

1 **CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS**

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF**
6 **STATE.**

7
8 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
9 Chapter 854, relating to Business Enterprises of Texas:

- 10
11 Subchapter A. General Provisions and Program Operations, §854.10 and §854.11
12 Subchapter B. License and Assignments, §§854.20 - 854.23
13 Subchapter C. Expectations of TWC and Managers, §§854.40 - 854.43
14 Subchapter D. BET Elected Committee of Managers, §854.60
15 Subchapter E. Action Against a License, §§854.80 - 854.83

16
17 TWC proposes to repeal the following section of Chapter 854, relating to Business Enterprises of
18 Texas:

- 19
20 Subchapter A. General Provisions and Program Operations, §854.12

21
22 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

23 On May 21, 2019, TWC adopted rules in 40 TAC Chapter 854, relating to the Business
24 Enterprises of Texas (BET).

25
26 On May 23, 2019, TWC submitted revised BET Program rules to the Rehabilitation Services
27 Administration (RSA) for approval. The Randolph Sheppard Act (20 United States Code §107)
28 requires rules governing the BET Program first be reviewed and approved by RSA before
29 becoming effective. The federally mandated BET Elected Committee of Managers (ECM)
30 agreed with the revisions and communicated its support to RSA via email on May 24, 2019. The
31 revised program rules included changes requested by the ECM and conforming changes to
32 incorporate the BET rules into TWC administrative rules in 40 TAC Part 20 following transfer of
33 the program to TWC from legacy Texas Department of Assistive and Rehabilitative Services.

34
35 The BET Program rules adopted by TWC went into effect on September 1, 2019; however, RSA
36 had not returned approval of the rules by that date.

37
38 On April 22, 2020, RSA responded to TWC's May 2019 submission, offering comments,
39 questions, and required changes related to the revised BET Program rules. The required changes
40 included provisions that were not revised by TWC in the 2019 submission and that were
41 previously approved by RSA. The information presented by RSA was supplied to the ECM.

42
43 TWC sought clarification from RSA about the specific adjustments required to obtain approval
44 of the revised rules as submitted. Upon gaining a better understanding of the requirements and
45 making adjustments to comply, RSA approved the revised rules on November 16, 2020. The

1 ECM was notified that RSA approved the rules with some required adjustments. The ECM
2 agreed with the RSA adjustments in writing on May 6, 2021.

3
4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

7
8 **SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS**

9 TWC proposes the following amendments to Subchapter A:

10
11 **§854.10. Definitions**

12 Section 854.10 is amended to add the definitions for "Agency" and "VRD director."

13
14 New §854.10(2) defines "Agency" as TWC, which is the state licensing agency for the
15 Randolph-Sheppard program titled the Business Enterprises of Texas. Subsequent definitions are
16 renumbered accordingly.

17
18 New §854.10(28) defines "VRD director" as the director of TWC's designated state unit titled the
19 Vocational Rehabilitation Division.

20
21 **§854.11. General Policies**

22 Section 854.11(b) is amended to change "citizens of Texas" to "reside or are physically present
23 in Texas" to clarify that legally blind individuals who reside or are physically present in Texas
24 can operate BET facilities.

25
26 Section 854.11(c) is amended to clarify that the term "Management" includes "being physically
27 present to perform" the supervision duties.

28
29 Section 854.11(h) is amended to add "race" to the nondiscrimination clause and §854.11(i) is
30 amended to include "declared emergencies" in the description of emergencies.

31
32 **§854.12. Consultants**

33 Section 854.12 is repealed because the section relating to consultants is no longer needed.

34
35 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

36 TWC proposes the following amendments to Subchapter B:

37
38 **§854.20. Eligibility and Application Process**

39 Section 854.20(a) is amended to clarify prerequisites for training. In §854.20(a)(2) "residing" in
40 Texas is changed to "physically present" in Texas, and in §854.20(a)(5), "health and stamina" is
41 changed to "physical capability."

42
43 Section 854.20(b) is amended to include in the application process that notification of the
44 interview results may be provided by mail if the applicant does not have access to email.

1 **§854.21. BET Licenses and Continuing Education Requirement**

2 Section 854.21 is amended to clarify the property right statement. Section 854.21(a)(4) is
3 amended to read that a license shall not create any property right for the licensee to state or
4 federal property including state- or federally owned equipment.
5

6 **§854.22. Initial Assignment Procedures**

7 Section 854.22(b)(6), which states "any other circumstances on a case-by-case basis," is removed
8 from the factors that the BET director will consider when determining the manager's initial
9 assignment.
10

11 **§854.23. Career Advancement Assignment Procedures**

12 Section 854.23(b)(4) is amended to correct a reference. Section 854.81 relates to Administrative
13 Action Based on Unsatisfactory Performance, not §854.41.
14

15 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

16 TWC proposes the following amendments to Subchapter C:
17

18 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables**

19 Section 854.40(c) is amended to clarify that TWC's purchase of necessary equipment for
20 placement away from the facility and remove the sentence regarding the manager's
21 responsibilities relating to the off-site equipment.
22

23 Section 854.40(f) is amended to add paragraph (3) to state that TWC has the right to perform
24 required maintenance and require the manager to reimburse the Agency for that maintenance.
25

26 Section 854.40(g) is amended to remove the language stating that the vendors will be informed
27 by TWC staff of the procedures regarding payment for services.
28

29 **§854.41. Set-Aside Fees**

30 Section 854.41(a)(4) is amended to replace "Texans" with "individuals physically present in
31 Texas." Section 854.41(b)(5) is amended to clarify that the use of funds for retirement, health
32 insurance, or paid sick and vacation leave will be determined by the majority vote of licensed
33 managers.
34

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

36 Section 854.42(d) is amended to state that managers shall dress and act in an appropriate manner
37 and §854.42(o) is amended to state that copies of evidence that needs to be preserved for an audit
38 or review will be supplied to the manager within 90 business days.
39

40 **§854.43. Responsibilities of the Texas Workforce Commission**

41 Section 854.43(c) is amended to state the ECM will actively participate in the setting of price
42 ranges charged in facilities.
43

44 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**

45 TWC proposes the following amendments to Subchapter D:
46

1 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities**

2 Section 854.60(c)(2) is amended to replace "Texans" with "individuals physically present in
3 Texas."

4
5 **SUBCHAPTER E. ACTION AGAINST A LICENSE**

6 TWC proposes the following amendments to Subchapter E:
7

8 **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance**

9 Section 854.80(a)(2) is amended to add "with or without reasonable accommodations" to the
10 cause for termination for a licensee who becomes permanently disabled and is unable to perform
11 the essential functions to operate and maintain the facility.
12

13 **§854.81. Administrative Action Based on Unsatisfactory Performance**

14 Section 854.81(a) is amended to clarify the causes for administrative action based on
15 unsatisfactory performance.
16

17 Section 854.81(b) is deleted to remove the administrative action pending an appeal and the
18 subsequent subsections are relettered accordingly.
19

20 Relettered §854.81(b)(5)(D) and (c)(2)(A) are amended to include "via mail or electronically via
21 email" for notifications between the manager and TWC.
22

23 Relettered §854.81(d) is amended to include the reference to §854.82(e) regarding full
24 evidentiary hearings.
25

26 **§854.82. Procedures for Resolution of Manager's Dissatisfaction**

27 Section 854.82 is amended to remove subsection (b)(2) and (3) from actions not subject to appeal
28 and the statement of agency sovereign immunity in subsection (c). The subsequent subsections
29 have been relettered accordingly.
30

31 Relettered §854.82(d) is amended to clarify the informal procedures in paragraphs (1), (3), and
32 (4) and paragraph (6) is amended to clarify that upon conclusion of mediation, the mediator
33 would share in writing the results of mediation.
34

35 Relettered §854.82(e)(3) is amended to clarify the time that a manager needs to request an
36 evidentiary hearing and paragraph (4) is amended to clarify the request for the hearing must be in
37 writing and transmitted to the VRD director by mail or email.
38

39 **§854.83. Establishing and Closing Facilities**

40 Section 854.83(a) is amended to remove paragraph (2), which is the description of action
41 required if it is determined that a blind individual cannot properly operate a vending facility.
42

43 **PART III. IMPACT STATEMENTS**

44 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
45 rules will be in effect, the following statements will apply:
46

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

3
4 There are no estimated cost reductions to the state and to local governments as a result of
5 enforcing or administering the rules.

6
7 There are no estimated losses or increases in revenue to the state or to local governments as a
8 result of enforcing or administering the rules.

9
10 There are no foreseeable implications relating to costs or revenue of the state or local
11 governments as a result of enforcing or administering the rules.

12
13 There are no anticipated economic costs to individuals required to comply with the rules.

14
15 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
16 communities as a result of enforcing or administering the rules.

17
18 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
19 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
20 does not apply to this rulemaking.

