

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 **ON DECEMBER 18, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

10
11 Estimated Publication Date of the Proposal in the *Texas Register*: **January 4, 2019**

12 Estimated End of Comment Period: **February 4, 2019**
13

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

17
18 Subchapter A. Vocational Rehabilitation General Rules, §§850.3 - 850.6, and 850.11

19 Subchapter C. Councils, Board, and Committees, §§850.32 - 850.35

20 Subchapter D. Privacy and Confidentiality, §§850.50 and 850.51

21 Subchapter F. Memorandum of Understanding, §§850.130 - 850.132
22

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

25
26 Subchapter A. Vocational Rehabilitation General Rules, §§850.1, 850.2, and §§850.7 -
27 850.10

28 Subchapter B. Historically Underutilized Businesses, §§850.20 - 850.23

29 Subchapter C. Councils, Board, and Committees, §§850.30, 850.31, 850.40 - 850.43
30

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

33
34 Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures, §§850.60
35 - 850.84 and §§850.100 - 850.111
36

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

39
40 Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures,
41 §§850.60 - 850.88
42

43 PART I. PURPOSE, BACKGROUND, AND AUTHORITY

44 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

45 PART III. IMPACT STATEMENTS

46 PART IV. COORDINATION ACTIVITIES

1
2 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

3 The purpose of the proposed Chapter 850 rule change is to align the chapter with TWC's
4 operation of the Vocational Rehabilitation (VR) services program. Texas Labor Code §351.002
5 transferred the administration of VR services from the Texas Department of Assistive and
6 Rehabilitative Services (DARS) to TWC, effective September 1, 2016.
7

8 To ensure continuity and avoid any impacts on customers, the administrative rules shared by all
9 DARS programs were duplicated into Chapters 850, 857, and 858 of TWC's rules upon transfer of
10 the programs. Because the rules established DARS' administrative framework and served all DARS
11 programs, they overlap certain existing TWC administrative rules and contain numerous references
12 to programs that were not transferred to TWC.
13

14 In order to streamline TWC rules and accurately reflect TWC's program administration, several
15 amendments are necessary to integrate and align overlapping sections and update outdated terms and
16 procedures to align with TWC's current program operation.
17

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

19 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
20 therefore, are not discussed in the Explanation of Individual Provisions.)
21

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

23 **TWC proposes the following amendments to Subchapter A:**
24

25 **§850.1. Purpose**

26 Section 850.1 is repealed to align with current TWC rulemaking practices, in which purpose and
27 legal authority are provided in a rule's preamble text.
28

29 **§850.2. Legal Authority**

30 Section 850.2 is repealed to align with current TWC rulemaking practices, in which purpose and
31 legal authority are provided in a rule's preamble text.
32

33 **§850.3. Definitions**

34 Section 850.3 is amended to remove a reference to "DARS", replace with "Agency" and replace
35 a reference to the two former DARS divisions with "Vocational Rehabilitation Division (VRD)."
36

37 **§850.4. Opportunities for Citizen Participation**

38 Section 850.4 is amended to replace "DARS" with "Agency" and "Commission," as appropriate,
39 and "people" with "individuals."
40

41 **§850.5. Complaints**

42 Section 850.5 is amended to reflect TWC's operation of the program and to replace "DARS" with
43 "Agency" and "Commission," as appropriate, "consumer" with "customer," and "person" with
44 "individual." Subsections (d) and (e) of this section are repealed as they relate to services which
45 did not transfer to TWC.
46

1 **§850.6. Cooperation with Other Public Agencies**

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

3
4 **§850.7. Criminal History Information on Applicants for Employment**

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

7
8 **§850.8. Use of Criminal History Information in Contracting**

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

11
12 **§850.9. Fees for Department Publications**

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

15
16 **§850.10. Gifts and Donations to TWC**

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

18
19 **§850.11. Qualified Vocational Rehabilitation Counselor**

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

22
23 **SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES**

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

25
26 **§850.20. Purpose**

27 Section 850.20 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 **§850.21. Legal Authority**

31 Section 850.21 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 **§850.22. Definitions**

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

37
38 **§850.23. Adoption of Rules**

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

41
42 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**

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

44
45 **§850.30. Purpose**

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

3
4 **§850.31. Legal Authority**

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

7
8 **§850.32. Definitions**

9 Section 850.32 is amended to replace "DARS" with "Agency."

10
11 **§850.33. Tasks**

12 Section 850.33 is amended to replace references to the former DARS divisions with "Vocational
13 Rehabilitation Division (VRD)" and to replace "consumer" with "customer" and "people" with
14 "individuals."

15
16 **§850.34. Reports**

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

18
19 **§850.35. Funding**

20 Section 850.35 is amended to replace "DARS" with "Agency."

21
22 **DIVISION 2**

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

24
25 **§850.40. Purpose**

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

28
29 **§850.41. Legal Authority**

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

32
33 **§850.42. Definitions**

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

36
37 **§850.43. Substantive Rules**

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

40
41 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**

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

43
44 **§850.50. Privacy Policies**

45 Section 850.50 is amended to replace "DARS" with "Agency" and "person" with "individual;" to
46 update the address for submitting requests for correction of information; to remove a reference to

1 social security disability determination cases which did not transfer to TWC; and to update
2 procedures relating to verifying documentation for submitting requests for correction of
3 information.

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

7 Section 850.51 is amended to replace "DARS" with "Agency" and "consumer" with "customer."
8

9 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
10 **HEARING PROCEDURES**

11 **TWC proposes new Subchapter E:**

12
13 **§850.60. Scope**

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

17
18 **§850.61. Definitions**

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

21
22 New §850.61(2), the definition of "appellant," retains without modification the provisions of
23 §850.62(2), concurrently proposed for repeal.

24
25 New §850.61(3), the definition of "applicant," retains the provisions of §850.62(3), concurrently
26 proposed for repeal, with modifications to align with the federal definitions at 34 CFR Part 361.

