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24



- 1 (10) Blind (individual who is)--An individual whose central visual acuity does not  
2 exceed 20/200 in the better eye with correcting lenses or whose visual acuity,  
3 if better than 20/200, is accompanied by a limit to the field of vision in the  
4 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) Business day--A day on which state agencies are officially required to be open  
10 during their normal business hours.  
11
- 12 (12) ECM--Elected Committee of Managers--A committee representative of BET  
13 licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.  
14
- 15 (13) 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) Immediate family--Any individual related within the first degree of affinity  
21 (marriage) or consanguinity (blood) to the individual involved.  
22
- 23 (15) 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) Initial assignment--The first BET facility to which a manager is assigned after  
28 being licensed.  
29
- 30 (17) 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) 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) 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) Licensee--A blind individual who has been licensed by the Agency as qualified  
45 to apply for and operate a BET facility, and which shall have the same  
46 meaning assigned to "blind licensee" in 34 CFR §395.1.

- 1  
2 (21) Manager--A licensee who is operating a BET facility, and which shall have the  
3 same meaning assigned to "vendor" in 34 CFR §395.1.  
4  
5 (22) Net sales--All sales, excluding sales tax.  
6  
7 (23) Other income--Money received by a manager from sources other than direct  
8 sales, such as vending commissions or subsidies.  
9  
10 (24) Sanitation and cleaning supplies--Items that require a low capital outlay and  
11 have a short life expectancy, such as, by way of illustration and not limitation,  
12 mops, brooms, detergents, bleach, gloves, oven mitts, trash bags, food  
13 wrapping supplies, foil, and cleaning supplies for food equipment.  
14  
15 (25) State property--Lands and buildings owned, leased, or otherwise controlled by  
16 the State of Texas; and equipment and facilities purchased and/or owned by the  
17 State of Texas.  
18  
19 (26) 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) Vending machine--For the purpose of assigning vending machine income, a  
34 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 *The provisions of this §854.10 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
44 *amended to be effective July 4, 2022, 47 TexReg 3823*  
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1       **§854.11. General Policies.**  
2

3       (a) Objectives. BET objectives shall be:  
4

5           (1) to provide employment opportunities for qualified individuals; and  
6

7           (2) to provide an ongoing training program for managers that encourages them to  
8               advance their upward mobility career opportunities within the program.  
9

10       (b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act  
11       and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for  
12       legally blind individuals who reside or are physically present in Texas to operate  
13       BET facilities in Texas by establishing a vending facility program in which  
14       individuals who need employment are given priority in the operation of vending  
15       facilities selected and installed by the Agency. The Agency is required to administer  
16       BET in accordance with the Agency's vocational rehabilitation objectives. Therefore,  
17       a customer receiving services from VRD whose employment goal is to be a licensed  
18       manager shall have reached an employment outcome, as that term is used in the  
19       Rehabilitation Act of 1973, as amended, when the customer is licensed by the  
20       Agency and is managing a BET facility. The licensed manager shall not be  
21       considered an employee of the Agency or of state or federal government.  
22

23       (c) Full-time employment. Managing a BET facility shall constitute full-time  
24       employment. "Full-time" shall mean "being actively engaged in the management of a  
25       BET facility for the number of hours necessary to achieve satisfactory operation of  
26       the facility." The manager shall be available for necessary visits by Agency staff to  
27       allow inspection, advice, and consultation as may be required to ensure satisfactory  
28       operation. "Management" means "being physically present to perform the personal  
29       supervision of the day-to-day operation of the assigned BET facility by the assigned  
30       manager."  
31

32       (d) Subcontracting. The management of a BET facility shall not be subcontracted by a  
33       licensed manager except for temporary periods of time approved by the Agency and  
34       in those circumstances in which the Agency considers that subcontracting the  
35       operation of some parts of the facility is in the best interest of BET. Potential  
36       justifications for subcontracting include the following: business strategies in which a  
37       portion of the facility operation may be subcontracted so that the assigned manager  
38       may focus on another aspect of the facility; temporary events not to exceed six  
39       months in which the assigned manager is not capable of management duties due to  
40       illness, injury, or other events, as approved by the Agency; and the need for business  
41       expertise and resources beyond that available from BET. Any subcontracting shall  
42       require the prior written approval of the Agency. The approval of any subcontract is  
43       at the discretion of the Agency. This subsection does not apply to equipment or  
44       machines allowed to be placed within the facility and not owned by or arranged for  
45       by the Agency.  
46