21
22 Takings Impact Assessment

23 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
24 affects private real property, in whole or in part or temporarily or permanently, in a manner that
25 requires the governmental entity to compensate the private real property owner as provided by
26 the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I,
27 §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in
28 the absence of the governmental action, and is the producing cause of a reduction of at least 25
29 percent in the market value of the affected private real property, determined by comparing the
30 market value of the property as if the governmental action is not in effect and the market value of
31 the property determined as if the governmental action is in effect. TWC completed a Takings
32 Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043.
33 The primary purpose of this proposed rulemaking action, as discussed elsewhere in this
34 preamble, is to amend Chapter 854 to incorporate the changes that were approved by RSA.

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

42
43 Government Growth Impact Statement

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

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

10

11 Economic Impact Statement and Regulatory Flexibility Analysis

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

15

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

18

19 Cheryl Fuller, Director, Vocational Rehabilitation Division, determined that for each year of the
20 first five years the rules are in effect the public benefit anticipated as a result of enforcing the
21 rules will be that the BET Program rules in 40 TAC Chapter 854 will reflect the language agreed
22 upon by RSA in accordance with the Randolph Sheppard Act.

23

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

26

27 **PART IV. PUBLIC COMMENT**

28 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov.
29 Comments must be received no later than March 28, 2022.

30

31 **PART V. STATUTORY AUTHORITY**

32 The rules are proposed under Texas Labor Code, §355.012(a), authorizing TWC to promulgate
33 rules necessary to implement Texas Labor Code, Chapter 355, and under Texas Labor Code,
34 §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary.

35

36 The proposed rules affect Texas Labor Code, particularly Chapter 355.

1 (10)(9) Blind (individual who is)--An individual whose central visual acuity does
2 not exceed 20/200 in the better eye with correcting lenses or whose visual
3 acuity, if better than 20/200, is accompanied by a limit to the field of vision in
4 the better eye to such a degree that its widest diameter subtends an angle of no
5 greater than 20 degrees. In determining whether an individual is blind, there
6 shall be an examination by a physician skilled in diseases of the eye, or by an
7 optometrist, whichever the individual shall select.
8

9 (11)(10) Business day--A day on which state agencies are officially required to be
10 open during their normal business hours.
11

12 (12)(11) ECM--Elected Committee of Managers--A committee representative of
13 BET licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.
14

15 (13)(12) Expendables--Items that require a low capital outlay and have a short life
16 expectancy, including, but not limited to, small wares, thermometers, dishes,
17 glassware, flatware, sugar and napkin dispensers, salt and pepper shakers,
18 serving trays, kitchen knives, spreaders, serving spoons, and ladles.
19

20 (14)(13) Immediate family--Any individual related within the first degree of
21 affinity (marriage) or consanguinity (blood) to the individual involved.
22

23 (15)(14) Individual with a significant disability--An individual who has a severe
24 physical or mental impairment that seriously limits one or more functional
25 capacities (such as mobility or communication).
26

27 (16)(15) Initial assignment--The first BET facility to which a manager is assigned
28 after being licensed.
29

30 (17)(16) Instruction by Agency staff members--Instructions that are proper and
31 authorized and in accordance with applicable statutes and program rules,
32 regulations, and procedures.
33

34 (18)(17) Level 1 facility--A BET facility that in the previous year generated a net
35 income after set-aside fees equal to or less than 170 percent of the median net
36 income after set-aside fees of all BET managers for the previous year or, in the
37 case of a new BET facility, is reasonably expected to generate that income.
38

39 (19)(18) Level 2 facility--A BET facility that in the previous year generated a net
40 income after set-aside fees greater than 170 percent of the median net income
41 after set-aside fees of all BET managers for the previous year or, in the case of
42 a new BET facility, is reasonably expected to generate that income.
43

44 (20)(19) Licensee--A blind individual who has been licensed by the Agency as
45 qualified to apply for and operate a BET facility, and which shall have the
46 same meaning assigned to "blind licensee" in 34 CFR §395.1.

1
2 ~~(21)(20)~~ Manager--A licensee who is operating a BET facility, and which shall
3 have the same meaning assigned to "vendor" in 34 CFR §395.1.

4
5 ~~(22)(21)~~ Net sales--All sales, excluding sales tax.

6
7 ~~(23)(22)~~ Other income--Money received by a manager from sources other than
8 direct sales, such as vending commissions or subsidies.

9
10 ~~(24)(23)~~ Sanitation and cleaning supplies--Items that require a low capital outlay
11 and have a short life expectancy, such as, by way of illustration and not
12 limitation, mops, brooms, detergents, bleach, gloves, oven mitts, trash bags,
13 food wrapping supplies, foil, and cleaning supplies for food equipment.

14
15 ~~(25)(24)~~ State property--Lands and buildings owned, leased, or otherwise controlled
16 by the State of Texas; and equipment and facilities purchased and/or owned by
17 the State of Texas.

18
19 ~~(26)(25)~~ Substantial interest--An individual has a substantial interest if:

20
21 (A) in an assignment decision:

22
23 (i) the individual will benefit financially from the assignment decision
24 and;

25
26 (ii) funds received by the individual from the business exceed 10
27 percent of the individual's gross income for the previous year; or

28
29 (B) if he or she is related to an individual in the first degree of affinity or
30 consanguinity who has a substantial interest as defined in subparagraph
31 (A) of this paragraph.

32
33 ~~(27)(26)~~ Vending machine--For the purpose of assigning vending machine income,
34 a coin- or currency-operated machine that dispenses articles or services, except
35 those machines operated by the United States Postal Service for the sale of
36 postage stamps or other postal products and services. Machines providing
37 services of a recreational nature and telephones shall not be considered to be
38 vending machines.

39
40 ~~(28)~~ VRD director--The director of the Agency's designated state unit titled the
41 Vocational Rehabilitation Division.

42
43 **§854.11. General Policies.**

44
45 (a) Objectives. BET objectives shall be:
46

- 1 (1) to provide employment opportunities for qualified individuals; and
2
3 (2) to provide an ongoing training program for managers that encourages them to
4 advance their upward mobility career opportunities within the program.
5

6 (b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act
7 and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for
8 legally blind individuals who reside or are physically present in Texas to operate
9 BET facilities in~~the citizens of Texas who are legally blind~~ by establishing a vending
10 facility program in which individuals who need employment are given priority in the
11 operation of vending facilities selected and installed by the Agency. The Agency is
12 required to administer BET in accordance with the Agency's vocational rehabilitation
13 objectives. Therefore, a customer receiving services from VRD whose employment
14 goal is to be a licensed manager shall have reached an employment outcome, as that
15 term is used in the Rehabilitation Act of 1973, as amended, when the customer is
16 licensed by the Agency and is managing a BET facility. The licensed manager shall
17 not be considered an employee of the Agency or of state or federal government.
18

19 (c) Full-time employment. Managing a BET facility shall constitute full-time
20 employment. "Full-time" shall mean "being actively engaged in the management of a
21 BET facility for the number of hours necessary to achieve satisfactory operation of
22 the facility." The manager shall be available for necessary visits by Agency staff to
23 allow inspection, advice, and consultation as may be required to ensure satisfactory
24 operation. "Management" means "being physically present to perform the personal
25 supervision of the day-to-day operation of the assigned BET facility by the assigned
26 manager."
27

28 (d) Subcontracting. The management of a BET facility shall not be subcontracted by a
29 licensed manager except for temporary periods of time approved by the Agency and
30 in those circumstances in which the Agency considers that subcontracting the
31 operation of some parts of the facility is in the best interest of BET. Potential
32 justifications for subcontracting include the following: business strategies in which a
33 portion of the facility operation may be subcontracted so that the assigned manager
34 may focus on another aspect of the facility; temporary events not to exceed six
35 months in which the assigned manager is not capable of management duties due to
36 illness, injury, or other events, as approved by the Agency; and the need for business
37 expertise and resources beyond that available from BET. Any subcontracting shall
38 require the prior written approval of the Agency. The approval of any subcontract is
39 at the discretion of the Agency. This subsection does not apply to equipment or
40 machines allowed to be placed within the facility and not owned by or arranged for
41 by the Agency.
42

43 (e) Availability of funds. The administration of BET and the implementation of these
44 policies are contingent upon the availability of funds for the purposes stated in this
45 subchapter.
46

