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1                                   **CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS**  
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3                   **SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS**  
4

5                   **§854.10. Definitions.**  
6

7                   The following words and terms, when used in this subchapter, shall have the following  
8                   meanings, unless the context clearly indicates otherwise. Unless expressly provided  
9                   otherwise, words in the present or past tense include the future tense, and the singular  
10                  includes the plural and the plural includes the singular.  
11

- 12                  (1)   Act--Randolph-Sheppard Act (20 USC, Chapter 6A, §107 et seq.).  
13  
14                  (2)   Application for Training--The "BET Application for Training" form used by  
15                  VR customers to apply for prerequisite trainings that is a required prerequisite  
16                  to be considered for a license.  
17  
18                  (3)   Assignment Application--The "BET Facility Assignment Application" form  
19                  used by licensees to apply for a facility.  
20  
21                  (4)   BET--Business Enterprises of Texas.  
22  
23                  (5)   BET assignment--The document that sets forth the terms and conditions for  
24                  management of a BET facility by the individual named as manager.  
25  
26                  (6)   BET director--The administrator of Business Enterprises of Texas; or, if there  
27                  is no individual in that capacity, the individual designated by the VRD director  
28                  to perform that function; or if there is none, the VRD director.  
29  
30                  (7)   BET facility--Automatic vending machines, cafeterias, snack bars, cart service,  
31                  shelters, counters, and other equipment that may be operated by BET managers  
32                  and that are necessary for the sale of newspapers, periodicals, confections,  
33                  tobacco products, foods, beverages, and other articles or services dispensed  
34                  automatically or manually and prepared on or off the premises in accordance  
35                  with all applicable health laws, and including the vending or exchange of  
36                  tickets for any lottery authorized by state law.  
37  
38                  (8)   BET manual--"Business Enterprises of Texas Manual of Operations," which  
39                  contains this subchapter adopted by the Agency and related instructions and  
40                  procedures by which BET facilities are to be managed.  
41  
42                  (9)   Blind (individual who is)--An individual whose central visual acuity does not  
43                  exceed 20/200 in the better eye with correcting lenses or whose visual acuity,  
44                  if better than 20/200, is accompanied by a limit to the field of vision in the  
45                  better eye to such a degree that its widest diameter subtends an angle of no  
46                  greater than 20 degrees. In determining whether an individual is blind, there

1 shall be an examination by a physician skilled in diseases of the eye, or by an  
2 optometrist, whichever the individual shall select.

- 3
- 4 (10) Business day--A day on which state agencies are officially required to be open  
5 during their normal business hours.
- 6
- 7 (11) ECM--Elected Committee of Managers--A committee representative of BET  
8 licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.
- 9
- 10 (12) Expendables--Items that require a low capital outlay and have a short life  
11 expectancy, including, but not limited to, small wares, thermometers, dishes,  
12 glassware, flatware, sugar and napkin dispensers, salt and pepper shakers,  
13 serving trays, kitchen knives, spreaders, serving spoons, and ladles.
- 14
- 15 (13) Immediate family--Any individual related within the first degree of affinity  
16 (marriage) or consanguinity (blood) to the individual involved.
- 17
- 18 (14) Individual with a significant disability--An individual who has a severe  
19 physical or mental impairment that seriously limits one or more functional  
20 capacities (such as mobility or communication).
- 21
- 22 (15) Initial assignment--The first BET facility to which a manager is assigned after  
23 being licensed.
- 24
- 25 (16) Instruction by Agency staff members--Instructions that are proper and  
26 authorized and in accordance with applicable statutes and program rules,  
27 regulations, and procedures.
- 28
- 29 (17) Level 1 facility--A BET facility that in the previous year generated a net  
30 income after set-aside fees equal to or less than 170 percent of the median net  
31 income after set-aside fees of all BET managers for the previous year or, in the  
32 case of a new BET facility, is reasonably expected to generate that income.
- 33
- 34 (18) Level 2 facility--A BET facility that in the previous year generated a net  
35 income after set-aside fees greater than 170 percent of the median net income  
36 after set-aside fees of all BET managers for the previous year or, in the case of  
37 a new BET facility, is reasonably expected to generate that income.
- 38
- 39 (19) Licensee--A blind individual who has been licensed by the Agency as qualified  
40 to apply for and operate a BET facility, and which shall have the same  
41 meaning assigned to "blind licensee" in 34 CFR §395.1.
- 42
- 43 (20) Manager--A licensee who is operating a BET facility, and which shall have the  
44 same meaning assigned to "vendor" in 34 CFR §395.1.
- 45
- 46 (21) Net sales--All sales, excluding sales tax.

- 1  
2 (22) Other income--Money received by a manager from sources other than direct  
3 sales, such as vending commissions or subsidies.  
4  
5 (23) Sanitation and cleaning supplies--Items that require a low capital outlay and  
6 have a short life expectancy, such as, by way of illustration and not limitation,  
7 mops, brooms, detergents, bleach, gloves, oven mitts, trash bags, food  
8 wrapping supplies, foil, and cleaning supplies for food equipment.  
9  
10 (24) State property--Lands and buildings owned, leased, or otherwise controlled by  
11 the State of Texas; and equipment and facilities purchased and/or owned by the  
12 State of Texas.  
13  
14 (25) Substantial interest--An individual has a substantial interest if:  
15  
16 (A) in an assignment decision:  
17  
18 (i) the individual will benefit financially from the assignment decision  
19 and;  
20  
21 (ii) funds received by the individual from the business exceed 10  
22 percent of the individual's gross income for the previous year; or  
23  
24 (B) if he or she is related to an individual in the first degree of affinity or  
25 consanguinity who has a substantial interest as defined in subparagraph  
26 (A) of this paragraph.  
27  
28 (26) Vending machine--For the purpose of assigning vending machine income, a  
29 coin- or currency-operated machine that dispenses articles or services, except  
30 those machines operated by the United States Postal Service for the sale of  
31 postage stamps or other postal products and services. Machines providing  
32 services of a recreational nature and telephones shall not be considered to be  
33 vending machines.  
34

35 *The provisions of this §854.10 adopted to be effective September 1, 2019, 44 TexReg 3294*

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38  
39 **§854.11. General Policies.**

- 40  
41 (a) Objectives. BET objectives shall be:  
42  
43 (1) to provide employment opportunities for qualified individuals; and  
44  
45 (2) to provide an ongoing training program for managers that encourages them to  
46 advance their upward mobility career opportunities within the program.

- 1  
2 (b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act  
3 and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for  
4 the citizens of Texas who are legally blind by establishing a vending facility program  
5 in which individuals who need employment are given priority in the operation of  
6 vending facilities selected and installed by the Agency. The Agency is required to  
7 administer BET in accordance with the Agency's vocational rehabilitation objectives.  
8 Therefore, a customer receiving services from VRD whose employment goal is to be  
9 a licensed manager shall have reached an employment outcome, as that term is used  
10 in the Rehabilitation Act of 1973, as amended, when the customer is licensed by the  
11 Agency and is managing a BET facility. The licensed manager shall not be  
12 considered an employee of the Agency or of state or federal government.  
13
- 14 (c) Full-time employment. Managing a BET facility shall constitute full-time  
15 employment. "Full-time" shall mean "being actively engaged in the management of a  
16 BET facility for the number of hours necessary to achieve satisfactory operation of  
17 the facility." The manager shall be available for necessary visits by Agency staff to  
18 allow inspection, advice, and consultation as may be required to ensure satisfactory  
19 operation. "Management" means "the personal supervision of the day-to-day  
20 operation of the assigned BET facility by the assigned manager."  
21
- 22 (d) Subcontracting. The management of a BET facility shall not be subcontracted by a  
23 licensed manager except for temporary periods of time approved by the Agency and  
24 in those circumstances in which the Agency considers that subcontracting the  
25 operation of some parts of the facility is in the best interest of BET. Potential  
26 justifications for subcontracting include the following: business strategies in which a  
27 portion of the facility operation may be subcontracted so that the assigned manager  
28 may focus on another aspect of the facility; temporary events not to exceed six  
29 months in which the assigned manager is not capable of management duties due to  
30 illness, injury, or other events, as approved by the Agency; and the need for business  
31 expertise and resources beyond that available from BET. Any subcontracting shall  
32 require the prior written approval of the Agency. The approval of any subcontract is  
33 at the discretion of the Agency. This subsection does not apply to equipment or  
34 machines allowed to be placed within the facility and not owned by or arranged for  
35 by the Agency.  
36
- 37 (e) Availability of funds. The administration of BET and the implementation of these  
38 policies are contingent upon the availability of funds for the purposes stated in this  
39 subchapter.  
40
- 41 (f) BET manual. All BET policies adopted by the Agency shall be included in the BET  
42 manual. The BET director shall ensure that the manual and any revisions to it are  
43 provided to each licensee electronically or in the format requested by the licensee.  
44 The licensee shall be responsible for reading the manual and acknowledging in  
45 writing that he or she has read and understands its contents. The BET director shall

1 ensure that the BET manual contains procedures from which licensees may obtain  
2 assistance in understanding BET policies and procedures.

3  
4 (g) Accessibility of BET materials. All information produced by and provided to  
5 licensees by the Agency shall be in an accessible format. When possible, these  
6 materials are sent in the format requested by the licensee.

7  
8 (h) Nondiscrimination.

9  
10 (1) VR and BET participants. the Agency shall not discriminate against any blind  
11 individual who is participating in or who may wish to participate in BET on  
12 the basis of sex, age, religion, color, creed, national origin, political affiliation,  
13 or physical or mental impairment, if the impairment does not preclude  
14 satisfactory performance.

15  
16 (2) BET facilities. Managers shall operate BET facilities without discriminating  
17 against any present or prospective supplier, customer, employee, or other  
18 individual who might come into contact with the facility on the basis of sex,  
19 age, religion, color, creed, national origin, political affiliation, or physical or  
20 mental impairment.

21  
22 (i) Emergencies. The BET director is authorized to expend funds on an emergency basis  
23 to protect the state's investment in a BET facility not to exceed \$50,000 in a fiscal  
24 year or \$5,500 per facility incident due to riot, war, fire, earthquake, hurricane,  
25 tornado, flood, or other disasters, governmental restrictions, labor disturbances, or  
26 strikes.