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

1 at a minimum, shall evaluate the following: the individual's willingness to serve for  
2 the stated temporary term; the qualifications and experience relevant to the current  
3 opportunity; and the documented management compliance history, along with other  
4 factors set out in Agency rules. The geographic BET staff shall provide its findings  
5 to the local ECM and seek a joint recommendation to BET management. BET  
6 management shall make the final determination. When more than one individual is  
7 recommended at the local level, BET management shall first give preference to  
8 managers available within the local ECM region and thereafter to the individual  
9 manager with a lower average historical income, to improve his or her income  
10 temporarily.

- 11  
12 (k) Compliance with tax laws. Licensees and managers shall comply with state and  
13 federal tax laws and shall not have a tax lien against them.  
14

15 *The provisions of this §854.11 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
16 *amended to be effective July 4, 2022, 47 TexReg 3823*  
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## 20 **SUBCHAPTER B. LICENSE AND ASSIGNMENTS**

### 21 **§854.20. Eligibility and Application Process.**

- 22  
23 (a) Prerequisites for training. To be eligible for BET training, a customer desiring a  
24 career with BET as an employment outcome in the vocational rehabilitation program  
25 shall:  
26  
27 (1) be at least 18 years of age;  
28  
29 (2) be a United States citizen physically present in Texas (a birth certificate or  
30 other appropriate documentation must be submitted with the application);  
31  
32 (3) be legally blind as defined by these rules;  
33  
34 (4) be proficient in math, reading, and writing, as demonstrated through CCRC  
35 testing, as well as in adaptive technology, including word processing  
36 spreadsheet use and e-mail communication, as demonstrated through a CCRC  
37 final assessment;  
38  
39 (5) have the physical capability required to perform safely the basic functions of a  
40 manager;  
41  
42 (6) have mobility skills to operate a BET facility safely, as documented by a VR  
43 counselor or assessment verified by an orientation and mobility instructor;  
44  
45

- (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.

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

- (a) Natural persons. Licenses to manage a BET facility shall be issued only to natural persons.
  - (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.
  - (3) Display. The license or a copy of the license shall be displayed prominently in each BET facility to which the manager is assigned.
  - (4) Property right. A license shall not create any property right for the licensee to state or federal property including state- or federally owned equipment.
  - (5) Transferability. A license is not transferable.
  - (6) Term. A license issued by the Agency shall be valid for an indefinite period, subject, however, to termination or revocation under conditions specified in these rules that pertain to termination of a license for reasons other than unsatisfactory performance or administrative action.



1  
2 (b) Annual continuing education requirements for licensees:  
3

- 4 (1) The Agency and ECM conduct an annual training conference for all licensees  
5 to inform them of new BET developments and to provide instruction on  
6 relevant topics to enhance licensees' business competence and upward mobility  
7 in the program. Licensees must attend the Agency's training conference or an  
8 Agency-approved alternative training event every year to maintain their  
9 licenses and eligibility to bid on available facilities. They must document their  
10 attendance at the Agency training conference by signing attendance records  
11 provided at the conference. A licensee who is unable to attend the Agency  
12 training conference may satisfy the continuing education requirement by  
13 attending a BET-approved course or training conference. Such training  
14 includes, but is not limited to, attending the national training conferences for  
15 blind vendors conducted by the Randolph-Sheppard Vendors of America or by  
16 the National Association of Blind Merchants, or by completing a business-  
17 related course from the Hadley Institute for the Blind and Visually Impaired or  
18 a business-related course offered by an accredited community college.  
19
- 20 (2) Licensees wishing to attend an alternative training course or conference must  
21 request approval through their local Agency staff. The local Agency staff  
22 forwards the request to the BET director for approval. The licensee must also  
23 provide proof of successful completion of any business-related course or  
24 attendance at a training conference through the local Agency staff to the BET  
25 director to receive credit for attendance. All costs associated with travel,  
26 lodging, meals, and registration when attending any training other than the  
27 Agency training conference will be the responsibility of the licensee.  
28
- 29 (3) Licensees may use an alternative approved training course or training  
30 conference to satisfy the continuing education requirement only if they are  
31 unable to attend the Agency training conference because of personal medical  
32 reasons, the death of a family member, a medical emergency or serious  
33 medical condition of an immediate family member, or if there is not an Agency  
34 training conference offered during the licensee's 12-month evaluation period.  
35 Licensees must provide written documentation of the medical issues or death  
36 of a family member to their local Agency staff.  
37
- 38 (4) Licensees who fail to complete continuing education requirements may be  
39 subject to administrative action up to and including termination of their  
40 licenses.  
41