- 1 (f) BET manual. All BET policies adopted by the Agency shall be included in the BET
2 manual. The BET director shall ensure that the manual and any revisions to it are
3 provided to each licensee electronically or in the format requested by the licensee.
4 The licensee shall be responsible for reading the manual and acknowledging in
5 writing that he or she has read and understands its contents. The BET director shall
6 ensure that the BET manual contains procedures from which licensees may obtain
7 assistance in understanding BET policies and procedures.
8
- 9 (g) Accessibility of BET materials. All information produced by and provided to
10 licensees by the Agency shall be in an accessible format. When possible, these
11 materials are sent in the format requested by the licensee.
12
- 13 (h) Nondiscrimination.
- 14
- 15 (1) VR and BET participants. the Agency shall not discriminate against any blind
16 individual who is participating in or who may wish to participate in BET on
17 the basis of sex, age, religion, [race](#), color, creed, national origin, political
18 affiliation, or physical or mental impairment, if the impairment does not
19 preclude satisfactory performance.
20
- 21 (2) BET facilities. Managers shall operate BET facilities without discriminating
22 against any present or prospective supplier, customer, employee, or other
23 individual who might come into contact with the facility on the basis of sex,
24 age, religion, [race](#), color, creed, national origin, political affiliation, or physical
25 or mental impairment.
26
- 27 (i) Emergencies. The BET director is authorized to expend funds on an emergency basis
28 to protect the state's investment in a BET facility not to exceed \$50,000 in a fiscal
29 year or \$5,500 per facility incident due to riot, war, fire, earthquake, hurricane,
30 tornado, flood, or other disasters, governmental restrictions, labor disturbances,
31 [declared emergencies](#), or strikes.
32
- 33 (j) Temporary management. From time to time it becomes necessary to designate a
34 temporary manager to an unassigned facility to ensure uninterrupted service to the
35 host and customers. Temporary assignments shall be for the period stated in the
36 assignment document. After the time frame stated in the assignment expires, the
37 BET director shall review the temporary assignment and shall review the assignment
38 every 90 days to determine the need for continuation of the temporary assignment.
39 The temporary assignment shall terminate when a new manager is assigned to the
40 facility. The Agency shall choose temporary managers from licensees; if a licensee is
41 not available, the Agency may contract with a private entity. Before the Agency
42 offers a licensee or a private entity a temporary opportunity, the regional BET staff,
43 at a minimum, shall evaluate the following: the individual's willingness to serve for
44 the stated temporary term; the qualifications and experience relevant to the current
45 opportunity; and the documented management compliance history, along with other
46 factors set out in Agency rules. The geographic BET staff shall provide its findings

1 to the local ECM and seek a joint recommendation to BET management. BET
2 management shall make the final determination. When more than one individual is
3 recommended at the local level, BET management shall first give preference to
4 managers available within the local ECM region and thereafter to the individual
5 manager with a lower average historical income, to improve his or her income
6 temporarily.

- 7
8 (k) Compliance with tax laws. Licensees and managers shall comply with state and
9 federal tax laws and shall not have a tax lien against them.

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 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

37
38 **§854.20. Eligibility and Application Process.**

- 39
40 (a) Prerequisites for training. To be eligible for BET training, a customer desiring a
41 career with BET as an employment outcome in the vocational rehabilitation program
42 shall:

- 43
44 (1) be at least 18 years of age;

- (2) be a United States citizen ~~physically present~~~~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 ~~physical capability~~~~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. Notification may be provided by mail if the applicant does not have access to email services.

§854.21. BET Licenses and Continuing Education Requirement.

- (a) Natural ~~persons~~~~individuals~~. Licenses to manage a BET facility shall be issued only to natural ~~persons~~~~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.
 - (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.

- 1 (3) Display. The license or a copy of the license shall be displayed prominently in
2 each BET facility to which the manager is assigned.
3
- 4 (4) Property right. A license shall not create any property right ~~for~~ⁱⁿ the licensee to
5 state or federal property including state- or federally owned equipment ~~and~~
6 ~~shall be considered only as a means of informing the public and other~~
7 ~~interested parties that the licensee has successfully completed BET training~~
8 ~~and is qualified and authorized to operate a BET facility.~~
9
- 10 (5) Transferability. A license is not transferable.
11
- 12 (6) Term. A license issued by the Agency shall be valid for an indefinite period,
13 subject, however, to termination or revocation under conditions specified in
14 these rules that pertain to termination of a license for reasons other than
15 unsatisfactory performance or administrative action.
16

17 (b) Annual continuing education requirements for licensees:
18

- 19 (1) The Agency and ECM conduct an annual training conference for all licensees
20 to inform them of new BET developments and to provide instruction on
21 relevant topics to enhance licensees' business competence and upward mobility
22 in the program. Licensees must attend the Agency's training conference or an
23 Agency-approved alternative training event every year to maintain their
24 licenses and eligibility to bid on available facilities. They must document their
25 attendance at the Agency training conference by signing attendance records
26 provided at the conference. A licensee who is unable to attend the Agency
27 training conference may satisfy the continuing education requirement by
28 attending a BET-approved course or training conference. Such training
29 includes, but is not limited to, attending the national training conferences for
30 blind vendors conducted by the Randolph-Sheppard Vendors of America or by
31 the National Association of Blind Merchants, or by completing a business-
32 related course from the Hadley Institute for the Blind and Visually Impaired or
33 a business-related course offered by an accredited community college.
34
- 35 (2) Licensees wishing to attend an alternative training course or conference must
36 request approval through their local Agency staff. The local Agency staff
37 forwards the request to the BET director for approval. The licensee must also
38 provide proof of successful completion of any business-related course or
39 attendance at a training conference through the local Agency staff to the BET
40 director to receive credit for attendance. All costs associated with travel,
41 lodging, meals, and registration when attending any training other than the
42 Agency training conference will be the responsibility of the licensee.
43
- 44 (3) Licensees may use an alternative approved training course or training
45 conference to satisfy the continuing education requirement only if they are
46 unable to attend the Agency training conference because of personal medical

1 reasons, the death of a family member, a medical emergency or serious
2 medical condition of an immediate family member, or if there is not an Agency
3 training conference offered during the licensee's 12-month evaluation period.
4 Licensees must provide written documentation of the medical issues or death
5 of a family member to their local Agency staff.
6

- 7 (4) Licensees who fail to complete continuing education requirements may be
8 subject to administrative action up to and including termination of their
9 licenses.
10

11 **§854.22. Initial Assignment Procedures.**

12
13 (a) This section defines the process for the initial assignments of managers. It is the goal
14 of the process to provide a fair, unbiased, and impartial process for selection,
15 transfer, and promotion.
16

17 (b) Initial assignment. When an individual completes BET training, the BET director
18 shall make the initial assignment for the newly licensed individual. The initial
19 assignment shall be for a minimum of 12 months. The BET director shall make the
20 assignment based on the following factors, including but not limited to:
21

- 22 (1) availability of a Level 1 facility;
23
24 (2) recommendations from the BET training specialist and the ECM chair;
25
26 (3) licensee's training records;
27
28 (4) licensee's geographical concerns; and
29
30 (5) licensee's compliance with state and federal tax laws and not be subject to any
31 tax liens; ~~and~~
32
33 ~~(6) any other circumstances on a case-by-case basis.~~
34

35 **§854.23. Career Advancement Assignment Procedures.**

36
37 (a) Career advancement assignments. This section defines the process for the career
38 advancement assignments of managers. It is the goal of the process to provide a fair,
39 unbiased, and impartial process for selection, transfer, and promotion.
40

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

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- (2) Notice. As BET facilities become available and ready for permanent assignment, written notice of the availability shall be given to all licensees within 30 business days.
 - (3) On-site visits. An advertised facility shall be available for on-site visits upon reasonable notice by licensees interested in that facility assignment.
- (b) Eligibility. To apply for an available facility, a licensee must meet the following requirements:
- (1) The licensee shall have successfully managed a BET facility for a minimum of one year.
 - (2) The licensee shall be current on all accounts payable for the 12 months before the date of the facility announcement. Accounts payable include known debts to state and federal entities as well as any BET business-related debt. "Current" means "performing in accordance with written established or alternate payment plans associated with the accounts payable debts."
 - (3) The licensee shall be in compliance with state and federal tax laws and not be subject to any tax liens.
 - (4) The licensee shall not be on probation under ~~§854.41~~ [§854.81](#) of this title (relating to Administrative Action Based on Unsatisfactory Performance).
 - (5) The licensee shall meet eligibility requirements of the facility's host organization, including, but not limited to:
 - (A) criminal background checks; and
 - (B) drug tests.
 - (6) The licensee shall not have submitted more than one insufficient funds check to the Agency within the 12 months before the date of the facility announcement.
 - (7) The licensee shall not have submitted more than one late report within the 12 months before the date of the facility announcement.
 - (8) If unassigned, the licensee shall have fulfilled all resignation requirements in the licensee's most recent facility assignment or be displaced and eligible to apply for a facility.