27  
28 (j) Temporary management. From time to time it becomes necessary to designate a  
29 temporary manager to an unassigned facility to ensure uninterrupted service to the  
30 host and customers. Temporary assignments shall be for the period stated in the  
31 assignment document. After the time frame stated in the assignment expires, the  
32 BET director shall review the temporary assignment and shall review the assignment  
33 every 90 days to determine the need for continuation of the temporary assignment.  
34 The temporary assignment shall terminate when a new manager is assigned to the  
35 facility. The Agency shall choose temporary managers from licensees; if a licensee is  
36 not available, the Agency may contract with a private entity. Before the Agency  
37 offers a licensee or a private entity a temporary opportunity, the regional BET staff,  
38 at a minimum, shall evaluate the following: the individual's willingness to serve for  
39 the stated temporary term; the qualifications and experience relevant to the current  
40 opportunity; and the documented management compliance history, along with other  
41 factors set out in Agency rules. The geographic BET staff shall provide its findings  
42 to the local ECM and seek a joint recommendation to BET management. BET  
43 management shall make the final determination. When more than one individual is  
44 recommended at the local level, BET management shall first give preference to  
45 managers available within the local ECM region and thereafter to the individual

1 manager with a lower average historical income, to improve his or her income  
2 temporarily.

- 3  
4 (k) Compliance with tax laws. Licensees and managers shall comply with state and  
5 federal tax laws and shall not have a tax lien against them.  
6

7 *The provisions of this §854.11 adopted to be effective September 1, 2019, 44 TexReg 3294*  
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10  
11 **§854.12. Consultants.**

- 12  
13 (a) If the Agency determines that a consultant is necessary to assist a manager or protect  
14 the interests of the Agency, the Agency shall contract with a consultant and may pay  
15 for the consultant out of the facility proceeds. The Agency shall not contract with a  
16 consultant when it possesses the expertise and staffing level to provide the consulting  
17 services.  
18  
19 (b) If the Agency determines that a consultant is needed to assist a manager, the BET  
20 director shall consult with the manager before contracting with a consultant. The  
21 final authority, however, for contracting with a consultant shall rest with the Agency.  
22  
23 (c) All consultant contracts entered into by the Agency for the provision of business  
24 support and mentoring services to the manager shall not exceed three years in  
25 duration, provided, however, that the contract may be extended for additional periods  
26 not to exceed one year each. No contract shall be extended until the manager has  
27 been consulted. The final discretion to extend the contract shall rest with the Agency.  
28  
29 (d) If the Agency determines it necessary to contract with a consultant to protect the  
30 interests of the Agency, the Agency shall enter into a separate agreement for that  
31 purpose with terms and conditions that the Agency may consider appropriate. The  
32 consultant will be procured in accordance with state contracting requirements with  
33 consideration of factors including business expertise, operational capability,  
34 experience, financial resources, and price in relation to the needs of the Agency.  
35

36 *The provisions of this §854.12 adopted to be effective September 1, 2019, 44 TexReg 3294*  
37

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39  
40 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

41  
42 **§854.20. Eligibility and Application Process.**

- 43  
44 (a) Prerequisites for training. To be eligible for BET training, a customer desiring a  
45 career with BET as an employment outcome in the vocational rehabilitation program  
46 shall:

- (1) be at least 18 years of age;
- (2) be a United States citizen residing in Texas (a birth certificate or other appropriate documentation must be submitted with the application);
- (3) be legally blind as defined by these rules;
- (4) be proficient in math, reading, and writing, as demonstrated through CCRC testing, as well as in adaptive technology, including word processing spreadsheet use and e-mail communication, as demonstrated through a CCRC final assessment;
- (5) have the health and stamina required to perform safely the basic functions of a manager;
- (6) have mobility skills to operate a BET facility safely, as documented by a VR counselor or assessment verified by an orientation and mobility instructor;
- (7) satisfactorily perform a Work Evaluation Training conducted with a current BET operator;
- (8) not have engaged in substance abuse for the previous 12 months; and
- (9) be in compliance with state and federal tax laws and not be subject to any tax liens.

(b) Application process. Each eligible customer interested in applying for BET training must obtain approval and an application from the regional VR manager. The application must be submitted to the BET director. An eligible customer has successfully participated in the CCRC program. Interviews will be conducted by the BET director and an appointed panel. An e-mail notification of the results will be sent to the applicant.

*The provisions of this §854.20 adopted to be effective September 1, 2019, 44 TexReg 3294*

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**§854.21. BET Licenses and Continuing Education Requirement.**

- (a) Natural individuals. Licenses to manage a BET facility shall be issued only to natural individuals.
  - (1) Prerequisites. No individual may be licensed until the individual has satisfactorily completed all required BET training and otherwise continues to satisfy the criteria for entry into BET.

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- (2) Issuance. A license issued by the Agency shall contain the name of the licensee and the date of issue. The license shall be signed by the VRD director and the BET director on behalf of the Agency and the State of Texas.
  - (3) Display. The license or a copy of the license shall be displayed prominently in each BET facility to which the manager is assigned.
  - (4) Property right. A license shall not create any property right in the licensee and shall be considered only as a means of informing the public and other interested parties that the licensee has successfully completed BET training and is qualified and authorized to operate a BET facility.
  - (5) Transferability. A license is not transferable.
  - (6) Term. A license issued by the Agency shall be valid for an indefinite period, subject, however, to termination or revocation under conditions specified in these rules that pertain to termination of a license for reasons other than unsatisfactory performance or administrative action.
- (b) Annual continuing education requirements for licensees:
- (1) The Agency and ECM conduct an annual training conference for all licensees to inform them of new BET developments and to provide instruction on relevant topics to enhance licensees' business competence and upward mobility in the program. Licensees must attend the Agency's training conference or an Agency-approved alternative training event every year to maintain their licenses and eligibility to bid on available facilities. They must document their attendance at the Agency training conference by signing attendance records provided at the conference. A licensee who is unable to attend the Agency training conference may satisfy the continuing education requirement by attending a BET-approved course or training conference. Such training includes, but is not limited to, attending the national training conferences for blind vendors conducted by the Randolph-Sheppard Vendors of America or by the National Association of Blind Merchants, or by completing a business-related course from the Hadley Institute for the Blind and Visually Impaired or a business-related course offered by an accredited community college.
  - (2) Licensees wishing to attend an alternative training course or conference must request approval through their local Agency staff. The local Agency staff forwards the request to the BET director for approval. The licensee must also provide proof of successful completion of any business-related course or attendance at a training conference through the local Agency staff to the BET director to receive credit for attendance. All costs associated with travel, lodging, meals, and registration when attending any training other than the Agency training conference will be the responsibility of the licensee.

- 1  
2 (3) Licensees may use an alternative approved training course or training  
3 conference to satisfy the continuing education requirement only if they are  
4 unable to attend the Agency training conference because of personal medical  
5 reasons, the death of a family member, a medical emergency or serious  
6 medical condition of an immediate family member, or if there is not an Agency  
7 training conference offered during the licensee's 12-month evaluation period.  
8 Licensees must provide written documentation of the medical issues or death  
9 of a family member to their local Agency staff.
- 10  
11 (4) Licensees who fail to complete continuing education requirements may be  
12 subject to administrative action up to and including termination of their  
13 licenses.

14  
15 *The provisions of this §854.21 adopted to be effective September 1, 2019, 44 TexReg 3294*

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18  
19 **§854.22. Initial Assignment Procedures.**

- 20  
21 (a) This section defines the process for the initial assignments of managers. It is the goal  
22 of the process to provide a fair, unbiased, and impartial process for selection,  
23 transfer, and promotion.
- 24  
25 (b) Initial assignment. When an individual completes BET training, the BET director  
26 shall make the initial assignment for the newly licensed individual. The initial  
27 assignment shall be for a minimum of 12 months. The BET director shall make the  
28 assignment based on the following factors, including but not limited to:
- 29  
30 (1) availability of a Level 1 facility;
- 31  
32 (2) recommendations from the BET training specialist and the ECM chair;
- 33  
34 (3) licensee's training records;
- 35  
36 (4) licensee's geographical concerns;
- 37  
38 (5) licensee's compliance with state and federal tax laws and not be subject to any  
39 tax liens; and
- 40  
41 (6) any other circumstances on a case-by-case basis.

42  
43 *The provisions of this §854.22 adopted to be effective September 1, 2019, 44 TexReg 3294*

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1       **§854.23. Career Advancement Assignment Procedures.**  
2

3       (a) Career advancement assignments. This section defines the process for the career  
4       advancement assignments of managers. It is the goal of the process to provide a fair,  
5       unbiased, and impartial process for selection, transfer, and promotion.  
6

7           (1) Availability. All career advancement opportunities depend on the availability  
8           of BET facilities. No facility with a projected annual income equal to the  
9           annual median income level of all managers after set-aside fees shall be used  
10          for an initial assignment unless it has been advertised and made available to all  
11          licensees in the BET program and no one has been assigned to the facility as a  
12          result of the advertising process.  
13

14          (2) Notice. As BET facilities become available and ready for permanent  
15          assignment, written notice of the availability shall be given to all licensees  
16          within 30 business days.  
17

18          (3) On-site visits. An advertised facility shall be available for on-site visits upon  
19          reasonable notice by licensees interested in that facility assignment.  
20

21       (b) Eligibility. To apply for an available facility, a licensee must meet the following  
22       requirements:  
23

24           (1) The licensee shall have successfully managed a BET facility for a minimum of  
25           one year.  
26

27           (2) The licensee shall be current on all accounts payable for the 12 months before  
28           the date of the facility announcement. Accounts payable include known debts  
29           to state and federal entities as well as any BET business-related debt. "Current"  
30           means "performing in accordance with written established or alternate payment  
31           plans associated with the accounts payable debts."  
32

33           (3) The licensee shall be in compliance with state and federal tax laws and not be  
34           subject to any tax liens.  
35

36           (4) The licensee shall not be on probation under §854.41 of this title (relating to  
37           Administrative Action Based on Unsatisfactory Performance).  
38

39           (5) The licensee shall meet eligibility requirements of the facility's host  
40           organization, including, but not limited to:  
41