27
28 New §850.61(4), the definition of "authorized representative," retains the provisions of
29 §850.62(4), concurrently proposed for repeal, with modifications to replace "person" with
30 "individual".

31
32 New §850.61(5), the definition of "counselor," retains the provisions of §850.3(2), concurrently
33 proposed for repeal, with modifications to replace "DARS" with "Agency".

34
35 New §850.61(6), the definition of "customer," is added to mean an applicant or an individual
36 who is receiving VR services.

37
38 New §850.61(7), the definition of "discovery," retains without modification the provisions of
39 §850.62(8), concurrently proposed for repeal.

40
41 New §850.61(8), the definition of "eligible individual," retains the provisions of §850.62(9),
42 concurrently proposed for repeal, with modifications to replace "DARS" with "Agency".

43
44 New §850.61(9), the definition of "hearing," retains the provisions of §850.62(10), concurrently
45 proposed for repeal, with modifications to update chapter reference.

46

1 New §850.61(10), the definition of "impartial hearing officer," retains the provisions of
2 §850.62(11), concurrently proposed for repeal.

3
4 New §850.61(11), the definition of "Individualized Plan for Employment," is added to mean a
5 plan developed for each individual determined to be eligible for VR services, in accordance with
6 34 CFR Part 361.

7
8 New §850.61(12), the definition of "parent," retains the provisions of §850.62(12), concurrently
9 proposed for repeal, with modifications to update terminology.

10
11 New §850.60(13), the definition of "party," retains the provisions of §850.62(13), concurrently
12 proposed for repeal, with modifications to update terminology.

13
14 New §850.61(14), the definition of "record," retains the provisions of §850.62(15), concurrently
15 proposed for repeal, with modifications to update terminology.

16
17 New §850.61(15), the definition of "State Plan," retains the provisions of §850.3(3), concurrently
18 proposed for repeal, with modifications to update terminology.

19
20 **§850.62. Filing a Request for Review**

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

26
27 **§850.63. Informal Dispute Resolution**

28 New §850.63 is added to reflect TWC's development of an informal process for resolving a
29 request for review without conducting mediation or a formal hearing, consistent with 34 CFR
30 §361.57(c) and internal Agency practice.

31
32 **§850.64. Time for Hearing**

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

36
37 **§850.65. Mediation Procedures**

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

43
44 **§850.66. Assignment of Impartial Hearing Officer**

45 New §850.66 retains the provisions of §850.65, concurrently proposed for repeal, with
46 modifications to replace "DARS" with "Agency" and to integrate references to the two previous

1 VR divisions. Outdated references to programs no longer at TWC have been removed, and cross-
2 references have been updated.

3
4 **§850.67. Powers and Duties of Impartial Hearing Officer**

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

8
9 **§850.68. Substitution of Impartial Hearing Officer**

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

12
13 **§850.69. Reasonable Accommodations**

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

17
18 **§850.70. Appearance of Parties at Hearings; Representation**

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

21
22 **§850.71. Failure to Attend Hearing and Default**

23 New §850.71 retains the provisions of §850.70, concurrently proposed for repeal, with
24 modifications to update terminology.

25
26 **§850.72. Witness Fees**

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

29
30 **§850.73. Prehearing Conferences**

31 New §850.73 retains the provisions of §850.72, currently proposed for repeal, with modifications
32 to update terminology.

33
34 **§850.74. Dismissal without Hearing**

35 New §850.74 retains the provisions of §850.73, concurrently proposed for repeal, with
36 modifications to update terminology.

37
38 **§850.75. Conduct of Hearing**

39 New §850.75 retains the provisions of §850.74, concurrently proposed for repeal, with
40 modifications to update terminology.

41
42 **§850.76. Order of Proceedings**

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

1
2 **§850.77. Rules of Evidence**

3 New §850.77 retains the provisions of §850.76, concurrently proposed for repeal, with
4 modifications to replace "DARS" with "Agency" and to update terminology.
5

6 **§850.78. Transcription of Proceedings**

7 New §850.78 retains the provisions of §850.77, concurrently proposed for repeal, with
8 modifications to replace "DARS" with "Agency" and to update terminology.
9

10 **§850.79. Prepared Testimony**

11 New §850.79 retains the provisions of §850.78, concurrently proposed for repeal, with
12 modifications to update terminology.
13

14 **§850.80. Pleadings**

15 New §850.80 is amended to replace "DARS" with "Agency," incorporate §850.104(a),
16 concurrently proposed for repeal, into subsection (d), replace subsection (g) with subsection (c)
17 of §850.104, relating to Filings and concurrently proposed for repeal, and update terminology.
18

19 **§850.81. Discovery and Mandatory Disclosures**

20 New §850.81 retains the provisions of §850.105, relating to Discovery and Mandatory
21 Disclosures, and concurrently proposed for repeal, replaces "DARS" with "Agency," and updates
22 terminology. New wording clarifies that the copy to be provided to the appellant of the
23 appellant's record of services is provided to the extent pertinent to the determination that is the
24 subject of the request for review.
25

26 **§850.82 Documentary Evidence and Official Notice**

27 New §850.82 retains the provisions of §850.106, relating to Documentary Evidence and Official
28 Notice, concurrently proposed for repeal. "DARS" is replaced with "Agency," references to the
29 two previous VR divisions are consolidated, citations are updated to clarify the applicability of
30 the chapter to proceedings related to the Independent Living Services for Older Individuals Who
31 Are Blind program and the Business Enterprises of Texas program. Additionally, terminology is
32 updated.
33

34 **§850.83. Continuance**

35 New §850.83 retains and re-letters the provisions of §850.80, relating to Continuance, and
36 concurrently proposed for repeal, with modifications to update terminology.
37

38 **§850.84. Impartial Hearing Officer Decision**

39 New §850.84 retains the provisions of §850.107, relating to Impartial Hearing Officer Decision
40 and concurrently proposed for repeal, replaces "DARS" with "Agency," updates locations and
41 titles, integrates references to the two previous VR divisions, and updates citations and
42 terminology.
43

44 **§850.85. Finality of the Hearing Officer's Decision**

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

4
5 **§850.86. Implementation of Final Decision**

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

8
9 **§850.87. Motion for Reconsideration**

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

16
17 **§850.88. Civil Action**

18 New §850.88 retains and re-letters the provisions of §850.82, relating to Civil Action, and
19 concurrently proposed for repeal, with modifications to update terminology. Additionally, new
20 §850.87 incorporates §850.111, relating to Appeal of Final Decision, concurrently proposed for
21 repeal.