- 1 (9) The manager shall have an inventory of merchandise and expendables in the
2 manager's current facility that the Agency has determined sufficient for its
3 satisfactory operation.
4
5 (10) The licensee shall satisfy the Agency that he or she can maintain the
6 merchandise and expendables required for the available facility.
7
8 (11) A licensee who has been placed on probation is not eligible for promotion and
9 transfer for 30 days from the effective date of the most recent release from
10 probation.
11
12 (12) A licensee who has been placed on probation twice within a 12-month period
13 is not eligible for promotion or transfer for six months from the effective date
14 of the most recent release from probation.
15
16 (13) A licensee who has been placed on probation three times within a two-year
17 period is not eligible for promotion or transfer for one year from the effective
18 date of the most recent release from probation.
19

20 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

21 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.**

- 22
23
24 (a) Survey. When a BET facility becomes available for assignment, Agency staff shall
25 conduct a survey of the site to determine the fixtures, furnishings, and equipment
26 required to allow the facility to operate in accordance with projections by Agency
27 staff of the potential business model for the facility. When the facility is an existing
28 one, the survey shall consider the need for replacement or repair of fixtures,
29 furnishings, and equipment.
30
31 (b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for
32 fixtures, furnishings, and equipment for the facility, including specifications for each
33 item required and a site plan of the facility depicting the placement of the fixtures,
34 furnishings, and equipment within the facility. The facility shall be consistent with
35 local ordinances as well as state and federal requirements.
36
37 (c) Acquisition, placement, and installation. When satisfied with the plan for the
38 fixtures, furnishings, and equipment required for the facility, Agency staff shall
39 procure the necessary fixtures, furnishings, and equipment to be placed or installed
40 in the facility in accordance with the approved plans. ~~The~~With previous approval, the
41 Agency may also purchase necessary fixtures, furnishings, and equipment for
42 placement away from the facility for off-site storage ~~or other approved reason. A~~
43 ~~manager's responsibilities as noted in rule apply to off-site equipment.~~
44
45 (d) Ownership.
46

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

6 (2) The Agency shall have the sole authority to direct, control, transfer, and
7 dispose of the fixtures, furnishings, and equipment.
8

9 (e) Modifications. No modifications or alterations shall be made to state-owned fixtures,
10 furnishings, or equipment by any individual, firm, or entity without the express prior
11 written approval of the Agency.
12

13 (f) Upkeep and maintenance.
14

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

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

26 (3) The Agency has the right to perform required maintenance and require the
27 manager to reimburse the Agency for that maintenance.
28

29 ~~(4)~~(3) The manager shall keep and maintain accurate records of all maintenance
30 performed on fixtures, furnishings, and equipment. Any failure or refusal of
31 the manager to perform the maintenance referred to in this section shall result
32 in the manager being required to reimburse the Agency for the cost or expense
33 resulting from the failure or refusal and may result in further administrative
34 action.
35

36 (g) Repairs and replacements.
37

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

1 under §854.81 of this title (relating to Administrative Action Based on
2 Unsatisfactory Performance).

3
4 (2) The manager shall follow the instructions as established by BET to facilitate
5 the timely necessary repairs and for the payment for such services. The
6 instructions provide specific procedures for initiating repairs by the manager
7 and a list of approved vendors for repairs. The instructions provided to each
8 manager are published revised from time to time.

9
10 (3) Under no circumstances is a manager authorized to have the cost of repairs
11 charged to the Agency or to have repairs made by anyone other than approved
12 vendors unless Agency staff has given the manager authority to do so in
13 writing. Each vendor included in the approved list of vendors for repairs shall
14 be informed by Agency staff of this prohibition and of the procedures for
15 authorized repairs ~~and for payment for services.~~

16
17 (4) Agency staff members on their own initiative or upon request shall determine
18 the need for replacement of any fixtures, furnishings, or equipment, and they
19 shall report it to the BET director. If the BET director authorizes the expense,
20 the replacement fixtures, furnishings, and/or equipment shall be purchased,
21 contingent upon availability of BET funds.

22
23 (5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning
24 supplies. Each manager of a facility shall be responsible for replacing all such
25 items with items of a quality comparable to those being replaced and originally
26 furnished by the Agency.

27
28 (h) Initial inventory of merchandise and expendables for newly licensed managers. The
29 Agency shall furnish without charge the initial inventory of merchandise and
30 expendables for the initial assignment of a newly licensed licensee. The initial
31 inventory of merchandise and expendables shall be sufficient to assist the manager
32 with starting the business.

33
34 (i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and
35 expendables.

36
37 (1) The manager shall maintain an inventory of merchandise, sanitation and
38 cleaning supplies, and expendables in the same quantities as were transferred
39 to the manager upon assignment to the facility. If the Agency determines that
40 changed circumstances require different quantities of merchandise, sanitation
41 and cleaning supplies, and expendables, the Agency shall communicate in
42 writing to the manager the new quantities required. If the new quantities of
43 merchandise, sanitation and cleaning supplies, and expendables are necessary
44 to provide for the satisfactory operation of the facility, those new quantities of
45 inventory must be maintained by the manager.
46

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

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

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

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

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

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

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

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

45 **§854.41. Set-Aside Fees.**
46

- 1 (a) The Agency requires managers to pay a set-aside fee based on the monthly net
2 proceeds of their BET facilities. The purposes of requiring this payment are:
3
- 4 (1) to promote to the greatest possible extent the concept of a manager being an
5 independent business individual;
6
 - 7 (2) to cause BET to be to the greatest extent possible, self-supporting;
8
 - 9 (3) to encourage and stimulate growth in BET; and
10
 - 11 (4) to provide incentives for the increased employment opportunities for blind
12 individuals physically present in Texas~~Texans~~.
13
- 14 (b) Use of funds. To the extent permitted or required by applicable laws, rules, and
15 regulations, the funds collected as set-aside fees shall be used by the Agency for the
16 following purposes:
17
- 18 (1) maintenance and replacement of equipment for use in BET;
19
 - 20 (2) purchase of new equipment for use in BET;
21
 - 22 (3) management services;
23
 - 24 (4) ensuring a fair minimum return to managers; and
25
 - 26 (5) the establishment and maintenance of retirement or pension funds, health
27 insurance contributions, and provision for paid sick leave and vacation time if
28 it is so determined by a majority vote of licensed managers~~assigned to a~~
29 facility, after the Agency provides to each such manager information on all
30 matters relevant to these proposed purposes.
31
- 32 (c) Method of computing net proceeds.
33
- 34 (1) Net proceeds are the amount remaining from the sale of merchandise of a BET
35 facility, all vending machine income, and other income accruing to the
36 manager from the facility after deducting the reasonable and necessary cost of
37 such sale, but excluding set-aside charges required to be paid by the manager.
38 The manager shall not remove any items from the inventory or other stock
39 items of the facility unless the manager pays for those items at the actual cost.
40
 - 41 (2) Costs of sales that may be deducted from net sales to calculate net proceeds in
42 a reporting period shall be limited to:
43
- 44 (A) cost of merchandise sold;
45
 - 46 (B) wages paid to employees;

- 1
2 (C) payroll taxes; and
3
4 (D) the following reasonable miscellaneous operating expenses that are
5 directly related to the operation of the BET facility. Discretionary
6 expenses, not to exceed 1.5 percent of the monthly net sales, or \$150,
7 whichever is greater. Expenses must be verifiable, invoiced, and directly
8 related to the operation of the facility. Acceptable expenses include:
9
10 (i) rent and utilities authorized in the permit or contract;
11
12 (ii) business taxes, licenses, and permits;
13
14 (iii) telecommunication services;
15
16 (iv) liability, property damage, and fire insurance;
17
18 (v) worker's compensation insurance;
19
20 (vi) employee group hospitalization or health insurance;
21
22 (vii) employee retirement contributions (the plans must be IRS-
23 approved and not for the manager);
24
25 (viii) janitorial services, supplies, and equipment;
26
27 (ix) bookkeeping and accounting services;
28
29 (x) trash removal and disposal services;
30
31 (xi) service contracts on file with the Agency;
32
33 (xii) legal fees directly related to the operation of the facility (legal
34 fees directly or indirectly related to actions against governmental
35 entities are not deductible);
36
37 (xiii) medical expenses directly related to accidents that occur to
38 employees at the facility, not to exceed \$500;
39
40 (xiv) purchase of personally owned or leased equipment that has been
41 approved by the Agency for placement in the facility;
42
43 (xv) repairs and maintenance to personally owned or leased equipment
44 that has been approved by the Agency to be placed in the facility;
45
46 (xvi) consumable office supplies;

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(xvii) exterminator or pest control services; and

(xviii) mileage expenses for vehicles required for the direct operation of vending facilities at the rate and method allowed by the Internal Revenue Service at the time the expenses are incurred.

(3) All reports by managers shall be accompanied by supporting documents required by the Agency.

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the net proceeds of the facility as determined in accordance with this section. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the BET director with the active participation of ECM at least annually each state fiscal year. The purpose of the review shall be to determine whether the percentage needs to be adjusted in order to meet the financial needs of the program. The percentage assessed against the net proceeds of facilities may be lowered or raised to meet the needs of the program. ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days before a review by the BET director in which the percentage is to be considered. For the period from the effective date of this amended rule until BET director undertakes his or her first annual review of the set-aside fee, the percentage shall be 5 percent.

(e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then ECM may choose to use the appeal process.