42                   (A) criminal background checks; and  
43

44                   (B) drug tests.  
45

- 1 (6) The licensee shall not have submitted more than one insufficient funds check  
2 to the Agency within the 12 months before the date of the facility  
3 announcement.  
4
- 5 (7) The licensee shall not have submitted more than one late report within the 12  
6 months before the date of the facility announcement.  
7
- 8 (8) If unassigned, the licensee shall have fulfilled all resignation requirements in  
9 the licensee's most recent facility assignment or be displaced and eligible to  
10 apply for a facility.  
11
- 12 (9) The manager shall have an inventory of merchandise and expendables in the  
13 manager's current facility that the Agency has determined sufficient for its  
14 satisfactory operation.  
15
- 16 (10) The licensee shall satisfy the Agency that he or she can maintain the  
17 merchandise and expendables required for the available facility.  
18
- 19 (11) A licensee who has been placed on probation is not eligible for promotion and  
20 transfer for 30 days from the effective date of the most recent release from  
21 probation.  
22
- 23 (12) A licensee who has been placed on probation twice within a 12-month period  
24 is not eligible for promotion or transfer for six months from the effective date  
25 of the most recent release from probation.  
26
- 27 (13) A licensee who has been placed on probation three times within a two-year  
28 period is not eligible for promotion or transfer for one year from the effective  
29 date of the most recent release from probation.  
30

31 *The provisions of this §854.23 adopted to be effective September 1, 2019, 44 TexReg 3294*  
32

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34

35 **§854.24. Career Advancement Assignment Application.**  
36

- 37 (a) BET application deadline. A licensee may apply for an available facility by applying  
38 electronically, by hand, or by mail not later than the 12th business day (exclusive of  
39 date of mailing) after the date the facility notice was published. The submission date  
40 shall be:  
41
- 42 (1) the date the application is delivered electronically or by hand to the Agency; or  
43
- 44 (2) three days after postmark of the application in the US postal service,  
45 whichever is earlier; or  
46

1 (3) the date the application is delivered to an overnight courier.  
2

3 (b) BET application contents. A copy of the current form of the application shall be  
4 included in the BET manual. The substance of the application form shall not be  
5 modified except by action of the Agency. Modifications shall be provided to all  
6 licensees before their effective date. Upon request by the manager and before the  
7 submission deadline, assistance is available from the local BET staff and ECM  
8 representative in completing the BET application form.  
9

10 (c) Preliminary review of applications. The Agency staff and the ECM representative in  
11 each geographic area in which the applying licensees are located shall review all  
12 applications from their areas and shall verify the applicants' eligibility. If an ECM  
13 representative is an applicant for an available BET facility, the ECM chair shall  
14 appoint another ECM member for the review. Completed applications shall then be  
15 forwarded to the BET director, who shall provide copies to the ECM and Agency  
16 staff in the area in which the available facility is located.  
17

18 (d) Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET  
19 director after reviewing the assessments of all applicants conducted by the ECM  
20 representative and Agency staff, and the subsequent recommendations, for the  
21 regions in which the available facilities are located. Panel members shall rank all  
22 eligible applicants using a worksheet that weights the applicant's performance by 50  
23 percent for the applicant's most recent annual performance evaluation completed  
24 before the date of the facility advertisement, 25 percent for interview performance,  
25 and 25 percent for the submitted BET application form. Any other materials  
26 submitted by the applicants shall be provided by the same deadline as the BET  
27 application form and will be included in the 25 percent interview performance  
28 weighting component.  
29

30 (e) Level 2 assignments. For Level 2 assignments, the following procedures, in addition  
31 to Level 1 procedures, shall apply:  
32

33 (1) Business plan. An applicant shall submit a business plan to the BET director  
34 no later than the 20th business day after the postmark date on the notice of  
35 facility availability. Upon request by an applicant, Agency staff in the area in  
36 which the available facility is located shall provide the applicant with a  
37 standard packet of information that is necessary to prepare the business plan.  
38 Agency staff shall deliver the packet to the applicant no later than the third  
39 business day after receiving a request.  
40

41 (2) Establishment of a pool of impartial and qualified individuals. The Agency  
42 shall establish and maintain a pool of qualified individuals who:  
43

44 (A) have no personal, professional, or financial interest that would conflict  
45 with the objectivity of the individual;  
46

- 1 (B) neither have nor have had any association with the Agency or BET  
2 before being considered as a pool member; and  
3  
4 (C) have at least five years' experience in business at a managerial or  
5 executive level, including experience in budget preparation and  
6 administration, personnel supervision or management, and  
7 administration of business plans or equivalents to business plans in the  
8 sector of business in which the individual has experience.  
9

10 (3) Evaluation of business plans. All business plans shall be reviewed and  
11 evaluated by an individual chosen at random from the pool of impartial and  
12 qualified individuals. Business plans shall be evaluated and scored based on a  
13 scoring system of 100 points. The evaluations and scores shall then be  
14 forwarded to the BET director for consideration by the selection panel in the  
15 selection process.  
16

17 (4) Selection panel. A selection panel consisting of one representative from the  
18 ECM, one Agency staff member, and one individual from the pool of impartial  
19 and qualified individuals shall be chosen by means of a computer program that  
20 selects randomly from a database. The selection of each panel member shall be  
21 from among all individuals within their respective categories, except that the  
22 impartial member may not be the individual who evaluated the business plans.  
23 If the member of a category of panel members who is selected is unable or  
24 refuses to serve, the BET director shall use the same method of random  
25 selection until three members are chosen.  
26

27 (5) Presiding officer. The impartial panel member shall serve as the presiding  
28 officer of the selection panel.  
29

30 (6) Interview notices. At least 10 business days before the convening of the  
31 selection panel, applicants shall be notified electronically, or, upon request, by  
32 first-class mail, of the date, place, and time of the selection panel interview.  
33

34 (7) Selection panel materials. Completed applications, business plans, and each  
35 applicant's most recent performance evaluation completed before the date of  
36 the facility advertisement shall be provided to the selection panel members at  
37 least five business days before the date that the selection panel is to convene.  
38

39 (8) Duties of selection panel. The selection panel shall review the documents  
40 provided and interview the applicants. The panel shall prepare a tabulation  
41 sheet for each applicant on which the panel member shall enter the business  
42 plan score and performance evaluation score previously received by the  
43 applicant. A third score shall be awarded by each panel member for the  
44 interview performance of the applicant. Each interview shall be rated on a  
45 maximum score of 100, based on such areas as the quality of the applicant's  
46 presentation, knowledge of the submitted business plan, and preparation for the

1 assignment. Each applicant shall be interviewed on the same areas and given a  
2 similar amount of time to present his or her case. While questions must be  
3 tailored to each applicant's business plan, presentation, and knowledge, the  
4 panel should strive to conduct the interviews as similarly as possible. The  
5 selection panel shall then rank the top three applicants. An applicant's ranking  
6 shall be determined after weighting each applicant's business plan score by 25  
7 percent, weighting each applicant's most recent performance evaluation  
8 completed before the date of the facility advertisement by 50 percent, and  
9 weighting the average interview score awarded by panel members by 25  
10 percent. If there is a tie between applicants, the panel awards one point to the  
11 applicant who has the greater length of accumulated service as an assigned  
12 manager in a BET facility according to BET records. The selections shall be  
13 transmitted to the BET director, who shall in turn notify the highest ranked  
14 eligible applicant of the decision of the selection panel. The available facility  
15 shall be offered to the eligible applicants in order of ranking.

16  
17 (9) Reports of improper contact. Members of the selection panel shall report  
18 alleged improper contacts to the BET director or VRD director. Improper  
19 contact is defined as communication with a member of the selection panel to  
20 influence or manipulate the selection of an applicant for the facility being  
21 considered for assignment by offering a thing or act of value, including  
22 promises of future benefit, or by threat. Nothing contained in this section,  
23 however, prohibits any licensee from endorsing or supporting any candidate  
24 for selection by furnishing a letter or other document to that effect to be  
25 included with the applying licensee's application. After the selection panel  
26 concludes its responsibilities, each panel member shall be required to sign a  
27 statement certifying whether the member had, or had knowledge of, improper  
28 contact during the selection proceedings.

29  
30 (10) Process for investigating reports of improper contact. When alleged improper  
31 contact is reported, each applicant for the facility under consideration and the  
32 ECM chair shall be informed of the occurrence of an alleged improper contact.  
33 The information provided to the applicants shall describe the nature of the  
34 alleged improper contact but shall not divulge the identities of any individuals  
35 allegedly participating in such improper contact. Each applicant may object to  
36 continuation of the existing panel and request that a new panel be formed to  
37 select the manager for the available facility. The BET director, upon the  
38 request of any applicant for the facility, shall determine whether the improper  
39 contact requires that the panel be disbanded and a new panel formed. In  
40 making that decision, the BET director shall consider all relevant factors,  
41 including the objections, if any, of the applicants, to determine whether the  
42 improper contact is likely to influence the decision of the selection panel. If the  
43 BET director determines that the improper contact occurred and is likely to  
44 influence the selection process, the BET director shall direct the panel to  
45 disband and a new panel be formed to consider the selection for the available  
46 facility. The BET director shall inform all applicants of the decision to

1 continue the selection process with the existing panel, or to form a new panel,  
2 and shall state the basis of the decision. The actions prescribed as a  
3 consequence of improper contact set forth in rules pertaining to administrative  
4 actions shall apply whether or not any improper contact results in the panel  
5 being disbanded.  
6

- 7 (11) Exceptions to assignment and selection procedures. Unusual circumstances  
8 may require exceptions to assignment and selection procedures. Exceptions to  
9 these procedures shall be made only if the circumstance is not covered by  
10 assignment procedures and failure to react to the circumstance would be  
11 detrimental to BET or a licensee. Notwithstanding anything in this section, no  
12 exceptional procedure shall result in the removal of a manager from a facility  
13 except for reasons contained in rules pertaining to administrative actions.  
14 Assignment and selection decisions that are exceptions to these procedures  
15 shall be made by the BET director after discussing relevant information with  
16 the ECM chair and receiving the chair's recommendation. If a decision  
17 contrary to the ECM chair's recommendation is made, the BET director shall  
18 provide a written explanation of the decision to the ECM chair.  
19

20 *The provisions of this §854.24 adopted to be effective September 1, 2019, 44 TexReg 3294*  
21

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## 24 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

### 25 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.**

- 26  
27  
28 (a) Survey. When a BET facility becomes available for assignment, Agency staff shall  
29 conduct a survey of the site to determine the fixtures, furnishings, and equipment  
30 required to allow the facility to operate in accordance with projections by Agency  
31 staff of the potential business model for the facility. When the facility is an existing  
32 one, the survey shall consider the need for replacement or repair of fixtures,  
33 furnishings, and equipment.  
34
- 35 (b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for  
36 fixtures, furnishings, and equipment for the facility, including specifications for each  
37 item required and a site plan of the facility depicting the placement of the fixtures,  
38 furnishings, and equipment within the facility. The facility shall be consistent with  
39 local ordinances as well as state and federal requirements.  
40
- 41 (c) Acquisition, placement, and installation. When satisfied with the plan for the  
42 fixtures, furnishings, and equipment required for the facility, Agency staff shall  
43 procure the necessary fixtures, furnishings, and equipment to be placed or installed  
44 in the facility in accordance with the approved plans. With previous approval, the  
45 Agency may also purchase necessary fixtures, furnishings, and equipment for

1 placement away from the facility for off-site storage or other approved reason. A  
2 manager's responsibilities as noted in rule apply to off-site equipment.