22
23 **§850.89. Computation of Time**

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

26
27 **SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND**
28 **HEARING PROCEDURES**

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

32
33 Division 1. General Rules

34 §850.60 Purpose

35 §850.61 Legal Authority

36 §850.62 Definitions

37 §850.63 Filing a Request for Review

38 §850.64 Time for Hearing

39 §850.65 Assignment of Impartial Hearing Officer

40 §850.66 Powers and Duties of Impartial Hearing Officer

41 §850.67 Substitution of Impartial Hearing Officer

42 §850.68 Reasonable Accommodations

43 §850.69 Appearance of Parties at Hearings; Representation

44 §850.70 Failure to Attend Hearing and Default

45 §850.71 Witness Fees

46 §850.72 Prehearing Conferences

- 1 §850.73 Dismissal Without Hearing
- 2 §850.74 Conduct of Hearing
- 3 §850.75 Order of Proceedings
- 4 §850.76 Rules of Evidence
- 5 §850.77 Transcription of Proceedings
- 6 §850.78 Prepared Testimony
- 7 §850.79 Pleadings
- 8 §850.80 Continuance
- 9 §850.81 Motion for Reconsideration
- 10 §850.82 Civil Action
- 11 §850.83 Mediation Procedures
- 12 §850.84 Computation of Time

- 13 Division 2. Division for Blind Services and Division for Rehabilitation Services
- 14 §850.100 Purpose
- 15 §850.101 Legal Authority
- 16 §850.102 Definitions
- 17 §850.103 Filing a Request for Review
- 18 §850.104 Filings
- 19 §850.105 Discovery and Mandatory Disclosures
- 20 §850.106 Documentary Evidence and Official Notice
- 21 §850.107 Impartial Hearing Officer Decision
- 22 §850.108 Finality of the Hearing Officer's Decision
- 23 §850.109 Implementation of Final Decision
- 24 §850.110 Motion for Reconsideration
- 25 §850.111 Appeal of Final Decision

26

27 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**

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

29

30 **§850.130. Memorandum of Understanding Regarding Continuity of Care for Physically**

31 **Disabled Inmates**

32 Section 850.130 is amended to replace references to "DARS" with "Agency," and update

33 citations and titles.

34

35 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**

36 **Public Awareness Information**

37 Section 850.131 is amended to replace references to "DARS" with "Agency," update agency

38 names, and update citations.

39

40 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**

41 **Disabled Persons**

42 Section 850.132 is amended to remove references to DARS, update agency names, and update

43 citations and terminology.

44

45

1 **PART III. IMPACT STATEMENTS**

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

4
5 There are no additional estimated costs to the state and to local governments expected as a result
6 of enforcing or administering the rules.

7
8 There are no estimated cost reductions to the state and to local governments as a result of
9 enforcing or administering the rules.

10
11 There are no estimated losses or increases in revenue to the state or to local governments as a
12 result of enforcing or administering the rules.

13
14 There are no foreseeable implications relating to costs or revenue of the state or local
15 governments as a result of enforcing or administering the rules.

16
17 There are no anticipated economic costs to individuals required to comply with the rules.

18
19 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
20 communities as a result of enforcing or administering the rules.

21
22 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
23 that the requirement to repeal or amend a rule, as required by Texas Government Code
24 §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code §352.101
25 requires TWC's three-member Commission (Commission) to adopt rules necessary to integrate
26 the VR programs, including recommending adopting rules to implement the integration.
27 Therefore, the exception identified in §2001.0045(c)(9) applies.

28
29 Takings Impact Assessment

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

43
44 The proposed rulemaking action will not create any additional burden on private real property.
45 The proposed rulemaking action will not affect private real property in a manner that would
46 require compensation to private real property owners under the United States Constitution or the

1 Texas Constitution. The proposal also will not affect private real property in a manner that
2 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
3 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
4 Government Code, Chapter 2007.

5
6 Government Growth Impact Statement

7 TWC has determined that during the first five years the amendments will be in effect:
8 --the proposed amendments will not create or eliminate a government program;
9 --implementation of the proposed amendments will not require the creation or elimination of
10 employee positions;
11 --implementation of the proposed amendments will not require an increase or decrease in future
12 legislative appropriations to TWC;
13 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
14 --the proposed amendments will not create a new regulation;
15 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
16 --the proposed amendments will not change the number of individuals subject to the rules; and
17 --the proposed amendments will not positively or adversely affect the state's economy.

18 Economic Impact Statement and Regulatory Flexibility Analysis

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

22
23 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
24 significant negative impact upon employment conditions in the state as a result of the rules.

25
26 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of
27 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
28 rules will be to align Chapter 850 with TWC's operation of the VR services program.

29
30 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
31 within TWC's legal authority to adopt.

32
33 **PART IV. COORDINATION ACTIVITIES**

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

40
41 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
42 Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
43 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
44 Comments must be received or postmarked no later than 30 days from the date this proposal is
45 published in the *Texas Register*.