(f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use BET Monthly Facility Report, BE-117, to report monthly activities.

(g) Adjustments to monthly set-aside fee.

(1) To encourage managers to hire individuals with disabilities, managers shall deduct from their set-aside payment up to 50 percent of the wages or salary paid to an employee who is blind or who has another disability or disabilities (as defined by the Americans with Disabilities Act) during any month up to an amount not to exceed 5 percent of the set-aside payment amount for that month, or \$250, whichever is less. A manager may make this deduction for any number of employees who are blind or have another disability as long as that deduction from the set-aside payment amount does not exceed 25 percent of the total set-aside payment that is due, or \$1,250, whichever is less. The manager shall provide documentation to BET as required by the Agency to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, "who is blind or who has another disability" does not include:

- 1
2 (A) the manager;
3
4 (B) an individual who is blind or who has another disability at the first
5 degree of consanguinity or affinity to the manager; or
6
7 (C) an individual who is blind or who has another disability claimed as a
8 dependent, either in whole or in part, on the manager's federal income
9 tax return.

- 10
11 (2) Adjustments provided for in paragraph (1) of this subsection shall not apply for
12 any month in which the set-aside fee is not paid in a timely manner.
13
14 (3) To encourage managers to file their monthly statement of facility operations
15 and pay their monthly set-aside fee promptly, managers shall have their
16 monthly set-aside fee increased by 5 percent of the total amount due if either
17 their monthly statement or the monthly set-aside fee is not received in a timely
18 manner, pursuant to these rules. None of the terms of this rule shall be
19 construed to create a contract to pay interest, as consideration for the use,
20 forbearance, or detention of money, at a rate more than the maximum rate
21 permitted by applicable laws and rules. This adjustment to the set-aside fee is
22 not imposed as interest.
23

24 **§854.42. Duties and Responsibilities of Managers.**

- 25
26 (a) Managers shall comply with applicable law, the rules contained in this chapter,
27 written agreements with hosts, the BET assignment, the requirements of the BET
28 manual, and instruction by BET staff.
29
30 (b) Managers shall comply with procedures prescribed by the Comptroller of Public
31 Accounts for the payment of sales taxes and provide evidence to the Agency of
32 timely sales tax remittances.
33
34 (c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's
35 right, title, and interest in the BET facility, its equipment, or the lease or agreement
36 with the property managers.
37
38 (d) While managing or present at their assigned BET facility, managers shall dress and
39 act in an appropriate manner consistent with the environment in which they are
40 operating, health and safety regulations, and anti-discrimination provisions under
41 §854.11(h) of this title (relating to General Policies). ~~Managers shall maintain a~~
42 ~~professional appearance and act in a professional manner while managing a BET~~
43 ~~facility.~~
44
45 (e) Managers shall open a commercial business account in which they maintain
46 sufficient funds to operate the BET facility.

- 1
2 (f) Managers shall hire sufficient employees to ensure the efficient operation of the BET
3 facility and to provide satisfactory service to customers. If the facility is remodeled
4 or if operational areas change, the manager must have sufficient employees on hand
5 for the necessary shutdown and reopen cleanup.
6
7 (g) Managers shall be actively engaged in the management of a BET facility and be
8 actively working the number of hours necessary to achieve satisfactory operation of
9 the facility. With prior notice from the Agency, managers shall be available for all
10 necessary visits to the facilities for advice, consultation, and inspections of the
11 facility. If the business is closed for remodel or improvement, the manager shall be
12 available for the opening, closing, and overall security of the business and assets.
13
14 (h) Managers shall take appropriate actions to correct deficiencies noted on BET facility
15 audits or reviews within seven business days.
16
17 (i) Managers shall provide satisfactory service to the BET facility host and customers.
18
19 (j) Managers shall notify the Agency in advance if they intend to be absent from their
20 assigned facility for more than two days.
21
22 (k) Managers shall provide BET staff with the following information and shall notify
23 BET staff of changes to any item no more than 10 business days after a change
24 occurs:
25
26 (1) the BET facility telephone number;
27
28 (2) a mailing address and an e-mail address ~~to which BET correspondence is to be~~
29 ~~sent~~;
30
31 (3) a phone number for use in emergencies; and
32
33 (4) the manager's preferred accessibility format.
34
35 (l) Managers are accountable to the Agency for the proceeds of the business.
36
37 (m) Managers shall keep all records supporting the monthly facility report for three
38 calendar years.
39
40 (n) Managers shall report the actual value of resale inventory by taking a physical count
41 in the facility each month and submitting a written quarterly inventory (March, June,
42 September, and December) with the monthly facility report.
43
44 (o) Managers, upon request by the Agency, shall make available all records pertinent to
45 the facilities to which they have been assigned for audit or review. Any materials
46 removed from the facility will be returned within 90 business days, unless evidence

1 needs to be preserved. [Copies of preserved evidence will be supplied by the Agency](#)
2 [to the manager within 90 business days.](#)

- 3
4 (p) Managers shall maintain liability insurance coverage sufficient to indemnify the
5 Agency if Agency funding is not available or insufficient for such purposes.
6

7 **§854.43. Responsibilities of the Texas Workforce Commission.**
8

- 9 (a) Management services. The Agency shall provide each manager with regular and
10 systematic management services, which shall, at a minimum, include:
11
12 (1) explanations of Agency rules, procedures, policies, and standards;
13
14 (2) recommendations on how the facility can be made more profitable for the
15 manager;
16
17 (3) techniques to develop positive relationships with customers, assistants, and
18 management of the host organization;
19
20 (4) possible solutions to problems recognized by the manager or brought to the
21 manager's attention by Agency staff or the facility host;
22
23 (5) continuing education and training courses and opportunities for managers
24 designed to enhance skills, productivity, and profitability; and
25
26 (6) information about laws, rules, and regulations affecting the operation of a BET
27 facility.
28
29 (b) Training. The Agency shall assist ECM in conducting a special training seminar for
30 all licensees each year to inform them of new BET developments and to provide
31 instruction on new, relevant topics to enhance upward mobility.
32
33 (c) Facility operating conditions. The Agency shall establish the conditions for operation
34 of a BET facility in accordance with this subchapter and any requirements of the
35 host. The operating conditions shall include, among other things, pricing-ranges
36 requirements, hours of operation, and menu items or product lines. The Agency may
37 revise the operating conditions from time to time as market conditions warrant. [The](#)
38 [ECM](#)~~elected committee of managers~~ [will actively participate in the setting of price](#)
39 [ranges charged in the facilities.](#) The final authority and ultimate responsibility for
40 determining the price ranges to be charged for products sold through BET facilities
41 shall rest with the Agency.
42
43 (d) BET financial data. Upon request, the Agency shall provide licensees with access to
44 BET financial data. Also upon request, Agency staff shall assist the licensee in
45 interpreting the data.
46

- 1 (e) Inventory payment. When a manager leaves the manager's initial assignment, the
2 Agency shall pay the manager or the manager's heirs the value of the usable stock
3 and supplies above the amount provided to the manager upon initial assignment.
4

5 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**
6

7 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities.**
8

- 9 (a) Authority. The Elected Committee of Managers (ECM) is created and shall operate
10 under 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard
11 Act.
12
- 13 (b) Relationship to the Agency. ECM shall be presumed as the sole representative of all
14 licensees to the Agency in matters contained in the Randolph-Sheppard Act and
15 implementing regulations requiring the active participation of the ECM. Active
16 participation means an ongoing process of good-faith negotiations between ECM and
17 the Agency in the development of BET policies and procedures before
18 implementation. The Agency shall have the ultimate responsibility for the
19 administration and operation of all aspects of BET and has final authority in
20 decisions affecting BET.
21
- 22 (c) Relationship to licensees.
23
- 24 (1) It shall be the sole responsibility of the licensees who elect the members of
25 ECM to ensure that the individuals elected represent all licensees.
26
- 27 (2) ECM shall, in addition to all other matters set forth in this subchapter or by law
28 or regulation affecting the administration of BET, act as an advocate for
29 licensees and shall strive to improve and expand BET and make it profitable
30 and successful to the greatest extent possible for the mutual benefit of the
31 Agency and of the legally blind [individuals physically present in Texas](#)~~Texas~~
32 who participate in the program.
33
- 34 (d) BET policies, rules, and procedures. In all matters related to policies and rules, the
35 Agency has the ultimate responsibility and the ultimate authority for their
36 establishment and adoption. ECM shall actively participate in the consideration of
37 significant BET decisions and in deliberations of rules and policies affecting BET.
38 Whenever the Agency or ECM wishes to consider policies or rules related to BET,
39 the Agency shall request that ECM participate in the Agency rule-drafting
40 workshops to be conducted by the BET director. The BET director will work with
41 ECM in a good-faith effort to agree in matters related to rule and policy changes.
42
- 43 (e) BET administrative decisions. In matters concerning the administration of BET, the
44 Agency holds the ultimate responsibility and authority for making administrative
45 decisions affecting BET. The BET director shall establish and maintain a continuing
46 dialogue and exchange of information with ECM about decisions regarding the