3  
4 (d) Ownership.

5  
6 (1) All state fixtures, furnishings, and equipment within the facility shall at all  
7 times remain the property of the State of Texas. The facility manager's use of  
8 all such fixtures, furnishings, and equipment shall be as a licensee only and in  
9 accordance with the BET Equipment Loan Agreement.

10  
11 (2) The Agency shall have the sole authority to direct, control, transfer, and  
12 dispose of the fixtures, furnishings, and equipment.

13  
14 (e) Modifications. No modifications or alterations shall be made to state-owned fixtures,  
15 furnishings, or equipment by any individual, firm, or entity without the express prior  
16 written approval of the Agency.

17  
18 (f) Upkeep and maintenance.

19  
20 (1) The manager assigned to a facility shall be provided with manuals,  
21 instructions, and guides electronically or in a format requested by the manager.  
22 These documents for state-owned fixtures, furnishings, and equipment within  
23 the facility should be in an accessible format.

24  
25 (2) It shall be the responsibility of the manager to keep fixtures, furnishings, and  
26 equipment clean and sanitary and to perform maintenance required or  
27 recommended by the manufacturers or vendors of the fixtures, furnishings, and  
28 equipment. This must be in accordance with the BET instructions and  
29 equipment manuals.

30  
31 (3) The manager shall keep and maintain accurate records of all maintenance  
32 performed on fixtures, furnishings, and equipment. Any failure or refusal of  
33 the manager to perform the maintenance referred to in this section shall result  
34 in the manager being required to reimburse the Agency for the cost or expense  
35 resulting from the failure or refusal and may result in further administrative  
36 action.

37  
38 (g) Repairs and replacements.

39  
40 (1) Upon notification, the Agency shall be responsible for all necessary repairs of  
41 any of the state-owned fixtures, furnishings, and equipment located within the  
42 facility except for repairs necessitated by the negligence, abuse, or misuse of  
43 the fixtures, furnishings, or equipment by the manager or the manager's  
44 employees. Failure to comply with manufacturer 's or BET's maintenance and  
45 preventive care requirements shall be considered negligence, abuse, or misuse.  
46 The cost of repairs necessitated by negligence, abuse, or misuse by the

1 manager or the manager's employees shall be the sole responsibility of the  
2 manager. Failure to make such repairs may result in administrative action  
3 under §854.81 of this title (relating to Administrative Action Based on  
4 Unsatisfactory Performance).  
5

6 (2) The manager shall follow the instructions as established by BET to facilitate  
7 the timely necessary repairs and for the payment for such services. The  
8 instructions provide specific procedures for initiating repairs by the manager  
9 and a list of approved vendors for repairs. The instructions provided to each  
10 manager are published revised from time to time.

11  
12 (3) Under no circumstances is a manager authorized to have the cost of repairs  
13 charged to the Agency or to have repairs made by anyone other than approved  
14 vendors unless Agency staff has given the manager authority to do so in  
15 writing. Each vendor included in the approved list of vendors for repairs shall  
16 be informed by Agency staff of this prohibition and of the procedures for  
17 authorized repairs and for payment for services.  
18

19 (4) Agency staff members on their own initiative or upon request shall determine  
20 the need for replacement of any fixtures, furnishings, or equipment, and they  
21 shall report it to the BET director. If the BET director authorizes the expense,  
22 the replacement fixtures, furnishings, and/or equipment shall be purchased,  
23 contingent upon availability of BET funds.  
24

25 (5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning  
26 supplies. Each manager of a facility shall be responsible for replacing all such  
27 items with items of a quality comparable to those being replaced and originally  
28 furnished by the Agency.  
29

30 (h) Initial inventory of merchandise and expendables for newly licensed managers. The  
31 Agency shall furnish without charge the initial inventory of merchandise and  
32 expendables for the initial assignment of a newly licensed licensee. The initial  
33 inventory of merchandise and expendables shall be sufficient to assist the manager  
34 with starting the business.  
35

36 (i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and  
37 expendables.  
38

39 (1) The manager shall maintain an inventory of merchandise, sanitation and  
40 cleaning supplies, and expendables in the same quantities as were transferred  
41 to the manager upon assignment to the facility. If the Agency determines that  
42 changed circumstances require different quantities of merchandise, sanitation  
43 and cleaning supplies, and expendables, the Agency shall communicate in  
44 writing to the manager the new quantities required. If the new quantities of  
45 merchandise, sanitation and cleaning supplies, and expendables are necessary

1 to provide for the satisfactory operation of the facility, those new quantities of  
2 inventory must be maintained by the manager.

3  
4 (2) Managers assigned to any facility other than their initial assignment in Texas  
5 shall acquire the merchandise, sanitation and cleaning supplies, and  
6 expendables as determined by the Agency to be sufficient to satisfactorily  
7 operate the facility. To effectively expedite the changeover in facilities, when a  
8 facility is already stocked with merchandise, sanitation and cleaning supplies,  
9 and expendables, the existing stock shall become part of the required inventory  
10 stock level of the incoming manager. The amount owed by the incoming  
11 manager for the existing stock shall be the amount agreed to by the affected  
12 parties. If the existing inventory is the property of the state, the amount owed  
13 by the incoming manager shall be the amount paid with state funds.

14  
15 (j) Purchases on credit. During the first three years of being in the program, managers  
16 must notify the Agency in advance of any purchase on credit of merchandise,  
17 sanitation and cleaning supplies, and expendables.

18  
19 (k) Obtaining an advance from the Agency for initial inventory. A manager may apply  
20 to the Agency for an advance to purchase an initial inventory of merchandise,  
21 sanitation and cleaning supplies, and expendables. The manager must satisfy an  
22 advance received from the Agency to purchase merchandise on subsequent  
23 assignments within a 12-month period and must make monthly payments in the  
24 amount established by the Agency. The granting of an advance is discretionary and  
25 may be done only under the following conditions:

26  
27 (1) The manager shall justify to the Agency, in writing, the need for the advance  
28 and why the funds are not available from other sources.

29  
30 (2) The manager shall submit evidence satisfactory to the Agency that the  
31 financing has been sought from at least two commercial financial institutions.

32  
33 (3) The manager shall demonstrate to the Agency his or her ability to repay the  
34 advance within 12 months.

35  
36 (4) Managers with outstanding balances on advances are not eligible for transfer to  
37 another assignment.

38  
39 (l) Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation  
40 and cleaning supplies, and expendable items. When a manager is assigned to an  
41 existing BET facility, the responsibility for the fixtures, furnishings, and equipment  
42 of that facility, as well as its inventory of merchandise, sanitation and cleaning  
43 supplies, and expendable items shall be transferred to the incoming manager. The  
44 BET director shall follow the procedures for transferring the equipment between the  
45 incoming and outgoing managers to ensure that the managers have full knowledge of  
46 the nature and condition of the items being transferred.

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6 **§854.41. Set-Aside Fees.**  
7

- 8 (a) The Agency requires managers to pay a set-aside fee based on the monthly net  
9 proceeds of their BET facilities. The purposes of requiring this payment are:  
10  
11 (1) to promote to the greatest possible extent the concept of a manager being an  
12 independent business individual;  
13  
14 (2) to cause BET to be to the greatest extent possible, self-supporting;  
15  
16 (3) to encourage and stimulate growth in BET; and  
17  
18 (4) to provide incentives for the increased employment opportunities for blind  
19 Texans.  
20  
21 (b) Use of funds. To the extent permitted or required by applicable laws, rules, and  
22 regulations, the funds collected as set-aside fees shall be used by the Agency for the  
23 following purposes:  
24  
25 (1) maintenance and replacement of equipment for use in BET;  
26  
27 (2) purchase of new equipment for use in BET;  
28  
29 (3) management services;  
30  
31 (4) ensuring a fair minimum return to managers; and  
32  
33 (5) the establishment and maintenance of retirement or pension funds, health  
34 insurance contributions, and provision for paid sick leave and vacation time if  
35 it is so determined by a majority vote of managers assigned to a facility, after  
36 the Agency provides to each such manager information on all matters relevant  
37 to these proposed purposes.  
38  
39 (c) Method of computing net proceeds.  
40  
41 (1) Net proceeds are the amount remaining from the sale of merchandise of a BET  
42 facility, all vending machine income, and other income accruing to the  
43 manager from the facility after deducting the reasonable and necessary cost of  
44 such sale, but excluding set-aside charges required to be paid by the manager.  
45 The manager shall not remove any items from the inventory or other stock  
46 items of the facility unless the manager pays for those items at the actual cost.