1 The rules are proposed under the authority of the Rehabilitation Act of 1973, as amended (29
2 USC §701 et seq.), and regulations of the US Department of Education, 34 CFR Parts 361, 363,
3 367, 395, and 397. Texas Labor Code §352.101(b)(5) requires TWC to recommend the adoption
4 of any rules necessary to implement the requirement to integrate the VR programs. Texas Labor
5 Code §301.0015 and §302.002(d) provide TWC with the authority to adopt, amend, or repeal
6 such rules as it deems necessary for the effective administration of TWC services and activities.
7

8 The proposed rules affect Title 4, Texas Labor Code, Chapters, 301, 302, 352, and 355.
9

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

4 **SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES**
5
6

7 **§850.3. Definitions.**
8

9 The following words and terms, when used in this subchapter, have the following
10 meanings, unless the context clearly indicates otherwise:
11

- 12 .
- 13
- 14 (1) Counselor--An Agency employee who is trained to provide vocational
15 guidance and counseling and meets the minimum qualifications designated in a
16 functional job description.
17
- 18 (2) State Plan--The plan for vocational rehabilitation services submitted by the
19 Vocational Rehabilitation Division (VRD) in compliance with Title I of the
20 Rehabilitation Act of 1973, as amended.
21

22 **§850.4. Opportunities for Citizen Participation.**

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

- 26 (1) voice concerns through public representation on Agency committees, councils,
27 and boards;
28
- 29 (2) attend and make public comments at public meetings (notices of all public
30 meetings and agenda items are published in the *Texas Register*);
31
- 32 (3) comment on all proposed rules; and
33
- 34 (4) submit a petition requesting the adoption of rules.
35

36 (A) All petitions proposing the adoption of Agency rules shall be submitted
37 in writing to the Commission. The petition must contain the following:
38

- 39 (i) the text of the proposed rule prepared in a manner to indicate the
40 words to be added or deleted from the current text, if any;
41
- 42 (ii) a statement of the statutory or other authority under which the rule
43 is to be promulgated; and
44

1 (iii) the public benefits anticipated as a result of adopting the rule or
2 the anticipated implications that could result from the failure to
3 adopt the proposed rule.
4

5 (B) Agency staff reviews the requests and present recommendations to the
6 Commission for action.
7

8 **§850.5. Complaints.**
9

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

35 **§850.6. Cooperation with Other Public Agencies.**
36

37 The Agency enters into appropriate cooperative arrangements with, and uses the services
38 and facilities of, other federal, state, and local public agencies providing services related
39 to rehabilitation of individuals with disabilities. The Agency also works toward
40 maximum coordination and consultation with programs for and relating to rehabilitation
41 of veterans with disabilities.
42

43 **§850.11. Qualified Vocational Rehabilitation Counselor .**
44

- 45 (a) The Vocational Rehabilitation Division (VRD) helps counselors to meet the
46 Comprehensive System of Personnel Development (CSPD) standard by making

1 funds available through the Qualified Vocational Rehabilitation Counselor (QVRC)
2 program for the required graduate education except when:

- 3
4 (1) unforeseen circumstances occur that may restrict or prohibit the funding; or
5
6 (2) management discontinues a counselor's participation in the program in the best
7 interests of the division.
8

9 (b) The VRD director or designee must approve QVRC financial assistance. This
10 financial assistance is contingent on:

- 11 (1) funding;
12
13 (2) management approval; and
14
15 (3) compliance with qualifications for participation.
16
17

18 (c) Qualifications for participation in the QVRC program require that vocational
19 rehabilitation counselors, transition vocational rehabilitation counselors, VRD
20 vocational rehabilitation coordinators or VRD unit program specialists) applying for
21 assistance must:

- 22 (1) have completed the initial training year;
23
24 (2) be meeting or exceeding job performance expectations;
25
26 (3) obtain the appropriate approvals to pursue a graduate degree or prescribed
27 coursework;
28
29 (4) apply for Rehabilitation Services Administration (RSA) scholarship and
30 university stipend funding; and
31
32 (5) be accepted by the appropriate institution of higher education.
33
34

35 (d) A counselor who meets the CSPD standard is considered a Qualified Vocational
36 Rehabilitation Counselor.
37

38 (e) A counselor is expected to meet the CSPD standard within seven years from
39 completion of the initial training year. Divisions must conduct transcript reviews
40 and/or confirm certifications to determine compliance with standards or to outline
41 coursework to be completed by the counselor.
42

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

- 44 (1) associated with the college application and admission except one GRE fee;
45
46

- 1 (2) related to tuition, fees, and books for any coursework that must be repeated
2 because of failure to successfully complete; and
3
4 (3) related to completing work necessary to remove any grade of "I" (Incomplete)
5 within three months, unless there are valid reasons (for example, serious
6 illness, or university regulations to the contrary).
7
8
9

10 **SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES**
11
12
13

14 **§850.32. Definitions.**

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

- 17 (1) Agency--The Texas Workforce Commission.
18
19 (2) RCT--The Rehabilitation Council of Texas.
20
21
22

23 **§850.33. Tasks.**

24 The RCT shall:

- 25 (1) review, analyze, and advise the VRD about their performance of
26 responsibilities, particularly those relating to:
27
28 (A) eligibility determination (including order of selection);
29
30 (B) the extent, scope, and effectiveness of services provided; and
31
32 (C) functions performed by VRD that potentially affect the ability of
33 individuals with disabilities to achieve rehabilitation goals and
34 objectives;
35
36 (2) advise the Vocational Rehabilitation Division (VRD) and, at its discretion,
37 help prepare the State Plan for Vocational Rehabilitation Services;
38 amendments to the plan; and applications, reports, needs assessments, and
39 evaluations required;
40
41 (3) to the extent feasible, review and analyze the effectiveness of, and customer
42 satisfaction with:

- 1
2 (A) the functions performed by state agencies and other public and private
3 entities responsible for performing functions for individuals with
4 disabilities; and
5
6 (B) vocational rehabilitation services:
7
8 (i) provided, or paid for from funds made available, under 29 USC
9 §725, or through other public or private sources; and
10
11 (ii) provided by state agencies and other public and private entities
12 responsible for providing vocational rehabilitation services to
13 individuals with disabilities; and
14
15 (C) the employment outcomes achieved by individuals who receive services
16 under 29 USC §725, including the availability of health and other
17 employment benefits in connection with those employment outcomes;
18
19 (4) coordinate with other councils in the state, including the State Independent
20 Living Council established under 29 USC §796d; the advisory panel
21 established under §612(a)(20) of the Individuals with Disabilities Education
22 Act 20 USC§1412(a)(21); the State Council on Developmental Disabilities
23 described in 42 USC §15025; the State Mental Health Planning Council
24 established under 42 USC §300x-3(a); and the state workforce investment
25 board;
26
27 (5) advise VRD and coordinate working relationships between the divisions and
28 the State Independent Living Council and centers for independent living within
29 the state; and
30
31 (6) perform other comparable functions consistent with the Rehabilitation Act of
32 1973, as amended, that the RCT determines to be appropriate.
33

34 **§850.34. Reports.**

35 The RCT shall:

- 36 (1) prepare and submit an annual report to the governor or appropriate state entity
37 and the Commission on the status of vocational rehabilitation programs
38 operated within the state, and make the report available to the public; and
39
40 (2) submit to the commissioner of the Rehabilitation Services Administration,
41 United States Department of Education, periodic reports that the commissioner
42 may reasonably request, and keep records that the commissioner finds
43 necessary to verify those reports.
44

1 **§850.35. Funding.**
2

3 The Rehabilitation Council of Texas (RCT) is funded primarily by federal funds, and its
4 existence is required in order for the Agency to receive and expend federal funds.
5
6
7

8
9 **SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY**
10

11 **§850.50. Privacy Policies.**

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

14 (1) Right to be informed about information collected. An individual has the right
15 to be informed about information that the Agency collects about the individual
16 unless the Agency is allowed to withhold the information from the individual
17 under Government Code, §552.023(b).
18

19 (2) Right to receive notice about certain information laws and practices.
20

21 (A) When the Agency collects information about an individual by means of
22 a form that the individual completes and files with the Agency, the
23 Agency informs the individual of his or her rights related to the
24 information collected. If the form is in a paper format, the Agency posts
25 a prominent notice of the individual's rights on the form. Or if the form is
26 in an electronic format on an Internet site, the Agency prominently posts
27 the notice on the Internet site in connection with the electronic form. The
28 notice states that:

29 (i) with few exceptions, the individual is entitled on request to be
30 informed about the information that the Agency collects about the
31 individual;
32

33 (ii) under the Government Code, §552.021 and §552.023, the
34 individual may receive and review the information; and
35

36 (iii) under the Government Code, §559.004, the individual may have
37 the Agency correct information about the individual that is
38 incorrect.
39

40 (B) When Agency staff uses an Internet site to collect information about an
41 individual or about the computer network location or identity of a user of
42 the site, the Agency prominently posts on the site what information the
43

1 Agency is collecting, including such information being collected by
2 means that are not obvious.
3

- 4 (3) Right to correction of incorrect information. The Agency has established a
5 procedure under which an individual may have the Agency correct information
6 that the Agency possesses about the individual and that is incorrect. The
7 individual should send a written request to the Agency, including his or her full
8 name and mailing address; identify the incorrect information; and provide the
9 correct information. If the information to be corrected is related to a vocational
10 rehabilitation case, or to an Agency personnel or employment record,
11 documentation establishing the individual's identity should be included. The
12 individual should attach to the request any additional material needed to
13 identify the incorrect information or verify the correct information. The
14 individual should include with the request contact information such as address,
15 a daytime telephone number and an email address in case the Agency needs to
16 clarify the request. The individual must sign and mail the request to Records
17 Management Center, ATTN: Records Management Officer, 4405A Springdale
18 Road, Austin, Texas 78723-6050. The Agency will acknowledge receipt of the
19 request, and will notify the individual of final action taken.
20
- 21 (4) Applicability of Public Information Law. Government Code, Chapter 552,
22 governs the charges that the Agency may impose on an individual who
23 requests information that the Agency collects about himself or herself.
24 However, the Agency does not charge an individual to correct information
25 about the individual.
26

27 **§850.51. Confidentiality of Customer Information in Vocational Rehabilitation**
28 **Services Program.**
29

30 (a) Customer records.

- 31
- 32 (1) All personal information available to Agency employees as they administer
33 rehabilitation services programs, including names, addresses, and records of
34 customer evaluations, is confidential.
35
- 36 (2) The Agency may use such information and records only for purposes directly
37 connected with administering the vocational rehabilitation programs.
38
- 39 (3) The Agency may directly or indirectly disclose information only in
40 administering the rehabilitation programs, except with the customer's written
41 consent, in compliance with a court order, or in accordance with a federal or
42 state law or regulation. The Agency may not share information containing
43 identifiable personal information with advisory or other bodies that do not have
44 official responsibilities for administration of the programs.
45

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

10 (b) Other records.

- 11
12 (1) Release of customer records must be made in accordance with federal law and
13 regulations.
14
15 (2) The Agency may provide to and receive from any state agency other
16 nonconfidential information for the purpose of increasing and enhancing
17 services to customers and improving agency operations.
18

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

21 **§850.60. Scope.**

- 22
23
24 (a) The following statutes and regulations authorize the procedures established by this
25 chapter:
26
27 (1) The Rehabilitation Act of 1973, as amended, 29 USC §701 et seq. and
28 regulations of the US Department of Education, Rehabilitation Services
29 Administration, 34 CFR Part 361, as amended, relating to State Vocational
30 Rehabilitation Services;
31 (2) 34 CFR Part 395, as amended, relating to Vending Facility Program for the Blind
32 on Federal and Other Property; and
33 (3) 34 CFR Part 367, as amended, relating to Independent Living Services for Older
34 Individuals Who Are Blind (ILS-OIB).
35
36
37 (b) The procedures in this subchapter apply to those determinations made by Agency
38 personnel that affect the provision of vocational rehabilitation (VR) services,
39 independent living services for older individuals who are blind, and the Business
40 Enterprises of Texas program.
41
42 (1) Unless the determination concerns the denial, reduction, suspension, or
43 termination of VR services, independent living services for older individuals
44 who are blind, or comprehensive rehabilitation services by the Agency, it is not
45 subject to review under the procedures of this subchapter.
46