1 administration of BET and shall seek ECM input and advice on all significant
2 decisions affecting the administration of the program. In cooperation with the ECM
3 chair and other members of ECM that the ECM chair considers necessary and
4 appropriate, the BET director shall develop and implement methods of establishing
5 and maintaining the dialogue and exchange of information. The methods developed
6 shall be set out in detail in a written format and shall be included in the BET manual.
7

- 8 (f) Exclusions from participation. ECM, its members, and BET managers are not
9 employees, officers, or officials of the State of Texas. Therefore, ECM shall not
10 participate in any decision-making process regarding Agency personnel, personnel
11 policies, or personnel administration.
12
- 13 (g) Structure. ECM shall, to the extent possible, be composed of licensees who are
14 representative of all licensees in BET based on such factors as geography and facility
15 type and size. Two representatives shall be elected from each designated ECM
16 region created by the Agency with the active participation of ECM and as regions
17 may be revised or modified.
18
- 19 (h) Qualifications. ECM shall establish qualifications for candidates as well as the
20 procedures for voting, tabulating, and announcing results. The Agency shall provide
21 such advice and counsel as may be requested by ECM to accomplish all elections of
22 representatives to ECM.
23
- 24 (i) Term of office. The term of office for ECM members shall be two years, beginning
25 on January 1 following the election. Even- and odd-numbered districts shall alternate
26 election years. Any ECM member elected to fill a vacancy shall serve the remainder
27 of the unexpired term of the manager who vacated a position.
28
- 29 (j) Meetings. ECM shall meet once during each calendar year to elect officers and
30 additionally as it may establish by bylaw. The ECM chair shall provide a written
31 meeting agenda to the BET director 10 business days before each meeting.
32
- 33 (k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal
34 operation and order of business and shall provide the Agency with a copy.
35
- 36 (l) Travel expenses.
37
- 38 (1) Expenses for travel, meals, lodging, or other related expenses incurred by
39 ECM representatives must be preapproved by the Agency.
40
- 41 (2) When representing a manager at a full evidentiary hearing, the ECM
42 representative shall be reimbursed for travel, meals, and lodging at the rate
43 allowed for travel by Agency staff members.
44

45 **SUBCHAPTER E. ACTION AGAINST A LICENSE**

46

1 **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.**
2

3 (a) Causes for termination. The license of a licensee shall be terminated upon the
4 occurrence of any one of the following:
5

6 (1) The licensee's visual acuity is improved by any means to the point at which the
7 licensee no longer satisfies the definition of legally blind.
8

9 (2) The licensee becomes otherwise permanently disabled and as a result of such
10 permanent disability is unable to perform the essential functions of operating
11 and maintaining a BET facility with or without reasonable accommodations.
12 Being permanently disabled is having a condition that is medically
13 documented and has existed or is expected to exist for at least 12 months. The
14 determination of permanently disabled shall be made by the VRD director or
15 designee after review of medical documentation and other information relevant
16 to the issue. Other information relevant to the issue shall include
17 recommendations from Agency staff and ECM, pertinent information from the
18 licensee's BET file or provided by the licensee, and reports of examinations or
19 evaluations, if any, obtained by the Agency and the licensee.
20

21 (3) The licensee is unassigned and has not accepted assignment offers or applied
22 for an assignment when facilities are available for a period of six consecutive
23 months. The six-month deadline may be extended by periods of 30 days when
24 facilities are not available for assignment. Any unassigned period of 12 months
25 or more requires retraining for the licensee to become eligible to bid for, or be
26 assigned to, available facilities.
27

28 (b) Examination and evaluation. In any situation in which the vision or other disability
29 of a licensee is at issue with respect to termination of a license, the Agency or the
30 licensee may require an examination or evaluation by professionals to determine
31 whether the licensee is otherwise permanently disabled and because of the permanent
32 disability is unable to perform the essential functions of operating and maintaining a
33 BET facility. The reports of such professionals shall be furnished to the Agency and
34 the licensee. Any failure of the licensee to participate in required examinations or
35 evaluations shall be grounds for administrative action.
36

37 (c) Restoration of license. A license terminated under the provisions of this section may
38 be restored at the discretion of the Agency if the condition or conditions causing the
39 termination were resolved satisfactorily. In considering a decision with respect to
40 whether to restore a license that was terminated according to this section, the VRD
41 director shall consult with appropriate BET staff members, the ECM chair, and any
42 advocate for the licensee and shall consider all pertinent information and
43 documentation provided by any of the individuals described in this subsection.
44

45 (d) Conditional restoration. If the VRD director determines that a license that was
46 terminated according to this section should be restored, the VRD director may

1 authorize the restoration of the license on any reasonable basis, such as participation
2 in continued medical treatment or therapy, or completion of refresher or other
3 courses of training.
4

5 **§854.81. Administrative Action Based on Unsatisfactory Performance.**
6

- 7 (a) Causes for administrative action based on unsatisfactory performance. One or more
8 of the following acts or omissions by a manager shall subject a manager to
9 administrative action for unsatisfactory performance:
10
- 11 (1) Failing to operate the assigned facility as set forth in the permit or contract
12 with the host and/or in the manager's record of assignment unless prior written
13 approval to operate the facility in another manner has been obtained from the
14 Agency.
15
 - 16 (2) Failing to pay money that is due from the operation of the facility, including,
17 but not limited to, taxes, fees, advances, or assessments to a governmental
18 entity or supplier, or knowingly giving false or deceptive information to or
19 failing to disclose required information to or misleading in any manner a
20 governmental entity, including the Agency, or a supplier.
21
 - 22 (3) Failing to file required financial and other records with the Agency or preserve
23 them for the time required by this subchapter.
24
 - 25 (4) Failing to cooperate ~~in a timely manner~~ with audits conducted by the Agency
26 or other state or federal agencies.
27
 - 28 (5) Failing to ~~comply~~ ~~be in compliance~~ with filing and reporting requirements
29 established under state and federal tax laws relating to the operation of the
30 facility, ~~as demonstrated by a tax lien~~.
31
 - 32 (6) Failing to maintain insurance coverage required by these rules.
33
 - 34 (7) Using BET equipment or facility premises to operate another business.
35
 - 36 (8) Failing to properly maintain facility equipment in a clean and operable
37 condition within the scope of the manager's level of maintenance authorization.
38
 - 39 (9) Intentionally abusing, neglecting, using, or removing facility equipment
40 without prior written Agency authorization.
41
 - 42 (10) Operating a facility under the influence of substances that interfere with the
43 operation of the facility, including alcohol and illegal or prescription drugs.
44
 - 45 (11) Operating a BET facility in a manner that demonstrably jeopardizes the
46 Agency's investment in the facility.

- 1
2 (12) Using privileged information about an existing facility to compete with the
3 Agency for the facility.
4
5 (13) Failing to comply with any federal or state law prohibiting [violation of human](#)
6 [rights or](#) discrimination and failure to ensure that services are provided without
7 distinction on the basis of race, gender, color, national origin, religion, age,
8 political affiliation, [creed](#), or disability.
9
10 (14) Failing to maintain the necessary skills and abilities for effectively managing a
11 facility.
12
13 (15) Using a facility to conduct unlawful activities.
14
15 (16) Failing to comply with the manager's responsibilities under applicable law, this
16 subchapter, the requirements of the BET manual, or any instruction by Agency
17 staff.
18
19 (17) Communicating or causing another individual to communicate with a member
20 of a selection panel or an applicant for a facility then being considered for
21 assignment for the purpose of influencing or manipulating the selection of an
22 applicant by offering to give a thing or act of value, including promises of
23 future benefit, or by threat.
24
25 (18) Failing to complete annual continuing education requirements.