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- (2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:
  - (A) cost of merchandise sold;
  - (B) wages paid to employees;
  - (C) payroll taxes; and
  - (D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility. Discretionary expenses, not to exceed 1.5 percent of the monthly net sales, or \$150, whichever is greater. Expenses must be verifiable, invoiced, and directly related to the operation of the facility. Acceptable expenses include:
    - (i) rent and utilities authorized in the permit or contract;
    - (ii) business taxes, licenses, and permits;
    - (iii) telecommunication services;
    - (iv) liability, property damage, and fire insurance;
    - (v) worker's compensation insurance;
    - (vi) employee group hospitalization or health insurance;
    - (vii) employee retirement contributions (the plans must be IRS-approved and not for the manager);
    - (viii) janitorial services, supplies, and equipment;
    - (ix) bookkeeping and accounting services;
    - (x) trash removal and disposal services;
    - (xi) service contracts on file with the Agency;
    - (xii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);
    - (xiii) medical expenses directly related to accidents that occur to employees at the facility, not to exceed \$500;

- 1 (xiv) purchase of personally owned or leased equipment that has been  
2 approved by the Agency for placement in the facility;  
3
- 4 (xv) repairs and maintenance to personally owned or leased equipment  
5 that has been approved by the Agency to be placed in the facility;  
6
- 7 (xvi) consumable office supplies;  
8
- 9 (xvii) exterminator or pest control services; and  
10
- 11 (xviii) mileage expenses for vehicles required for the direct operation of  
12 vending facilities at the rate and method allowed by the Internal  
13 Revenue Service at the time the expenses are incurred.  
14
- 15 (3) All reports by managers shall be accompanied by supporting documents  
16 required by the Agency.  
17
- 18 (d) Method of computing monthly set-aside fee. The monthly set-aside fee of each  
19 manager shall be a percentage of the net proceeds of the facility as determined in  
20 accordance with this section. The provisions relative to the percentage required to be  
21 paid as set-aside fees shall be reviewed by the BET director with the active  
22 participation of ECM at least annually each state fiscal year. The purpose of the  
23 review shall be to determine whether the percentage needs to be adjusted in order to  
24 meet the financial needs of the program. The percentage assessed against the net  
25 proceeds of facilities may be lowered or raised to meet the needs of the program.  
26 ECM shall be provided with all relevant financial and other information concerning  
27 the financial requirements of the program no fewer than 60 days before a review by  
28 the BET director in which the percentage is to be considered. For the period from the  
29 effective date of this amended rule until BET director undertakes his or her first  
30 annual review of the set-aside fee, the percentage shall be 5 percent.  
31
- 32 (e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the  
33 annual review, then ECM may choose to use the appeal process.  
34
- 35 (f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's  
36 monthly statement of facility operations. The manager shall use BET Monthly  
37 Facility Report, BE-117, to report monthly activities.  
38
- 39 (g) Adjustments to monthly set-aside fee.  
40
- 41 (1) To encourage managers to hire individuals with disabilities, managers shall  
42 deduct from their set-aside payment up to 50 percent of the wages or salary  
43 paid to an employee who is blind or who has another disability or disabilities  
44 (as defined by the Americans with Disabilities Act) during any month up to an  
45 amount not to exceed 5 percent of the set-aside payment amount for that  
46 month, or \$250, whichever is less. A manager may make this deduction for any

1 number of employees who are blind or have another disability as long as that  
2 deduction from the set-aside payment amount does not exceed 25 percent of  
3 the total set-aside payment that is due, or \$1,250, whichever is less. The  
4 manager shall provide documentation to BET as required by the Agency to  
5 verify such employment and the right to the reduction in set-aside fees. For the  
6 purposes of this paragraph, "who is blind or who has another disability" does  
7 not include:

8  
9 (A) the manager;

10  
11 (B) an individual who is blind or who has another disability at the first  
12 degree of consanguinity or affinity to the manager; or

13  
14 (C) an individual who is blind or who has another disability claimed as a  
15 dependent, either in whole or in part, on the manager's federal income  
16 tax return.

17  
18 (2) Adjustments provided for in paragraph (1) of this subsection shall not apply for  
19 any month in which the set-aside fee is not paid in a timely manner.

20  
21 (3) To encourage managers to file their monthly statement of facility operations  
22 and pay their monthly set-aside fee promptly, managers shall have their  
23 monthly set-aside fee increased by 5 percent of the total amount due if either  
24 their monthly statement or the monthly set-aside fee is not received in a timely  
25 manner, pursuant to these rules. None of the terms of this rule shall be  
26 construed to create a contract to pay interest, as consideration for the use,  
27 forbearance, or detention of money, at a rate more than the maximum rate  
28 permitted by applicable laws and rules. This adjustment to the set-aside fee is  
29 not imposed as interest.

30  
31 *The provisions of this §854.41 adopted to be effective September 1, 2019, 44 TexReg 3294*

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34  
35 **§854.42. Duties and Responsibilities of Managers.**

36  
37 (a) Managers shall comply with applicable law, the rules contained in this chapter,  
38 written agreements with hosts, the BET assignment, the requirements of the BET  
39 manual, and instruction by BET staff.

40  
41 (b) Managers shall comply with procedures prescribed by the Comptroller of Public  
42 Accounts for the payment of sales taxes and provide evidence to the Agency of  
43 timely sales tax remittances.

- 1 (c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's  
2 right, title, and interest in the BET facility, its equipment, or the lease or agreement  
3 with the property managers.  
4
- 5 (d) Managers shall maintain a professional appearance and act in a professional manner  
6 while managing a BET facility.  
7
- 8 (e) Managers shall open a commercial business account in which they maintain  
9 sufficient funds to operate the BET facility.  
10
- 11 (f) Managers shall hire sufficient employees to ensure the efficient operation of the BET  
12 facility and to provide satisfactory service to customers. If the facility is remodeled  
13 or if operational areas change, the manager must have sufficient employees on hand  
14 for the necessary shutdown and reopen cleanup.  
15
- 16 (g) Managers shall be actively engaged in the management of a BET facility and be  
17 actively working the number of hours necessary to achieve satisfactory operation of  
18 the facility. With prior notice from the Agency, managers shall be available for all  
19 necessary visits to the facilities for advice, consultation, and inspections of the  
20 facility. If the business is closed for remodel or improvement, the manager shall be  
21 available for the opening, closing, and overall security of the business and assets.  
22
- 23 (h) Managers shall take appropriate actions to correct deficiencies noted on BET facility  
24 audits or reviews within seven business days.  
25
- 26 (i) Managers shall provide satisfactory service to the BET facility host and customers.  
27
- 28 (j) Managers shall notify the Agency in advance if they intend to be absent from their  
29 assigned facility for more than two days.  
30
- 31 (k) Managers shall provide BET staff with the following information and shall notify  
32 BET staff of changes to any item no more than 10 business days after a change  
33 occurs:  
34
- 35 (1) the BET facility telephone number;  
36
- 37 (2) a mailing address and an e-mail address to which BET correspondence is to be  
38 sent;  
39
- 40 (3) a phone number for use in emergencies; and  
41
- 42 (4) the manager's preferred accessibility format.  
43
- 44 (l) Managers are accountable to the Agency for the proceeds of the business.  
45

- 1 (m) Managers shall keep all records supporting the monthly facility report for three  
2 calendar years.  
3
- 4 (n) Managers shall report the actual value of resale inventory by taking a physical count  
5 in the facility each month and submitting a written quarterly inventory (March, June,  
6 September, and December) with the monthly facility report.  
7
- 8 (o) Managers, upon request by the Agency, shall make available all records pertinent to  
9 the facilities to which they have been assigned for audit or review. Any materials  
10 removed from the facility will be returned within 90 business days, unless evidence  
11 needs to be preserved.  
12
- 13 (p) Managers shall maintain liability insurance coverage sufficient to indemnify the  
14 Agency if Agency funding is not available or insufficient for such purposes.  
15

16 *The provisions of this §854.42 adopted to be effective September 1, 2019, 44 TexReg 3294*  
17

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19

20 **§854.43. Responsibilities of the Texas Workforce Commission.**  
21

- 22 (a) Management services. The Agency shall provide each manager with regular and  
23 systematic management services, which shall, at a minimum, include:  
24
- 25 (1) explanations of Agency rules, procedures, policies, and standards;  
26
  - 27 (2) recommendations on how the facility can be made more profitable for the  
28 manager;  
29
  - 30 (3) techniques to develop positive relationships with customers, assistants, and  
31 management of the host organization;  
32
  - 33 (4) possible solutions to problems recognized by the manager or brought to the  
34 manager's attention by Agency staff or the facility host;  
35
  - 36 (5) continuing education and training courses and opportunities for managers  
37 designed to enhance skills, productivity, and profitability; and  
38
  - 39 (6) information about laws, rules, and regulations affecting the operation of a BET  
40 facility.  
41
- 42 (b) Training. The Agency shall assist ECM in conducting a special training seminar for  
43 all licensees each year to inform them of new BET developments and to provide  
44 instruction on new, relevant topics to enhance upward mobility.  
45

- 1 (c) Facility operating conditions. The Agency shall establish the conditions for operation  
2 of a BET facility in accordance with this subchapter and any requirements of the  
3 host. The operating conditions shall include, among other things, pricing-ranges  
4 requirements, hours of operation, and menu items or product lines. The Agency may  
5 revise the operating conditions from time to time as market conditions warrant. The  
6 final authority and ultimate responsibility for determining the price ranges to be  
7 charged for products sold through BET facilities shall rest with the Agency.  
8
- 9 (d) BET financial data. Upon request, the Agency shall provide licensees with access to  
10 BET financial data. Also upon request, Agency staff shall assist the licensee in  
11 interpreting the data.  
12
- 13 (e) Inventory payment. When a manager leaves the manager's initial assignment, the  
14 Agency shall pay the manager or the manager's heirs the value of the usable stock  
15 and supplies above the amount provided to the manager upon initial assignment.  
16

17 *The provisions of this §854.43 adopted to be effective September 1, 2019, 44 TexReg 3294*  
18

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## 21 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**