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
- (2) The following decisions or determinations are not subject to review under this subchapter:
 - (A) administrative decisions that are made by Agency supervisors or managers without reference to any specific applicant or customer and that apply generally to the provision of VR services to applicants or customers, including to decisions concerning the assignment of personnel;
 - (B) decisions, diagnoses, judgments, actions, or omissions of third-party vendors or service providers;
 - (C) decisions concerning the content of an applicant's or customer's record of service for which remedies are provided under 34 CFR §361.38(c)(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; the Rehabilitation Act of 1973, as amended; Section 504, the Americans with Disabilities Act; or the 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 VR services; and
 - (2) previously eligible individuals who have been determined no longer eligible for VR services under 34 CFR §361.43.
 - (d) An individual's decision to seek an informal resolution of matters about which the individual is dissatisfied shall not prevent, compromise, or delay the individual's access to formal resolution procedures in this division.
 - (e) The Agency shall not suspend, reduce, or terminate VR services being provided to an applicant or customer, including evaluation and assessment services and the development of an Individualized Plan for Employment, pending a resolution of the applicant's or customer's appeal by mediation or hearing, unless:
 - (1) the applicant or customer requests a suspension, reduction, or termination of services; or
- 23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- 1 (2) the Agency has evidence that the applicant or customer obtained the services
2 through misrepresentation, fraud, collusion, or criminal conduct.
3

4 **§850.61. Definitions.**

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

- 8 (1) Act--The Rehabilitation Act of 1973 as amended, 29 USC §701, et seq.
9
- 10 (2) Appellant--An applicant, eligible individual, authorized representative, or
11 parent who has initiated formal procedures under this subchapter.
12
- 13 (3) Applicant--An individual who submits an application for VR services in
14 accordance with 34 CFR Part 361.
15
- 16 (4) Authorized representative--An attorney authorized to practice law in the State
17 of Texas, or an individual designated by a party to represent the party in
18 hearing procedures. The term includes a parent or an individual made legally
19 responsible for a child by a court of competent jurisdiction.
20
- 21 (5) Counselor--An Agency employee who is trained to provide vocational
22 guidance and counseling and meets the minimum qualifications designated in a
23 functional job description.
24
- 25 (6) Customer--An applicant or an individual with a disability who is receiving VR
26 services.
27
- 28 (7) Discovery--The process by which a party, before any final hearing on the
29 merits, may obtain evidence and other information that is relevant to a claim or
30 defense in the appeal.
31
- 32 (8) Eligible individual--Any individual with a disability determined to be eligible
33 to receive VR services.
34
- 35 (9) Hearing--A formal review conducted under Chapter 850. This term includes
36 prehearing conferences.
37
- 38 (10) Impartial hearing officer (IHO)--An individual who is appointed to conduct a
39 hearing under Chapter 850.
40
- 41 (11) Individualized Plan for Employment--A plan developed for each individual
42 determined to be eligible for VR services, in accordance with 34 CFR Part 361.
43

- 1 (12) Parent--The term "parent," whether singular or plural, means a minor child's
2 natural or adoptive parent, the spouse of the minor child's natural or adoptive
3 parent, the minor child's surrogate or foster parent, the spouse of the surrogate
4 or foster parent, or other individual made legally responsible for the minor
5 child by a court.
6
- 7 (13) Party--An individual or agency named or admitted to participate in a formal
8 hearing.
9
- 10 (14) Record--The official record of a hearing, including all arguments, briefs,
11 pleadings, motions, intermediate rulings, orders, evidence received or
12 considered, statements of matters officially noticed, questions and offers of
13 proof, objections and rulings on objections, proposed findings of fact,
14 conclusions of law, and hearing officer decision; any other decision, opinion,
15 or report by the hearing officer or Commission; and all memoranda or data,
16 including customer and applicant files, submitted to or considered by the
17 impartial hearing officer.
18
- 19 (15) State Plan--The plan for VR services submitted by the Agency's Vocational
20 Rehabilitation Division in compliance with the Act.
21

22 **§850.62. Filing a Request for Review.**
23

- 24 (a) Any applicant or eligible individual who is dissatisfied with a determination made by
25 the Agency, as described in §850.60 of this subchapter, relating to Scope, may
26 request, or, if appropriate, may request through the individual's authorized
27 representative, a review of the determination. Although no prescribed form is
28 required to file a request, preprinted forms for this purpose are available on request at
29 any Agency VR office.
30
- 31 (b) The request for a review shall be filed in writing with the hearings coordinator within
32 the Agency's Office of General Counsel.
33
- 34 (1) A request shall be considered filed on the day that it is received by the hearings
35 coordinator within the Agency's Office of General Counsel.
36
- 37 (2) Preprinted forms for this purpose are available on request from the hearings
38 coordinator within the Agency's Office of General Counsel or any Agency VR
39 office.
40
- 41 (c) On receiving a request for review, the hearings coordinator within the Agency's
42 Office of General Counsel shall, within five working days, mail the appellant:
43
- 44 (1) the name, address, and telephone number of the Client Assistance Program
45 established under federal law;
46

- (2) the name of the IHO appointed to hear the appeal, and the date, time, and place of any prehearing;
- (3) a copy of applicable hearing procedures; and
- (4) notice that the appellant has the right to request mediation procedures.

§850.63. Informal Dispute Resolution.

- (a) The Agency shall provide an opportunity for informal resolution of an appeal.
- (b) Informal resolution may include, but is not limited to:
 - (1) informal meetings with VR counselors or their supervisors;
 - (2) second reviews of the case file and case decisions by VR management;
 - (3) telephone calls to or conference calls that include the affected parties; or
 - (4) written explanations or summaries of the policies, laws, or regulations involved in the complaint.
- (c) If the informal resolution procedure results in a final agreement between the parties, no hearing shall be held.
- (d) If no final informal resolution is reached, the Agency shall provide an opportunity for a hearing to resolve an appeal.
- (e) Either a final agreement resulting from informal resolution or a hearing and impartial hearing officer decision shall be completed within 60 calendar days of the original filing of the appeal, unless the parties agree to a specific extension of time.

