whole or in part from other sources to pay for the training.
- (3) The PELL grant, like any other comparable services and benefits, must be applied to the educational process before the expenditure of VRD funds for services under this section. Services must not be denied pending receipt of a PELL grant, but must be contingent upon the customer's making application if eligible.
- (4) Academic training must be provided through public, tax-supported colleges and universities in Texas unless:
 - (A) a specific curriculum related to the customer's academic major is not available at a Texas public institution;
 - (B) academic training elsewhere is determined to be more economical; or
 - (C) academic training elsewhere provides specialized services needed by the customer.
- (5) If the customer chooses to obtain academic training at a private college or university in Texas or at a college or university outside Texas and the provisions in paragraph (4) of this subsection do not apply, academic support must be limited to that which the customer would receive if he or she attended a state-supported college or university in Texas.
- (6) A customer who is blind, does not meet the residency requirements of a particular institution, and is not eligible for tuition exemption under Texas Education Code §54.364 may receive VRD tuition assistance based on the customer's economic need, but the payments must not exceed the tuition paid for a customer who does meet the residency requirements.
- (7) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student services, building use, health center use, lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees.
- (8) Any equipment purchased for the customer during academic training must be needed by the customer to help maintain academic success so that the customer can meet the employment outcome.

- (9) Academic training does not include continuing education required for maintaining certification in a field in which the customer is already gainfully employed.
- (10) Once admitted to academic training:
 - (A) the customer must maintain and complete a full-time course load as defined by the college or university. This requirement may be waived if:
 - (i) the customer is a graduating senior;
 - (ii) the customer is an incoming freshman (first two semesters or quarters);
 - (iii) the customer is a returning adult (first academic year only);
 - (iv) the customer is in summer school; or
 - (v) other extenuating circumstances prevent the customer from participating in a full-time course load; and
 - (B) the customer is required to meet with the VR counselor at least once each semester, to submit add or drop slips as changes occur, and to provide grade slips or transcripts to the VR counselor at the end of each semester.
- (d) VRD requires that each customer who is provided with vocational or other training services by VRD apply for financial assistance where reasonably available. This assistance can include federal, state, or local grants-in-aid and private scholarships where applicable. If the customer has not done so before the time of application for vocational rehabilitation services, the VR counselor assists the customer in doing so.
- (e) VRD does not pay tuition and fees to a business, technical, or vocational school in excess of the published fees.

§856.46. Maintenance.

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

§856.47. Transportation.

VRD may pay for transportation services for the customer in connection with other vocational rehabilitation services.

§856.48. Services for Customers Who Are Deaf, Hard of Hearing, or Deafblind.

- (a) VRD may provide interpreter services for a customer who is deaf, hard of hearing, or deafblind when the services will help the customer to attain the employment outcome.
- (b) VRD may provide telecommunications, sensory, and other technological aids and devices to facilitate training, employability, and job opportunities for customers with significant disabilities, particularly customers who are deaf, deafblind, or have profound hearing or speech impairments.
- (c) When delivering interpreter services, note-taking services, or tactile interpreting to individuals who are deaf, hard of hearing, or deafblind, VRD uses interpreters, if available, certified by one of the following:
 - (1) Texas Health and Human Services Commission, Board for Evaluation of Interpreters; or
 - (2) The Registry of Interpreters for the Deaf.

§856.49. Job Development, Placement and Retention.

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

§856.50. Post-Employment Services.

- (a) VRD may provide post-employment services to customers who have been determined rehabilitated in order to maintain or strengthen the customer's employment. A customer may be considered for post-employment services if he or she has an employment-related problem that does not entail a complex rehabilitation effort or address a new and distinct substantial impediment to employment.

- (b) Post-employment services are services that are necessary for the customer to maintain, regain, or advance in an employment outcome that is consistent with the customer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (c) Post-employment services must be related to the previously planned employment outcome.

§856.51. Occupational Licenses, Tools, Equipment, Initial Stocks, and Supplies.