### 22 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities.**

- 23 (a) Authority. The Elected Committee of Managers (ECM) is created and shall operate  
24 under 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard  
25 Act.  
26  
27  
28
- 29 (b) Relationship to the Agency. ECM shall be presumed as the sole representative of all  
30 licensees to the Agency in matters contained in the Randolph-Sheppard Act and  
31 implementing regulations requiring the active participation of the ECM. Active  
32 participation means an ongoing process of good-faith negotiations between ECM and  
33 the Agency in the development of BET policies and procedures before  
34 implementation. The Agency shall have the ultimate responsibility for the  
35 administration and operation of all aspects of BET and has final authority in  
36 decisions affecting BET.  
37
- 38 (c) Relationship to licensees.  
39
- 40 (1) It shall be the sole responsibility of the licensees who elect the members of  
41 ECM to ensure that the individuals elected represent all licensees.  
42
- 43 (2) ECM shall, in addition to all other matters set forth in this subchapter or by law  
44 or regulation affecting the administration of BET, act as an advocate for  
45 licensees and shall strive to improve and expand BET and make it profitable

1 and successful to the greatest extent possible for the mutual benefit of the  
2 Agency and of the legally blind Texans who participate in the program.  
3

- 4 (d) BET policies, rules, and procedures. In all matters related to policies and rules, the  
5 Agency has the ultimate responsibility and the ultimate authority for their  
6 establishment and adoption. ECM shall actively participate in the consideration of  
7 significant BET decisions and in deliberations of rules and policies affecting BET.  
8 Whenever the Agency or ECM wishes to consider policies or rules related to BET,  
9 the Agency shall request that ECM participate in the Agency rule-drafting  
10 workshops to be conducted by the BET director. The BET director will work with  
11 ECM in a good-faith effort to agree in matters related to rule and policy changes.  
12
- 13 (e) BET administrative decisions. In matters concerning the administration of BET, the  
14 Agency holds the ultimate responsibility and authority for making administrative  
15 decisions affecting BET. The BET director shall establish and maintain a continuing  
16 dialogue and exchange of information with ECM about decisions regarding the  
17 administration of BET and shall seek ECM input and advice on all significant  
18 decisions affecting the administration of the program. In cooperation with the ECM  
19 chair and other members of ECM that the ECM chair considers necessary and  
20 appropriate, the BET director shall develop and implement methods of establishing  
21 and maintaining the dialogue and exchange of information. The methods developed  
22 shall be set out in detail in a written format and shall be included in the BET manual.  
23
- 24 (f) Exclusions from participation. ECM, its members, and BET managers are not  
25 employees, officers, or officials of the State of Texas. Therefore, ECM shall not  
26 participate in any decision-making process regarding Agency personnel, personnel  
27 policies, or personnel administration.  
28
- 29 (g) Structure. ECM shall, to the extent possible, be composed of licensees who are  
30 representative of all licensees in BET based on such factors as geography and facility  
31 type and size. Two representatives shall be elected from each designated ECM  
32 region created by the Agency with the active participation of ECM and as regions  
33 may be revised or modified.  
34
- 35 (h) Qualifications. ECM shall establish qualifications for candidates as well as the  
36 procedures for voting, tabulating, and announcing results. The Agency shall provide  
37 such advice and counsel as may be requested by ECM to accomplish all elections of  
38 representatives to ECM.  
39
- 40 (i) Term of office. The term of office for ECM members shall be two years, beginning  
41 on January 1 following the election. Even- and odd-numbered districts shall alternate  
42 election years. Any ECM member elected to fill a vacancy shall serve the remainder  
43 of the unexpired term of the manager who vacated a position.  
44

- 1 (j) Meetings. ECM shall meet once during each calendar year to elect officers and  
2 additionally as it may establish by bylaw. The ECM chair shall provide a written  
3 meeting agenda to the BET director 10 business days before each meeting.  
4
- 5 (k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal  
6 operation and order of business and shall provide the Agency with a copy.  
7
- 8 (l) Travel expenses.  
9
- 10 (1) Expenses for travel, meals, lodging, or other related expenses incurred by  
11 ECM representatives must be preapproved by the Agency.  
12
- 13 (2) When representing a manager at a full evidentiary hearing, the ECM  
14 representative shall be reimbursed for travel, meals, and lodging at the rate  
15 allowed for travel by Agency staff members.  
16

17 *The provisions of this §854.60 adopted to be effective September 1, 2019, 44 TexReg 3294*  
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21 **§854.61. BET Elected Committee of Managers' Conflict of Interest.**  
22

- 23 (a) The ECM representative shall immediately disclose any conflict of interest to all  
24 parties and shall withdraw from all matters related to the conflict. Final  
25 determination of a conflict of interest shall be made by the Agency.  
26
- 27 (b) The ECM representative shall not use the position for private gain or act in a manner  
28 that creates the appearance of impropriety.  
29
- 30 (c) The ECM representative may not vote or make recommendation on any BET  
31 promotion or transfer matter that would provide direct financial benefit to the ECM  
32 representative individually or the ECM representative's immediate family or on  
33 matters of the provision of services by the member or the entity the member  
34 represents.  
35
- 36 (d) Before a discussion, vote, recommendation, or decision on any promotion or transfer  
37 matter before ECM, if a representative or an individual in the immediate family of  
38 such representative has a substantial interest in the assignment being considered, that  
39 ECM representative shall disclose the nature and extent of the interest or relationship  
40 and shall abstain from voting or making a recommendation on or in any other way  
41 participating in the decision on the matter.  
42

43 *The provisions of this §854.61 adopted to be effective September 1, 2019, 44 TexReg 3294*  
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1     **SUBCHAPTER E. ACTION AGAINST A LICENSE**  
2

3     **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.**  
4

- 5     (a) Causes for termination. The license of a licensee shall be terminated upon the  
6     occurrence of any one of the following:  
7
- 8         (1) The licensee's visual acuity is improved by any means to the point at which the  
9         licensee no longer satisfies the definition of legally blind.  
10
- 11         (2) The licensee becomes otherwise permanently disabled and as a result of such  
12         permanent disability is unable to perform the essential functions of operating  
13         and maintaining a BET facility. Being permanently disabled is having a  
14         condition that is medically documented and has existed or is expected to exist  
15         for at least 12 months. The determination of permanently disabled shall be  
16         made by the VRD director or designee after review of medical documentation  
17         and other information relevant to the issue. Other information relevant to the  
18         issue shall include recommendations from Agency staff and ECM, pertinent  
19         information from the licensee's BET file or provided by the licensee, and  
20         reports of examinations or evaluations, if any, obtained by the Agency and the  
21         licensee.  
22
- 23         (3) The licensee is unassigned and has not accepted assignment offers or applied  
24         for an assignment when facilities are available for a period of six consecutive  
25         months. The six-month deadline may be extended by periods of 30 days when  
26         facilities are not available for assignment. Any unassigned period of 12 months  
27         or more requires retraining for the licensee to become eligible to bid for, or be  
28         assigned to, available facilities.  
29
- 30     (b) Examination and evaluation. In any situation in which the vision or other disability  
31     of a licensee is at issue with respect to termination of a license, the Agency or the  
32     licensee may require an examination or evaluation by professionals to determine  
33     whether the licensee is otherwise permanently disabled and because of the permanent  
34     disability is unable to perform the essential functions of operating and maintaining a  
35     BET facility. The reports of such professionals shall be furnished to the Agency and  
36     the licensee. Any failure of the licensee to participate in required examinations or  
37     evaluations shall be grounds for administrative action.  
38
- 39     (c) Restoration of license. A license terminated under the provisions of this section may  
40     be restored at the discretion of the Agency if the condition or conditions causing the  
41     termination were resolved satisfactorily. In considering a decision with respect to  
42     whether to restore a license that was terminated according to this section, the VRD  
43     director shall consult with appropriate BET staff members, the ECM chair, and any  
44     advocate for the licensee and shall consider all pertinent information and  
45     documentation provided by any of the individuals described in this subsection.  
46

- 1 (d) Conditional restoration. If the VRD director determines that a license that was  
2 terminated according to this section should be restored, the VRD director may  
3 authorize the restoration of the license on any reasonable basis, such as participation  
4 in continued medical treatment or therapy, or completion of refresher or other  
5 courses of training.  
6

7 *The provisions of this §854.80 adopted to be effective September 1, 2019, 44 TexReg 3294*  
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10  
11 **§854.81. Administrative Action Based on Unsatisfactory Performance.**  
12

- 13 (a) Causes for administrative action based on unsatisfactory performance. One or more  
14 of the following acts or omissions by a manager shall subject a manager to  
15 administrative action for unsatisfactory performance:  
16
- 17 (1) Failing to operate the assigned facility as set forth in the permit or contract  
18 with the host and/or in the manager's record of assignment unless prior written  
19 approval to operate the facility in another manner has been obtained from the  
20 Agency.  
21
  - 22 (2) Failing to pay money that is due from the operation of the facility, including,  
23 but not limited to, taxes, fees, advances, or assessments to a governmental  
24 entity or supplier, or knowingly giving false or deceptive information to or  
25 failing to disclose required information to or misleading in any manner a  
26 governmental entity, including the Agency, or a supplier.  
27
  - 28 (3) Failing to file required financial and other records with the Agency or preserve  
29 them for the time required by this subchapter.  
30
  - 31 (4) Failing to cooperate in a timely manner with audits conducted by the Agency  
32 or other state or federal agencies.  
33
  - 34 (5) Failing to be in compliance with state and federal tax laws relating to the  
35 operation of the facility, as demonstrated by a tax lien.  
36
  - 37 (6) Failing to maintain insurance coverage required by these rules.  
38
  - 39 (7) Using BET equipment or facility premises to operate another business.  
40
  - 41 (8) Failing to properly maintain facility equipment in a clean and operable  
42 condition within the scope of the manager's level of maintenance authorization.  
43
  - 44 (9) Intentionally abusing, neglecting, using, or removing facility equipment  
45 without prior written Agency authorization.  
46