§850.64. Time for Hearing.

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

§850.65. Mediation Procedures.

- (a) An applicant or eligible individual who has initiated a proceeding under Chapter 850, Subchapter E, may request, or may request through the individual's authorized representative, mediation to resolve the dispute. The Agency, with the consent of the applicant, eligible individual, or the authorized representative, as appropriate, may

1 also originate the request for mediation.
2

- 3 (b) Mediation is voluntary on the part of the parties. At any point during the mediation
4 process, either party or the mediator may elect to terminate the mediation. In the
5 event that mediation is terminated, either party may pursue resolution through an
6 impartial hearing. Mediation shall not be used to deny or delay the right of an
7 individual to a hearing under Chapter 850, Subchapter E, or to deny any other right
8 afforded by the Act. Mediation shall be conducted by a qualified and impartial
9 mediator who is trained in effective mediation techniques.
10
- 11 (c) The Agency shall bear all costs related to the mediation process, consistent with
12 Chapter 850, Subchapter E.
13
- 14 (d) The request for mediation shall be filed in writing with the hearings coordinator
15 within the Agency's Office of General Counsel. On receiving a request for mediation
16 from the parties, the hearings coordinator shall randomly select an individual from a
17 list of qualified mediators who are knowledgeable in laws and regulations relating to
18 the provision of VR services, ILS-OIB, or the Business Enterprises of Texas
19 program, whichever may apply to the dispute.
20
- 21 (e) Sessions in the mediation process shall be coordinated by the mediator in a timely
22 manner at a location convenient to both parties in the dispute. Parties shall be
23 provided an opportunity to submit evidence and other information that supports their
24 positions.
25
- 26 (f) All discussions that occur during the mediation sessions are confidential and shall
27 not be used as evidence in any subsequent due process hearing or civil proceeding.
28 The mediator may require the parties to sign a confidentiality pledge before the start
29 of the mediation process.
30
- 31 (g) Any agreement reached through the mediation process shall be documented in a
32 written mediation agreement and signed by the parties to the dispute. Copies shall be
33 provided to both parties. The agreement then becomes a part of the customer record.
34
35

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

- 38 (a) The hearings coordinator, as described in §850.62, shall select, on a random basis, or
39 by agreement between the Agency and the appellant, or if appropriate, the appellant's
40 authorized representative or a parent, an IHO from a list of qualified IHOs
41 maintained by the Agency.
42
- 43 (b) The IHO shall be an individual who:
44

- (1) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);
- (2) has knowledge of the delivery of VR services, the state plan, and the federal and state regulations governing appeals under this chapter;
- (3) has received training specified by the Agency with respect to the performance of official duties; and
- (4) has no personal, professional, or financial interest that would conflict with his or her objectivity in the hearing.

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

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

- (1) the hearings coordinator may appoint the same IHO that heard the prior appeal to hear the subsequent appeal; or
- (2) the IHO, on Agency motion, reassigns the appeal to the IHO who heard the prior appeal.

§850.67. Powers and Duties of Impartial Hearing Officer.

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

- (1) conduct a full and impartial hearing;
- (2) take action to avoid unnecessary delay in the disposition of the proceeding; and
- (3) maintain order.

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

- (1) administer oaths;
- (2) take testimony;
- (3) rule on questions of evidence;

- 1 (4) rule on discovery issues;
2
3 (5) issue orders relating to hearing and prehearing matters, including orders
4 granting motions to subpoena witnesses and imposing nonmonetary sanctions
5 regarding discovery;
6
7 (6) admit or deny party status;
8
9 (7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably
10 limit the time for presentations;
11
12 (8) grant continuances;
13
14 (9) request parties to submit legal memoranda, proposed findings of fact, and
15 conclusions of law; and
16
17 (10) issue decisions based on findings of fact and conclusions of law.
18
19 (c) Unless required for the disposition of ex parte matters authorized by law, the IHO
20 shall not directly or indirectly communicate in connection with any issue of fact or
21 law with any party or a party's authorized representative, except on notice and
22 opportunity for each party to participate.
23
24 (d) Discovery conducted under subsection (b) of this section is subject to these rules and
25 the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001,
26 Subchapter D.
27

28 **§850.68. Substitution of Impartial Hearing Officer.**
29

- 30 (a) If for any reason an IHO is unable to continue presiding over a pending hearing, or
31 issue a decision after the conclusion of the hearing, another IHO shall be designated
32 as a substitute to complete the hearing and render a decision in accordance with these
33 rules. Reasons may include, but are not limited to, withdrawal or reassignment to
34 avoid the appearance of impropriety or partiality.
35
36 (b) The substitute IHO may use the existing record and may conduct further proceedings
37 as necessary and proper to conclude the hearing and render a decision.
38

39 **§850.69. Reasonable Accommodations.**
40

- 41 (a) Any hearing or proceedings conducted under this subchapter shall be held, whenever
42 feasible, by telephone (directly or by relay), at a time and place reasonably accessible
43 to the appellant and any witnesses, and convenient for parties. In considering the
44 physical location of a hearing or proceeding, the IHO shall consider, among other
45 factors:
46

1 (1) the suitability of any proposed facilities for a hearing, including the ability of
2 the appellant and any witnesses to gain physical access to the proceedings and
3 facilities; and
4

5 (2) the comparative distances and times required to travel from places of work or
6 residence to a proposed hearing location by parties and witnesses.
7

8 (b) The Agency shall, upon reasonable notice, provide the appellant with readers or
9 interpreters. Reasonable notice shall be considered to be no fewer than five working
10 days prior to the proceeding, unless good cause for a shorter period exists in the
11 judgment of the IHO.
12