26
27 ~~(b) Administrative action pending an appeal. The Agency may at its discretion suspend~~
28 ~~administrative action pending the outcome of an appeal.~~
29

30 (b)(e) Types of administrative actions. The five types of administrative actions that are
31 based on unsatisfactory performance are as follows:
32

- 33 (1) Written reprimand. Written reprimand is a formal statement describing
34 violations of applicable law, this subchapter, the requirements of the BET
35 manual, or any instruction by Agency staff.
36
37 (2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily
38 remedy a condition that is not acceptable under this subchapter. If the
39 condition causing probation is satisfactorily remedied within the time periods
40 specified in the written notice of probation, the probation will be lifted. If the
41 unacceptable condition is not remedied within the time specified, additional
42 and more serious administrative actions may ensue. When a licensee who has
43 been on probation two times in a three-year period qualifies for probation for
44 the third time within those three years, the licensee's license may be revoked
45 according to Agency rules.
46

- 1 (3) Loss of facility. Loss of facility is the removal of a manager from the
 2 manager's current facility for administrative reasons when the manager's
 3 actions or inactions endanger the Agency's investment in the facility.
 4
- 5 (4) Termination. Termination is the revocation of a license and the removal of the
 6 licensee from BET.
 7
- 8 (5) Emergency removal of manager.
 9
- 10 (A) A manager may be summarily removed from a facility in an emergency.
 11 An emergency shall be considered to exist when the Agency, in
 12 consultation with the ECM chair, determines that some act or acts or
 13 some failure to act of that manager or any individual who is an
 14 employee, server, or agent of such manager, will, if such removal does
 15 not occur:
 16
- 17 (i) result in a clear danger to the health, safety, or welfare of any
 18 individual or to the property of any individual in or around the
 19 facility; or
 20
- 21 (ii) result in a deterioration of the existing or future relationship with the
 22 host, thereby putting the continuation of the facility in jeopardy; or
 23
- 24 (iii) present a clear potential of substantial loss or damage to the property
 25 of the State of Texas.
 26
- 27 (B) In any case in which a manager has been summarily removed from a
 28 facility on an emergency basis for any of the reasons set forth in
 29 subparagraph (A) of this paragraph, the manager shall be entitled to have
 30 a hearing about the necessity of the removal within 10 days after the
 31 removal has occurred.
 32
- 33 (C) The time period for the hearing may be extended only by mutual
 34 agreement of the manager and the Agency under the following
 35 circumstances: if an official holiday of the State of Texas falls within the
 36 period, then the period shall be extended by the time of the holiday; or, if
 37 the services of an arbitrator cannot be obtained in time to hold the
 38 hearing within the period, then the period shall be extended by the time
 39 necessary to obtain the services of an arbitrator and schedule the hearing.
 40
- 41 (D) If the manager desires to have a hearing, the manager shall notify the
 42 Agency in writing [via mail or electronically via email](#) within 48 hours
 43 following the removal. The written notification need state only the name
 44 of the manager, the location of the facility, and that the manager desires
 45 to have a hearing about the need for summary removal. The request may

1 be delivered to the BET director, the VRD director, or any local BET
2 staff member in the geographic region in which the facility is located.

- 3
- 4 (E) Upon receipt of any such request, the BET director shall obtain the
5 services of an arbitrator from the American Arbitration Association
6 (AAA) or other similar organization to conduct the hearing.
7
- 8 (F) The manager shall be notified of the date, time, and place of the hearing.
9 To the extent possible, the hearing shall be conducted in an area near the
10 location of the facility.
11
- 12 (G) The hearing shall be conducted in accordance with the rules of AAA,
13 except that the arbitrator shall be requested to announce orally a decision
14 at the conclusion of the hearing.
15
- 16 (H) If the arbitrator determines that no emergency necessitating the removal
17 of the manager exists, then the manager shall be immediately restored to
18 the operation of the facility.
19
- 20 (I) No determination made as a result of the hearing shall operate to
21 prejudice the rights of the manager to proceed with a grievance in
22 accordance with the terms of this subchapter and the Act.
23

24 (c)(d) Administrative procedures.

- 25
- 26 (1) The Agency shall decide what administrative action to take based on the
27 seriousness of the violation, the damage to BET facilities and/or equipment,
28 and the licensee's record.
29
- 30 (2) Upon receipt of information that indicates that administrative action may be
31 appropriate, the Agency shall take the following actions before deciding
32 whether to take administrative action:
33
- 34 (A) The Agency shall notify the licensee in writing via mail or electronically
35 via email of the allegations and reasons that administrative action is
36 being considered. The notice shall either be hand-delivered and read to
37 the licensee, or be delivered to the licensee's work, e-mail address, or
38 home address.
39
- 40 (B) The licensee shall have five business days to respond to the notice, either
41 in person or in writing. The response shall be made to the individual
42 designated in the notice. After receiving the licensee's response, the
43 Agency shall decide what administrative action, if any, is appropriate. If
44 no response is received from the licensee in a timely manner, the Agency
45 shall decide without the licensee's response what administrative action, if
46 any, will be taken.

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- (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, the Agency shall notify the manager in writing by hand delivery or certified mail with a return receipt requested that the manager's assignment to the BET facility has been terminated and the manager

1 must vacate the facility. The removal letter shall contain the following
2 information:

- 3
- 4 (i) specific reasons for removal from the facility;
- 5
- 6 (ii) actions required by the manager, if any;
- 7
- 8 (iii) requirements for obtaining reassignment; and
- 9
- 10 (iv) notice of the manager's right to appeal under the Act.
- 11

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

- 18
- 19 (i) specific reasons for termination;
- 20
- 21 (ii) actions required by the licensee, if any;
- 22
- 23 (iii) procedures for applying for any other Agency services for which
24 the individual may be eligible; and
- 25
- 26 (iv) notice of the licensee's rights under the Randolph-Sheppard Act.
- 27

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

33

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

36

37 ~~(d)~~(e) Before termination of a license, the Agency shall afford the licensee an
38 opportunity for a full evidentiary hearing [as described in §854.82\(e\) of this title](#)
39 [\(relating to Procedures for Resolution of Manager's Dissatisfaction\)](#).

40

41 **§854.82. Procedures for Resolution of Manager's Dissatisfaction.**

42

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

1 (b) Actions not subject to appeal. The phrase "the Agency's action arising from the
2 operation of BET" in subsection (a) of this section does not include the [Agency's](#)
3 [hiring, firing, or discipline of Agency employees](#). ~~following actions of the Agency:~~

4
5 ~~(1) the hiring, firing, or discipline of Agency employees;~~

6
7 ~~(2) the challenge of federal or state law, or rules previously approved by the~~
8 ~~Secretary of Education under the Act; or~~

9
10 ~~(3) an action by the Agency unless it is alleged that the action is in violation of~~
11 ~~applicable law, this subchapter, the requirements of the BET manual, or any~~
12 ~~instruction by Agency personnel, or is unreasonable. "Unreasonable" shall~~
13 ~~mean "without rational basis or arbitrary and capricious."~~

14
15 ~~(c) Agency discretion and sovereign immunity. The Agency does not waive its right and~~
16 ~~duty to exercise its lawful and proper discretion. The Agency does not waive its~~
17 ~~sovereign immunity.~~

18
19 ~~(c)(d)~~ Remedies. Remedies available to resolve dissatisfaction shall correct the action
20 complained of from the earlier time of:

21
22 (1) agreement by the parties about an appropriate remedy; or

23
24 (2) a final resolution under the Randolph-Sheppard Act that the Agency acted in
25 violation of applicable law, this subchapter, the requirements of the BET
26 manual, or any instruction by Agency personnel, or acted unreasonably.

27
28 ~~(d)(e)~~ Informal procedures to review dissatisfactions. At the request of a licensee, the
29 Agency shall arrange for and participate in informal meetings to [quickly](#) resolve
30 ~~quickly~~ a matter of dissatisfaction arising from the operation or administration of
31 BET. The informal process is for resolving an issue in controversy quickly and
32 amicably. It is not for the purpose of denying or delaying the manager's right to
33 pursue resolution of a matter through a full evidentiary hearing. At any point during
34 the informal process, either party may elect to terminate the following informal
35 process procedures:

36
37 (1) A licensee may initiate informal procedures by notifying the Agency in
38 writing, [via mail or electronically via email](#), through the BET director that the
39 licensee is dissatisfied with a matter arising from the operation or
40 administration of BET. The written notice must describe with reasonable
41 particularity the specific matter in controversy, the date the action occurred, or
42 an approximate date if the exact date is not known, and the licensee's desired
43 relief or remedy. If the licensee is dissatisfied with a series of the same or
44 related actions over a period, the notice shall describe, to the best of the
45 licensee's ability, the time frame of the events and include the date of the most
46 recent event about which the licensee is dissatisfied.

- (2) To ensure that informal resolution is possible in a timely manner, the licensee's request to initiate informal proceedings must be filed with the Agency no later than 20 business days after the most recent event specified in the request. the Agency shall, within a reasonable time, arrange a meeting at a location, date, and time satisfactory to all parties.
- (3) The licensee must notify the Agency when filing a request for informal proceedings if the licensee is an attorney or will be represented by legal counsel during mediation. The Agency ~~may~~ will be represented by legal counsel only when the licensee is an attorney or is represented by legal counsel.
- (4) Meetings shall take place in an informal environment and shall be attended by the licensee, a BET staff member with decision--making authority, and a neutral third party who shall serve as an informal mediator during the discussions.
- (5) The neutral third party shall be an individual certified in conducting mediations.
- (6) The neutral third party's responsibility is to report to the Agency only that the effort to resolve the matter to the licensee's satisfaction was or was not successful. If an agreement is reached, then the actions agreed to with respect to the facility or licensee shall, prior to the conclusion of the mediation, be reduced to writing and signed by the licensee and the BET attendee. The parties shall expeditiously complete all actions called for in the signed agreement~~be immediately taken.~~
- (7) The provisions concerning mediation under Chapter 850 of this title (relating to Vocational Rehabilitation Services Administrative Rules and Procedures) shall not apply to or control the informal resolution procedures in this subchapter.