- 1 (10) Operating a facility under the influence of substances that interfere with the  
2 operation of the facility, including alcohol and illegal or prescription drugs.  
3
- 4 (11) Operating a BET facility in a manner that demonstrably jeopardizes the  
5 Agency's investment in the facility.  
6
- 7 (12) Using privileged information about an existing facility to compete with the  
8 Agency for the facility.  
9
- 10 (13) Failing to comply with any federal or state law prohibiting discrimination and  
11 failure to ensure that services are provided without distinction on the basis of  
12 race, gender, color, national origin, religion, age, political affiliation, or  
13 disability.  
14
- 15 (14) Failing to maintain the necessary skills and abilities for effectively managing a  
16 facility.  
17
- 18 (15) Using a facility to conduct unlawful activities.  
19
- 20 (16) Failing to comply with the manager's responsibilities under applicable law, this  
21 subchapter, the requirements of the BET manual, or any instruction by Agency  
22 staff.  
23
- 24 (17) Communicating or causing another individual to communicate with a member  
25 of a selection panel or an applicant for a facility then being considered for  
26 assignment for the purpose of influencing or manipulating the selection of an  
27 applicant by offering to give a thing or act of value, including promises of  
28 future benefit, or by threat.  
29
- 30 (18) Failing to complete annual continuing education requirements.  
31
- 32 (b) Administrative action pending an appeal. The Agency may at its discretion suspend  
33 administrative action pending the outcome of an appeal.  
34
- 35 (c) Types of administrative actions. The five types of administrative actions that are  
36 based on unsatisfactory performance are as follows:  
37
- 38 (1) Written reprimand. Written reprimand is a formal statement describing  
39 violations of applicable law, this subchapter, the requirements of the BET  
40 manual, or any instruction by Agency staff.  
41
- 42 (2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily  
43 remedy a condition that is not acceptable under this subchapter. If the  
44 condition causing probation is satisfactorily remedied within the time periods  
45 specified in the written notice of probation, the probation will be lifted. If the  
46 unacceptable condition is not remedied within the time specified, additional

1 and more serious administrative actions may ensue. When a licensee who has  
2 been on probation two times in a three-year period qualifies for probation for  
3 the third time within those three years, the licensee's license may be revoked  
4 according to Agency rules.  
5

6 (3) Loss of facility. Loss of facility is the removal of a manager from the  
7 manager's current facility for administrative reasons when the manager's  
8 actions or inactions endanger the Agency's investment in the facility.  
9

10 (4) Termination. Termination is the revocation of a license and the removal of the  
11 licensee from BET.  
12

13 (5) Emergency removal of manager.  
14

15 (A) A manager may be summarily removed from a facility in an emergency.  
16 An emergency shall be considered to exist when the Agency, in  
17 consultation with the ECM chair, determines that some act or acts or  
18 some failure to act of that manager or any individual who is an  
19 employee, server, or agent of such manager, will, if such removal does  
20 not occur:

21  
22 (i) result in a clear danger to the health, safety, or welfare of any  
23 individual or to the property of any individual in or around the  
24 facility; or  
25

26 (ii) result in a deterioration of the existing or future relationship with the  
27 host, thereby putting the continuation of the facility in jeopardy; or  
28

29 (iii) present a clear potential of substantial loss or damage to the property  
30 of the State of Texas.  
31

32 (B) In any case in which a manager has been summarily removed from a  
33 facility on an emergency basis for any of the reasons set forth in  
34 subparagraph (A) of this paragraph, the manager shall be entitled to have  
35 a hearing about the necessity of the removal within 10 days after the  
36 removal has occurred.  
37

38 (C) The time period for the hearing may be extended only by mutual  
39 agreement of the manager and the Agency under the following  
40 circumstances: if an official holiday of the State of Texas falls within the  
41 period, then the period shall be extended by the time of the holiday; or, if  
42 the services of an arbitrator cannot be obtained in time to hold the  
43 hearing within the period, then the period shall be extended by the time  
44 necessary to obtain the services of an arbitrator and schedule the hearing.  
45

- 1 (D) If the manager desires to have a hearing, the manager shall notify the  
2 Agency in writing within 48 hours following the removal. The written  
3 notification need state only the name of the manager, the location of the  
4 facility, and that the manager desires to have a hearing about the need for  
5 summary removal. The request may be delivered to the BET director, the  
6 VRD director, or any local BET staff member in the geographic region  
7 in which the facility is located.  
8
- 9 (E) Upon receipt of any such request, the BET director shall obtain the  
10 services of an arbitrator from the American Arbitration Association  
11 (AAA) or other similar organization to conduct the hearing.  
12
- 13 (F) The manager shall be notified of the date, time, and place of the hearing.  
14 To the extent possible, the hearing shall be conducted in an area near the  
15 location of the facility.  
16
- 17 (G) The hearing shall be conducted in accordance with the rules of AAA,  
18 except that the arbitrator shall be requested to announce orally a decision  
19 at the conclusion of the hearing.  
20
- 21 (H) If the arbitrator determines that no emergency necessitating the removal  
22 of the manager exists, then the manager shall be immediately restored to  
23 the operation of the facility.  
24
- 25 (I) No determination made as a result of the hearing shall operate to  
26 prejudice the rights of the manager to proceed with a grievance in  
27 accordance with the terms of this subchapter and the Act.  
28
- 29 (d) Administrative procedures.  
30
- 31 (1) The Agency shall decide what administrative action to take based on the  
32 seriousness of the violation, the damage to BET facilities and/or equipment,  
33 and the licensee's record.  
34
- 35 (2) Upon receipt of information that indicates that administrative action may be  
36 appropriate, the Agency shall take the following actions before deciding  
37 whether to take administrative action:  
38
- 39 (A) The Agency shall notify the licensee in writing of the allegations and  
40 reasons that administrative action is being considered. The notice shall  
41 either be hand-delivered and read to the licensee, or be delivered to the  
42 licensee's work, e-mail address, or home address.  
43
- 44 (B) The licensee shall have five business days to respond to the notice, either  
45 in person or in writing. The response shall be made to the individual  
46 designated in the notice. After receiving the licensee's response, the

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Agency shall decide what administrative action, if any, is appropriate. If no response is received from the licensee in a timely manner, the Agency shall decide without the licensee's response what administrative action, if any, will be taken.

- (C) If a decision is made to issue a written reprimand, the written reprimand will be accompanied by a summary of the evidence justifying the reprimand, suggested steps for correcting the violation, and the consequences of not correcting the violation. All reprimands shall contain notice of the licensee's right to appeal the reprimand and a statement that failure to correct the violation may result in further administrative action.
  
- (D) If a decision is made to place a licensee on probation, the Agency shall deliver to the licensee a letter of probation containing the following:
  - (i) the specific reasons for probation;
  - (ii) the remedial action required to remove the licensee from probation;
  - (iii) the time within which the remedial action must take place;
  - (iv) the consequences of failure to take remedial action within the prescribed time frame; and
  - (v) notice of the licensee's right to appeal.
  
- (E) Upon satisfactory completion of the remedial action outlined in the letter of probation, a licensee shall be removed from probation.
  
- (F) Failure of the licensee to complete remedial requirements within the prescribed time frame shall result in one or more of the following actions:
  - (i) required training;
  - (ii) extension of probation;
  - (iii) restrictions on applying for another facility;
  - (iv) removal from the facility; or
  - (v) termination of license.
  
- (G) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist to remove the manager from a facility,

1 the Agency shall notify the manager in writing by hand delivery or  
2 certified mail with a return receipt requested that the manager's  
3 assignment to the BET facility has been terminated and the manager  
4 must vacate the facility. The removal letter shall contain the following  
5 information:

- 6 (i) specific reasons for removal from the facility;
- 7 (ii) actions required by the manager, if any;
- 8 (iii) requirements for obtaining reassignment; and
- 9 (iv) notice of the manager's right to appeal under the Act.

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15 (H) If, after the manager has had an opportunity to respond, a decision is  
16 made that sufficient grounds exist for termination, the Agency shall  
17 notify the manager in writing by hand delivery, e-mail, or certified mail  
18 with a return receipt requested that the Agency has decided that  
19 sufficient cause exists to terminate the manager's license and the  
20 manager must vacate the facility. The termination letter shall contain:

- 21 (i) specific reasons for termination;
- 22 (ii) actions required by the licensee, if any;
- 23 (iii) procedures for applying for any other Agency services for which  
24 the individual may be eligible; and
- 25 (iv) notice of the licensee's rights under the Randolph-Sheppard Act.

26  
27  
28  
29  
30 (3) The provisions of paragraph (2) of this subsection notwithstanding, pending a  
31 determination with respect to administrative action, a manager may be  
32 removed from a facility if the Agency considers such removal to be in the best  
33 interest of BET and if efforts to correct the deficiencies have been  
34 unsuccessful.

35  
36  
37 (4) During the license termination process, the manager shall not be eligible for  
38 assignment to any other BET facility.

39  
40 (e) Before termination of a license, the Agency shall afford the licensee an opportunity  
41 for a full evidentiary hearing.

42  
43 *The provisions of this §854.81 adopted to be effective September 1, 2019, 44 TexReg 3294*

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1       **§854.82. Procedures for Resolution of Manager’s Dissatisfaction.**  
2

3       (a) Appealable actions. This section provides the procedures for licensees who are  
4       dissatisfied with the Agency's action arising from the operation of BET.

5  
6       (b) Actions not subject to appeal. The phrase "the Agency's action arising from the  
7       operation of BET" in subsection (a) of this section does not include the following  
8       actions of the Agency:

- 9  
10               (1) the hiring, firing, or discipline of Agency employees;  
11  
12               (2) the challenge of federal or state law, or rules previously  
13               approved by the Secretary of Education under the Act; or  
14  
15               (3) an action by the Agency unless it is alleged that the action is in  
16               violation of applicable law, this subchapter, the requirements of  
17               the BET manual, or any instruction by Agency personnel, or is  
18               unreasonable. "Unreasonable" shall mean "without rational  
19               basis or arbitrary and capricious."  
20

21       (c) Agency discretion and sovereign immunity. The Agency does not waive its right and  
22       duty to exercise its lawful and proper discretion. The Agency does not waive its  
23       sovereign immunity.