- (a) VRD may engage in or contract for activities to provide the customer with occupational licenses, including any license, permit, or other written authority that a state, city, or other governmental unit requires an individual to obtain before entering an occupation or self-employment.
- (b) VRD may provide the customer with tools, equipment, initial stocks, goods, and supplies necessary to enter an occupation or self-employment.
- (c) Customers must safeguard and maintain in a serviceable condition nonconsumable supplies, tools, and equipment and will not sell, give away, or otherwise wrongfully dispose of them.
- (d) The customer must sign a prescribed form agreeing to the terms of subsection (c) of this section at the time that the customer receives tools and equipment.

§856.52. Individualized Plan for Employment.

- (a) VRD initiates and continuously develops an individualized plan for employment (IPE) for each individual eligible for vocational rehabilitation services and for each individual being provided such services in trial work. All IPEs must be written using the form prescribed by VRD for this purpose.
- (b) VRD advises the customer or, the customer's parent, guardian, or other representative, as appropriate, of the customer's options and all VRD procedures and requirements affecting the development and review of an IPE, including the availability of special modes of communication.
- (c) The VR counselor and customer or, as appropriate, the customer's parent, guardian, or other representative, uses information obtained during the assessment to help the customer make informed choices about vocational rehabilitation needs, employment outcome, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services and the service providers to be included in the IPE.
- (d) The VR counselor must provide the customer or, as appropriate, the customer's representative, with a copy of the IPE and its amendments, in the mode of communication specified by the customer or representative.

- (e) All substantive revisions necessary to reflect changes in the customer's employment outcome, specific vocational rehabilitation services, service providers, and the methods used to procure services must be incorporated into the customer's IPE.
- (f) The customer may develop all or part of the IPE with assistance from the VRD VR counselor, a qualified VR counselor not employed by VRD, or another resource outside VRD. VRD does not pay for non-VRD assistance with IPE development. The IPE is not final until approved by the VRD VR counselor. A copy of the plan and any amendments are provided to the customer or the customer's parent, guardian, or other representative, as appropriate.
- (g) The data used to prepare the IPE must include the information necessary to satisfy federal requirements and to adequately document the customer's plan of services. Regardless of the approach selected by the customer to develop the IPE, the IPE must, at a minimum, contain the following mandatory components:
 - (1) a description of the customer's specific employment outcome;
 - (2) a description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services; personal assistance services, including training in the management of those services; and timelines for initiating the services and for achieving the employment outcome;
 - (3) a description of the entity chosen by the customer or, as appropriate, the customer's representative, that will provide the vocational rehabilitation services, and the methods used to procure the services;
 - (4) a description of criteria to evaluate progress toward achievement of the employment outcome;
 - (5) the terms and conditions of the IPE, including, as appropriate, information describing:
 - (A) VRD responsibilities; and
 - (B) customer responsibilities, including:
 - (i) the customer's responsibilities related to his or her employment outcome;
 - (ii) if applicable, the customer's participation in paying for the costs of the plan;

- (iii) the customer's responsibility to apply for and secure comparable benefits; and
 - (iv) the responsibilities of other entities resulting from arrangements made under comparable services or benefits;
 - (6) for a customer with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying:
 - (A) the extended services that the customer needs; and
 - (B) the source of extended services or, if the source of the extended services cannot be identified at the time that the IPE is developed, a description of the basis for a reasonable expectation that a source will become available; and
 - (7) as determined to be necessary, a statement of projected need for post-employment services.
- (h) In developing an IPE for a student with a disability who is receiving special education services, VRD must consider the student's individualized education program.
- (i) The VR counselor must advise the customer of the customer's rights and the means by which the customer may express and seek remedy for dissatisfaction with the plan, including the opportunity for an administrative review of VRD action and a fair hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules in Chapter 850 of this title (relating to Vocational Rehabilitation Services Administrative Rules and Procedures).
- (j) The VR counselor reviews the IPE as often as necessary, but on at least an annual basis, at which time the customer or the customer's parent, guardian, or other representative, as appropriate, is afforded an opportunity to review the plan and, if necessary, jointly redevelop its terms.
- (k) The IPE is a joint commitment that must be signed by both the VR counselor and the customer.
- (l) VRD may provide only goods and services that are reasonable and necessary to achieve the employment outcome identified in customer IPEs.
- (m) Before suspending, reducing, or terminating any planned service in the IPE, VRD shall send written notification of intent to the customer's last known address.

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

§856.53. Customers Determined to Have Achieved Employment Outcome.