~~(e)~~ Full evidentiary hearing. A manager has the right to request a full evidentiary hearing to resolve dissatisfaction according to the following:

- (1) A manager has the right to request a full evidentiary hearing without first going through mediated meetings described in subsection ~~(d)~~~~(e)~~ of this section.
- (2) A request for an evidentiary hearing must be made no later than the 20th business day after the occurrence of the Agency action about which the manager complains. The VRD director, upon request of the complaining party, may extend the period for filing a grievance upon the showing of good cause by the complaining party for such additional period if such request is made no

1 later than the 20th business day after the occurrence of the Agency action
2 about which the manager complains.

3
4 (3) A manager requesting a full evidentiary hearing after the conduct of mediated
5 meetings described in subsection ~~(d)(e)~~ of this section must request such
6 hearing in writing no later than the 20th business day after the date on which
7 the neutral third party in subsection (d) of this section reports an unsuccessful
8 informal mediation or a party terminates the informal mediation process,
9 whichever is earlier in time~~receipt of the VRD director's decision.~~

10
11 (4) A request for a full evidentiary hearing must be in writing and transmitted to
12 the VRD director by mail or by email. A request that is postmarked within the
13 designated time frame shall be considered delivered in a timely manner if
14 properly posted.

15
16 (5) The request for a full evidentiary hearing must describe the specific action with
17 reasonable particularity sufficient to provide notice as to the action that is
18 alleged to be unreasonable or in violation of applicable law, this subchapter,
19 the requirements of the BET manual, or any instruction by Agency personnel.
20 The request must, to the best of the complainant's knowledge, contain the date
21 the action occurred, and the law or regulation must be reasonably identified if
22 an action is alleged to be in violation of law, this subchapter, the requirements
23 of the BET manual, or regulation. The request must also identify the desired
24 relief or remedy.

25
26 (6) The manager may be represented in the evidentiary hearing by legal counsel or
27 other representative of the manager's choice, at the manager's expense.

28
29 (7) The Agency shall arrange reader or other communication services for the
30 manager, if needed, upon request by the manager at least three business days
31 prior to the hearing date.

32
33 (8) The manager shall be notified in writing of the time and place fixed for the
34 hearing and of the manager's right to be represented by legal or other counsel.

35
36 (9) Selection of the hearing officer.

37
38 (A) The hearings coordinator, the Agency's Office of General Counsel, shall
39 select, on a random basis, a hearing officer from a pool of individuals
40 qualified according to this section.

41
42 (B) The hearing officer shall be an impartial and qualified individual who:

43
44 (i) is not involved either with the Agency's action that is at issue or
45 with the administration or operation of BET;

46

- 1 (ii) is not an employee of a public agency (other than an administrative
2 law judge, hearing examiner, or employee of an institution of
3 higher education);
4
- 5 (iii) has knowledge of the Randolph-Sheppard Act and any applicable
6 state and federal regulations governing the appeal;
7
- 8 (iv) has received training specified by the Agency with respect to the
9 performance of official duties; and
10
- 11 (v) has no personal, professional, or financial interest that would
12 compromise his or her impartiality.
13
- 14 (C) An individual is not considered to be an employee of a public agency for
15 the purposes of subparagraph (B)(ii) of this paragraph if the only
16 consideration is that the individual is paid by the agency to serve as a
17 hearing officer.
18
- 19 (10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act,
20 Texas Government Code, §2001.051 et seq., and this subchapter to the extent
21 that those procedures do not conflict with the Act and its implementing
22 regulations or this subchapter.
23
- 24 (11) Licensees bringing complaints shall have the burden of proving their cases by
25 means of a preponderance of the evidence. Licensees shall present their
26 evidence first. When a hearing is requested because of administrative action by
27 the Agency against a licensee, The Agency shall have the burden of proving its
28 case by a preponderance of the evidence and shall present its evidence first.
29
- 30 (12) Transcription of Proceedings.
- 31
- 32 (A) Unless precluded by law, the hearing shall be recorded electronically
33 either by the hearing officer or by someone designated by the hearing
34 officer. Such recording shall be the official record of the testimony
35 recorded during the hearing. Any party, however, may request, at the
36 party's expense, that the hearing be recorded by a court reporter if the
37 request is made within 10 days of the date for the hearing.
38
- 39 (B) In lieu either of a recording of the testimony electronically or of the
40 reporting of testimony by a court reporter, the parties to a hearing may
41 agree upon a statement of the evidence to use transcription as a statement
42 of the testimonial evidence, or agree to the summarization of testimony
43 before the hearing officer, provided, however, that proceedings or any
44 part of them must be transcribed on written request of any party.
45

- 1 (C) Unless otherwise provided in this subchapter, the party requesting a
2 transcription of any electronic recording of the proceedings shall bear the
3 cost for transcribing the testimony. Nothing provided for in this section
4 limits the Agency to an electronic record of the proceedings.
5
- 6 (D) The record of the proceedings, including exhibits and any transcription,
7 shall be made available to the parties by the Agency no later than the
8 30th business day after the close of the hearing.
9
- 10 (13) The hearing officer shall issue a recommendation that shall set forth the
11 principal issues and relevant facts that were stated at the hearing and the
12 applicable provisions of law, rule, the requirements of the BET manual,
13 or any instruction by Agency personnel. The recommendation shall
14 contain findings of fact and conclusions with respect to each of the
15 issues, and the reasons and bases for the conclusions.
16
- 17 (14) In formulating a recommendation, the hearing officer shall not evaluate
18 whether the Agency's actions were wise, efficient, or effective. Rather,
19 the hearing officer is limited to determining whether the Agency's
20 actions were unreasonable, or if they violated applicable law, this
21 subchapter, the requirements of the BET manual, or any instruction by
22 Agency personnel.
23
- 24 (15) If the hearing officer finds that the actions taken by the Agency were
25 unreasonable or violated applicable law, this subchapter, the
26 requirements of the BET manual, or any instruction by Agency
27 personnel, the hearing officer shall also recommend any prospective
28 action necessary to correct the violations.
29
- 30 (16) The hearing officer's recommendation shall be made no later than the
31 30th business day after the receipt of the official transcript. The
32 recommendation shall be delivered promptly to the VRD director.
33
- 34 (17) The VRD director shall review the recommendation of the hearing
35 officer and forward a decision to the manager no later than the 20th
36 business day after receipt of the hearing officer's recommendation. The
37 VRD director's decision shall include findings of fact and conclusions of
38 law based on the evidence in the record and separately stated.
39
- 40 (18) Subject to the provisions of Texas Government Code, §2001.144 and
41 §2001.146, the VRD director's decision shall be the final decision of the
42 Agency. Any such decision becomes the final decision of the Agency if a
43 timely motion for rehearing or reconsideration is not filed.
44

45 ~~(f)~~(g) Arbitration. A manager appealing the Agency's decision must file a complaint
46 with the US Secretary of Education in conformity with the provisions of the

1 implementing regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of
2 vendor complaints.
3

4 **§854.83. Establishing and Closing Facilities.**
5

6 (a) Establishing facilities. On its own initiative, at the request of an agency that controls
7 federal or state property, of the ECM, or of a private organization, the Agency shall
8 survey the property, blueprints, or other available information concerning the
9 property to determine whether the installation of a BET facility is feasible and
10 consonant with applicable laws and regulations and with VRD objectives. If the
11 installation of a BET facility is determined to be feasible, the Agency shall proceed
12 to develop plans for the establishment of a facility in accordance with procedures
13 promulgated and implemented by Agency staff and, when the facility is developed,
14 shall assign a manager to the facility.
15

16 ~~(1) If the installation of a BET facility is determined to be feasible, the Agency~~
17 ~~shall proceed to develop plans for the establishment of a facility in accordance~~
18 ~~with procedures promulgated and implemented by Agency staff and, when the~~
19 ~~facility is developed, shall assign a manager to the facility.~~
20

21 ~~(2) If it is determined that a blind individual could not properly operate a vending~~
22 ~~facility at a particular location, the pertinent facility data will be presented to~~
23 ~~the VRD director to determine whether an individual whose disability is not of~~
24 ~~a visual nature could operate the facility in a proper manner. The phrase "could~~
25 ~~not properly operate a vending facility" includes the existence, at the time of~~
26 ~~the establishment of the facility, of laws or regulations that restrict the blind~~
27 ~~from operating a particular vending facility as defined under state and federal~~
28 ~~laws.~~
29

30 (b) Closing facilities. Except for temporary closings by Agency staff, no BET facility
31 shall be closed by the Agency until both of the following have occurred:
32

33 (1) The BET director has certified to the VRD director that the facility is no longer
34 a feasible or viable BET facility and provides reasons for that opinion.
35

36 (2) The VRD director has approved the proposed closing of the facility.
37