24  
25       (d) Remedies. Remedies available to resolve dissatisfaction shall correct the action  
26       complained of from the earlier time of:

- 27  
28               (1) agreement by the parties about an appropriate remedy, or  
29  
30               (2) a final resolution under the Randolph-Sheppard Act that the Agency acted in  
31               violation of applicable law, this subchapter, the requirements of the BET  
32               manual, or any instruction by Agency personnel, or acted unreasonably.  
33

34       (e) Informal procedures to review dissatisfactions. At the request of a licensee, the  
35       Agency shall arrange for and participate in informal meetings to resolve quickly a  
36       matter of dissatisfaction arising from the operation or administration of BET. The  
37       informal process is for resolving an issue in controversy quickly and amicably. It is  
38       not for the purpose of denying or delaying the manager's right to pursue resolution of  
39       a matter through a full evidentiary hearing. At any point during the informal process,  
40       either party may elect to terminate the following informal process procedures:

- 41  
42               (1) A licensee may initiate informal procedures by notifying the Agency in writing  
43               through the BET director that the licensee is dissatisfied with a matter arising  
44               from the operation or administration of BET. The written notice must describe  
45               with reasonable particularity the specific matter in controversy, the date the  
46               action occurred, or an approximate date if the exact date is not known, and the

1 licensee's desired relief or remedy. If the licensee is dissatisfied with a series of  
2 the same or related actions over a period, the notice shall describe, to the best  
3 of the licensee's ability, the time frame of the events and include the date of the  
4 most recent event about which the licensee is dissatisfied.  
5

6 (2) To ensure that informal resolution is possible in a timely manner, the licensee's  
7 request to initiate informal proceedings must be filed with the Agency no later  
8 than 20 business days after the most recent event specified in the request. The  
9 Agency shall within a reasonable time arrange a meeting at a location, date,  
10 and time satisfactory to all parties.

11  
12 (3) The licensee must notify the Agency when filing a request for informal  
13 proceedings if the licensee will be represented by legal counsel during  
14 mediation. The Agency will be represented by legal counsel only when the  
15 licensee is represented by legal counsel.

16  
17 (4) Meetings shall take place in an informal environment and shall be attended by  
18 the licensee, a BET staff member, and a neutral third party who shall serve as  
19 an informal mediator during the discussions.  
20

21 (5) The neutral third party shall be an individual certified in conducting  
22 mediations.  
23

24 (6) The neutral third party's responsibility is to report to the Agency only that the  
25 effort to resolve the matter to the licensee's satisfaction was or was not  
26 successful. If an agreement is reached, then the actions agreed to with respect  
27 to the facility or licensee shall be immediately taken.  
28

29 (7) The provisions concerning mediation under Chapter 850 of this title (relating  
30 to Vocational Rehabilitation Services Administrative Rules and Procedures)  
31 shall not apply to or control the informal resolution procedures in this  
32 subchapter.  
33

34 (f) Full evidentiary hearing. A manager has the right to request a full evidentiary hearing  
35 to resolve dissatisfaction according to the following:  
36

37 (1) A manager has the right to request a full evidentiary hearing without first  
38 going through mediated meetings described in subsection (e) of this section.  
39

40 (2) A request for an evidentiary hearing must be made no later than the 20th  
41 business day after the occurrence of the Agency action about which the  
42 manager complains. The VRD director, upon request of the complaining party,  
43 may extend the period for filing a grievance upon the showing of good cause  
44 by the complaining party for such additional period if such request is made no  
45 later than the 20th business day after the occurrence of the Agency action  
46 about which the manager complains.

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45
- (3) A manager requesting a full evidentiary hearing after the conduct of mediated meetings described in subsection (e) of this section must request such hearing in writing no later than the 20th business day after receipt of the VRD director's decision.
  - (4) A request for a full evidentiary hearing must be in writing and transmitted to the VRD director. A request that is postmarked within the designated time frame shall be considered delivered in a timely manner if properly posted.
  - (5) The request for a full evidentiary hearing must describe the specific action with reasonable particularity sufficient to provide notice as to the action that is alleged to be unreasonable or in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel. The request must, to the best of the complainant's knowledge, contain the date the action occurred, and the law or regulation must be reasonably identified if an action is alleged to be in violation of law, this subchapter, the requirements of the BET manual, or regulation. The request must also identify the desired relief or remedy.
  - (6) The manager may be represented in the evidentiary hearing by legal counsel or other representative of the manager's choice, at the manager's expense.
  - (7) The Agency shall arrange reader or other communication services for the manager, if needed, upon request by the manager at least three business days prior to the hearing date.
  - (8) The manager shall be notified in writing of the time and place fixed for the hearing and of the manager's right to be represented by legal or other counsel.
  - (9) Selection of the hearing officer.
    - (A) The hearings coordinator, the Agency's Office of General Counsel, shall select, on a random basis, a hearing officer from a pool of individuals qualified according to this section.
    - (B) The hearing officer shall be an impartial and qualified individual who:
      - (i) is not involved either with the Agency's action that is at issue or with the administration or operation of BET;
      - (ii) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

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- (iii) has knowledge of the Randolph-Sheppard Act and any applicable state and federal regulations governing the appeal;
  - (iv) has received training specified by the Agency with respect to the performance of official duties; and
  - (v) has no personal, professional, or financial interest that would compromise his or her impartiality.
- (C) An individual is not considered to be an employee of a public agency for the purposes of subparagraph (B)(ii) of this paragraph if the only consideration is that the individual is paid by the agency to serve as a hearing officer.
- (10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act, Texas Government Code §2001.051 et seq., and this subchapter to the extent that those procedures do not conflict with the Act and its implementing regulations or this subchapter.
- (11) Licensees bringing complaints shall have the burden of proving their cases by means of a preponderance of the evidence. Licensees shall present their evidence first. When a hearing is requested because of administrative action by the Agency against a licensee, The Agency shall have the burden of proving its case by a preponderance of the evidence and shall present its evidence first.
- (12) Transcription of Proceedings.
- (A) Unless precluded by law, the hearing shall be recorded electronically either by the hearing officer or by someone designated by the hearing officer. Such recording shall be the official record of the testimony recorded during the hearing. Any party, however, may request, at the party's expense, that the hearing be recorded by a court reporter if the request is made within 10 days of the date for the hearing.
  - (B) In lieu either of a recording of the testimony electronically or of the reporting of testimony by a court reporter, the parties to a hearing may agree upon a statement of the evidence to use transcription as a statement of the testimonial evidence, or agree to the summarization of testimony before the hearing officer, provided, however, that proceedings or any part of them must be transcribed on written request of any party.
  - (C) Unless otherwise provided in this subchapter, the party requesting a transcription of any electronic recording of the proceedings shall bear the cost for transcribing the testimony. Nothing provided for in this section limits the Agency to an electronic record of the proceedings.

- 1 (D) The record of the proceedings, including exhibits and any transcription,  
2 shall be made available to the parties by the Agency no later than the  
3 30th business day after the close of the hearing.  
4
- 5 (13) The hearing officer shall issue a recommendation that shall set forth the  
6 principal issues and relevant facts that were stated at the hearing and the  
7 applicable provisions of law, rule, the requirements of the BET manual,  
8 or any instruction by Agency personnel. The recommendation shall  
9 contain findings of fact and conclusions with respect to each of the  
10 issues, and the reasons and bases for the conclusions.  
11
- 12 (14) In formulating a recommendation, the hearing officer shall not evaluate  
13 whether the Agency's actions were wise, efficient, or effective. Rather,  
14 the hearing officer is limited to determining whether the Agency's  
15 actions were unreasonable, or if they violated applicable law, this  
16 subchapter, the requirements of the BET manual, or any instruction by  
17 Agency personnel.  
18
- 19 (15) If the hearing officer finds that the actions taken by the Agency were  
20 unreasonable or violated applicable law, this subchapter, the  
21 requirements of the BET manual, or any instruction by Agency  
22 personnel, the hearing officer shall also recommend any prospective  
23 action necessary to correct the violations.  
24
- 25 (16) The hearing officer's recommendation shall be made no later than the  
26 30th business day after the receipt of the official transcript. The  
27 recommendation shall be delivered promptly to the VRD director.  
28
- 29 (17) The VRD director shall review the recommendation of the hearing  
30 officer and forward a decision to the manager no later than the 20th  
31 business day after receipt of the hearing officer's recommendation. The  
32 VRD director's decision shall include findings of fact and conclusions of  
33 law based on the evidence in the record and separately stated.  
34
- 35 (18) Subject to the provisions of Texas Government Code §2001.144 and  
36 §2001.146, the VRD director's decision shall be the final decision of the  
37 Agency. Any such decision becomes the final decision of the Agency if a  
38 timely motion for rehearing or reconsideration is not filed.  
39
- 40 (g) Arbitration. A manager appealing the Agency's decision must file a complaint with  
41 the US Secretary of Education in conformity with the provisions of the implementing  
42 regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of vendor  
43 complaints.  
44

45 *The provisions of this §854.82 adopted to be effective September 1, 2019, 44 TexReg 3294*  
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2  
3 **§854.83. Establishing and Closing Facilities.**

- 4  
5 (a) Establishing facilities. On its own initiative, at the request of an agency that controls  
6 federal or state property, of the ECM, or of a private organization, the Agency shall  
7 survey the property, blueprints, or other available information concerning the  
8 property to determine whether the installation of a BET facility is feasible and  
9 consonant with applicable laws and regulations and with VRD objectives.
- 10  
11 (1) If the installation of a BET facility is determined to be feasible, the Agency  
12 shall proceed to develop plans for the establishment of a facility in accordance  
13 with procedures promulgated and implemented by Agency staff and, when the  
14 facility is developed, shall assign a manager to the facility.
- 15  
16 (2) If it is determined that a blind individual could not properly operate a vending  
17 facility at a particular location, the pertinent facility data will be presented to  
18 the VRD director to determine whether an individual whose disability is not of  
19 a visual nature could operate the facility in a proper manner. The phrase "could  
20 not properly operate a vending facility" includes the existence, at the time of  
21 the establishment of the facility, of laws or regulations that restrict the blind  
22 from operating a particular vending facility as defined under state and federal  
23 laws.
- 24  
25 (b) Closing facilities. Except for temporary closings by Agency staff, no BET facility  
26 shall be closed by the Agency until both of the following have occurred:
- 27  
28 (1) The BET director has certified to the VRD director that the facility is no longer  
29 a feasible or viable BET facility and provides reasons for that opinion.
- 30  
31 (2) The VRD director has approved the proposed closing of the facility.

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33 *The provisions of this §854.83 adopted to be effective September 1, 2019, 44 TexReg 3294*

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