- (a) VRD determines a customer to have achieved an employment outcome when the following requirements are met:
 - (1) the provision of services under the customer's IPE has contributed to the achievement of the employment outcome;
 - (2) the customer has achieved the employment outcome that is described in the customer's IPE and that is consistent with the customer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
 - (3) the employment outcome is in an integrated setting;
 - (4) the customer has maintained the employment outcome for at least 90 days; and
 - (5) the customer and the VR counselor consider the employment outcome to be satisfactory and agree that the customer is performing well on the job.
- (b) After a customer has been determined to have achieved an employment outcome, VRD may provide post-employment services as required to maintain, regain, or advance in employment.

§856.54. Services to Family Members.

- (a) VR services are provided to family members only if without the services the applicant or customer would be unable to begin or continue the rehabilitation program, and the customer's employment would be unnecessarily delayed or could not be achieved.
- (b) Only family members whose receipt of services would further the applicant's or customer's vocational adjustment or rehabilitation may receive services.
- (c) Family member, for purposes of receiving vocational rehabilitation services in accordance with this section, means an individual:
 - (1) who either:
 - (A) is a relative or guardian of the applicant or customer; or
 - (B) lives in the same household as the applicant or customer;
 - (2) who has a substantial interest in the well-being of the applicant or customer; and

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

§856.55. Reader Services.

- (a) Reader services are available only to customers who are blind and who are receiving vocational or academic training.
- (b) The customer must use all other available reading sources to the greatest extent possible before seeking reimbursement from VRD for reader services.
- (c) The maximum amount allowed per month for reader services is calculated according to the number of semester hours the customer is taking, whether during a fall, spring, or summer semester, and whether the customer is an undergraduate or graduate student. The rate of reimbursement is available from any VRD office during business hours.
- (d) VRD does not pay for reader services rendered by a member of the customer's family.
- (e) To receive reimbursement for reader services, the customer must submit the information required by VRD using the prescribed form.

§856.56. Assistive Technology Devices.

- (a) Assistive technology devices are purchased only after evaluation of the customer's need and the cost. Simple and less expensive alternatives must be considered first.
- (b) The customer must return to VRD any assistive technology device no longer needed for training, employment, or pursuit of employment.

SUBCHAPTER D. CUSTOMER PARTICIPATION

§856.59. Purpose of Customer Participation.

- (a) Establishing customer participation in service costs encourages customer commitment to an employment outcome, creates a cooperative relationship between the customer and VRD, and maximizes VRD's limited funds.
- (b) VRD requires customers to participate in the cost of services based on financial need.

§856.60. Basic Living Requirements (BLR).

- (a) The purpose of basic living requirements (BLR) is to establish a framework for determining whether the customer should pay any of the service cost. VRD does not consider BLR in determining eligibility for vocational rehabilitation services, but VRD does apply BLR to determine whether the customer must contribute to the cost of certain services. VRD applies BLR uniformly to ensure that all customers in similar circumstances receive equitable treatment.
- (b) All services are subject to required customer participation except for the following:
 - (1) services paid for, or reimbursed by, a source other than VRD;
 - (2) counseling, guidance, and referral provided by VRD;
 - (3) employment assistance services provided by VRD;
 - (4) diabetes education training;
 - (5) VR teacher services (including consumable supplies);
 - (6) orientation and mobility services;
 - (7) assessment services, to determine eligibility and rehabilitation needs;
 - (8) interpreter services;
 - (9) reader services;
 - (10) translator services;
 - (11) personal assistant services; and/or
 - (12) job-related services: job placement, services leading to supported employment, and job coach services.
- (c) Customers who are recipients of Social Security disability benefits, either SSI or SSDI, are not required to participate in the cost of services.
- (d) The VR counselor informs each customer of the services that require customer participation in the cost of services and the services that do not require customer participation.
- (e) If a customer declines to provide financial information to determine BLR, it is assumed that the customer has resources that exceed the BLR and therefore must fully participate in the cost of planned services.

SUBCHAPTER E. COMPARABLE BENEFITS

§856.71. Availability of Comparable Services and Benefits.