13 (c) A copy of a transcript prepared during hearing proceedings and all notices and
14 documents shall be provided to the appellant in an accessible format on request.
15

16 **§850.70. Appearance of Parties at Hearings; Representation.**
17

18 (a) An individual may represent himself or herself.
19

20 (b) A party may be represented by an attorney authorized to practice law in Texas or by
21 any other representative authorized by the party to represent the party.
22

23 (c) A party's authorized representative shall be copied on all notices, pleadings, and
24 other correspondence.
25

26 (d) A party's authorized representative remains the representative of record in absence of
27 a formal request to withdraw and an order approving such withdrawal issued by the
28 IHO.
29

30 (e) The Agency is not responsible for expenses incurred by appellants seeking remedy
31 under this subchapter and representation and attorney fees and related expenses are
32 the responsibility of the individual parties.
33

34 **§850.71. Failure to Attend Hearing and Default.**
35

36 If, after receiving notice of a hearing, a party or the party's authorized representative fails
37 to attend the hearing, the IHO may proceed and, when appropriate, issue a default
38 decision against the absent party.
39

40 **§850.72. Witness Fees.**
41

42 (a) Any witness or deponent who is not a party to, and who is subpoenaed or otherwise
43 appears at, any hearing or proceeding at the request of the Agency is entitled to
44 receive reimbursement as provided under Texas Government Code §2001.103.
45

1 (b) The Agency is not responsible for expenses incurred by any witness or deponent who
2 is not a party to, and who is subpoenaed or otherwise appears at, any hearing or
3 proceeding at the request of the appellant.
4

5 (c) The party calling or deposing an expert witness is responsible for all fees and
6 expenses charged by the expert witness.
7

8 **§850.73. Prehearing Conferences.**
9

10 (a) The IHO may hold a prehearing conference to resolve matters preliminary to the
11 hearing. At the discretion of the IHO, a prehearing conference may be held by
12 telephone (directly or by relay). A prehearing conference may be convened to
13 address any or all of the following matters:
14

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

16 (2) scope or party status;

17 (3) the date and location of the final hearing;

18 (4) factual and legal issues;

19 (5) motions;

20 (6) issuance of subpoenas;

21 (7) discovery disputes;

22 (8) scheduling;

23 (9) stipulations;

24 (10) settlement conferences;

25 (11) requests for official notice;

26 (12) identification and exchange of documentary evidence;

27 (13) admissibility of evidence;

28 (14) identification and qualification of witnesses;

29 (15) order of presentation; and

30 (16) other matters that promote the orderly and prompt conduct of the hearing.
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

1 (b) Within five business days of the date on which the IHO receives the appellant's
2 petition or request for review, the IHO shall notify the appellant in writing of any
3 other matters that the IHO considers expedient for an orderly conduct of the
4 prehearing, including the following:
5

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

14
15
16
17
18
19
20 **§850.74. Dismissal without Hearing.**
21

22 (a) The IHO may entertain motions for dismissal without a hearing for the following
23 reasons:
24

- 25 (1) failure to pursue the hearing;
- 26 (2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;
- 27 (3) withdrawal of the request for hearing;
- 28 (4) moot questions;
- 29 (5) lack of jurisdiction;
- 30 (6) failure to raise a material issue in the pleading;
- 31 (7) failure of a party or authorized representative to appear at a scheduled hearing;
- 32 (8) failure to respond to a discovery request; and
33 (9) failure to respond to any order by the IHO, including an order to disclose the
34 identities of witnesses and exhibits.
35
36
37
38
39
40
41
42
43

- 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.
46

- 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;
46

- 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:
44

- 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 CFR §361.47,

1 including any electronically stored or preserved records, to the extent pertinent to the
2 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 USC §701, et seq.;
 - 19
 - 20 (2) US Department of Education regulations, 34 CFR 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 (5) such other means as the IHO may direct.
- 40 (e) Date of service. The date of service is the date of hand-delivery, delivery by courier,
41 mailing, e-mailing, or facsimile transmission, unless otherwise required by law.
42
43
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, and for appealing a final decision of an IHO to a
32 court, as set forth at §850.88 of this subchapter, Saturdays, Sundays, and legal
33 holidays are included.
34
35

36 **SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING**
37

38 **§850.130. Memorandum of Understanding Regarding Continuity of Care for Physically**
39 **Disabled Inmates.**
40

- 41 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
42 the Texas Department of Criminal Justice, Texas Department of Aging and
43 Disability Services, and Texas Department of State Health Services. The MOU
44 contains the agreement required by Texas Health and Safety Code §§614.014 -
45 614.015 to establish the respective responsibilities of these agencies to institute a

1 continuity of care and service program for offenders in the criminal justice system
2 who are physically disabled, terminally ill, or significantly ill.
3

- 4 (b) The text of the MOU is in rule 37 TAC, Part 6 §159.19 (relating to Continuity of
5 Care and Service Program for Offenders who are Elderly and Offenders with
6 Physical Disabilities, or Significant or Terminal Illnesses).
7

8 **§850.131. Memorandum of Understanding Regarding the Exchange and Distribution of**
9 **Public Awareness Information.**

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

23 **§850.132. Memorandum of Understanding Concerning Coordination of Services to**
24 **Individuals with Disabilities.**

- 25
26 (a) The Agency adopts by reference the memorandum of understanding (MOU) between
27 the Texas Health and Human Services Commission, the Texas Department of Aging
28 and Disability Services, the Texas Department of State Health Services, the Texas
29 Department of Family and Protective Services , and the Texas Education Agency.
30
31 (b) The MOU is the agreement required by Texas Human Resources Code §22.011, to
32 facilitate the coordination of services to individuals with disabilities by establishing
33 the respective responsibilities of the agencies regarding the coordination of services
34 to individuals with disabilities.
35
36 (c) The text of the MOU is located in 40 TAC Part 1, §§72.201 - 72.212 (relating to
37 Memorandum of Understanding Concerning Coordination of Services to Persons
38 With Disabilities).
39
40
41