- (a) If comparable services or benefits exist under any other program and are available to the customer at the time needed to achieve the employment outcome in the customer's IPE, VRD must use those comparable services or benefits to meet, in whole or in part, the cost of VR services.
- (b) If comparable services or benefits exist under any other program, but are not available to the customer at the time necessary to satisfy the employment outcome in the consumer's IPE, VRD must provide VR services until those comparable services and benefits become available.
- (c) The following services are exempt from determination of the availability of comparable services and benefits:
 - (1) assessment for determining eligibility and priority for services;
 - (2) assessment for determining VR needs;
 - (3) VR counseling, guidance, and referral services;
 - (4) placement services;
 - (5) rehabilitation technology services; and
 - (6) post-employment services consisting of the services listed under paragraphs (1) - (5) of this subsection.
- (d) The requirements of subsection (a) of this section also do not apply if:
 - (1) determining the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any customer whom VRD has determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or
 - (2) an immediate job placement would be lost because of a delay in the provision of comparable services and benefits.

SUBCHAPTER F. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

§856.80. Statewide Studies and Program Evaluation.

- (a) VRD conducts continuing statewide studies of the needs of individuals with disabilities within the state and the methods by which these needs may be most effectively met.
- (b) The studies are directed toward:
 - (1) assessing the rehabilitation needs of individuals with significant disabilities who reside in the state;
 - (2) reviewing the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved or underserved by the vocational rehabilitation system;
 - (3) reviewing a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most significant disabilities, including individuals receiving supported employment services;
 - (4) ensuring the orderly and effective development of vocational rehabilitation services; and
 - (5) reviewing the efficacy of the criteria employed by VRD in making ineligibility decisions with respect to applicants for vocational rehabilitation services.
- (c) Reports of the studies are available to the public for review.

§856.81. Annual Evaluation.

- (a) VRD conducts an annual comprehensive evaluation of the effectiveness of the state's vocational rehabilitation program in achieving:
 - (1) service goals and priorities established in the state plan and annual amendments to the state plan; and
 - (2) compliance with the performance accountability measures established by the Act.
- (b) The evaluation measures the adequacy of VRD performance in providing vocational rehabilitation services, especially to individuals with the most significant disabilities, considering the state's vocational rehabilitation program financial resources. The evaluation has the following minimum objectives:
 - (1) to ensure that the rehabilitation program is serving the target population and that the services are provided in an equitable manner;

- (2) to ensure that customers are placed in gainful employment suitable to their capabilities, interests, and informed choice;
- (3) to measure the extent to which undue delays are avoided in providing customers with services;
- (4) to ensure that available resources are used effectively to achieve maximum efficiency;
- (5) to ensure that VR counselors maintain manageable-sized caseloads and provide timely and adequate services to individual customers;
- (6) to ensure that customers retain the benefits obtained from the rehabilitation process;
- (7) to ensure that the need for post-employment services is satisfied;
- (8) to identify reasons why customers are not successfully rehabilitated; and
- (9) to ensure that the customer is satisfied with the individualized plan for employment.

§856.82. Order of Selection.

- (a) An order of selection is authorized in Rehabilitation Act of 1973 §101, as amended, to ensure that in times of limited funding customers with the most severe disabilities are selected for service before other customers.
- (b) In determining whether to invoke an order of selection, the director for VR services applies the criteria set out in 34 CFR §361.36, as amended, and the state plan.
- (c) The order of selection, if invoked, is applied after eligibility for services is determined.

SUBCHAPTER G. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

§856.90. Purpose.

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

§856.91. Definitions.

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

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

§856.92. Eligibility.

- (a) To obtain a certificate, a VRD customer must make a request through his or her VR counselor.
- (b) For an individual who is not a VRD customer to obtain a certificate, the individual must submit a request in person or by mail to any VRD office, and present visual diagnostic information confirming that the individual is blind.
- (c) Visual diagnostic information must include eye exams from an optometrist, ophthalmologist, or low-vision specialist.
- (d) VRD does not pay for diagnostic exams for the sole purpose of obtaining this record.
- (e) Eligibility for a Certificate of Blindness for Tuition Waiver is determined by VRD, and the determination is final.
- (f) The Certificate of Blindness for Tuition Waiver issued by VRD is not a determination that an applicant satisfies the residency requirement, or any other requirement set forth under Texas Education Code §54.364, for tuition waiver at any eligible institution.