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1       **§854.22. Initial Assignment Procedures.**  
2

- 3           (a) This section defines the process for the initial assignments of managers. It is the goal  
4           of the process to provide a fair, unbiased, and impartial process for selection,  
5           transfer, and promotion.  
6
- 7           (b) Initial assignment. When an individual completes BET training, the BET director  
8           shall make the initial assignment for the newly licensed individual. The initial  
9           assignment shall be for a minimum of 12 months. The BET director shall make the  
10          assignment based on the following factors, including but not limited to:  
11
- 12           (1) availability of a Level 1 facility;
  - 13
  - 14           (2) recommendations from the BET training specialist and the ECM chair;
  - 15
  - 16           (3) licensee's training records;
  - 17
  - 18           (4) licensee's geographical concerns; and
  - 19
  - 20           (5) licensee's compliance with state and federal tax laws and not be subject to any  
21           tax liens.  
22

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25

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28       **§854.23. Career Advancement Assignment Procedures.**  
29

- 30           (a) Career advancement assignments. This section defines the process for the career  
31           advancement assignments of managers. It is the goal of the process to provide a fair,  
32           unbiased, and impartial process for selection, transfer, and promotion.  
33
- 34           (1) Availability. All career advancement opportunities depend on the availability  
35           of BET facilities. No facility with a projected annual income equal to the  
36           annual median income level of all managers after set-aside fees shall be used  
37           for an initial assignment unless it has been advertised and made available to all  
38           licensees in the BET program and no one has been assigned to the facility as a  
39           result of the advertising process.  
40
  - 41           (2) Notice. As BET facilities become available and ready for permanent  
42           assignment, written notice of the availability shall be given to all licensees  
43           within 30 business days.  
44
  - 45           (3) On-site visits. An advertised facility shall be available for on-site visits upon  
46           reasonable notice by licensees interested in that facility assignment.

- 1  
2 (b) Eligibility. To apply for an available facility, a licensee must meet the following  
3 requirements:  
4
- 5 (1) The licensee shall have successfully managed a BET facility for a minimum of  
6 one year.  
7
  - 8 (2) The licensee shall be current on all accounts payable for the 12 months before  
9 the date of the facility announcement. Accounts payable include known debts  
10 to state and federal entities as well as any BET business-related debt. "Current"  
11 means "performing in accordance with written established or alternate payment  
12 plans associated with the accounts payable debts."  
13
  - 14 (3) The licensee shall be in compliance with state and federal tax laws and not be  
15 subject to any tax liens.  
16
  - 17 (4) The licensee shall not be on probation under §854.81 of this title (relating to  
18 Administrative Action Based on Unsatisfactory Performance).  
19
  - 20 (5) The licensee shall meet eligibility requirements of the facility's host  
21 organization, including, but not limited to:  
22
    - 23 (A) criminal background checks; and
    - 24 (B) drug tests.
  - 25 (6) The licensee shall not have submitted more than one insufficient funds check  
26 to the Agency within the 12 months before the date of the facility  
27 announcement.  
28
  - 29 (7) The licensee shall not have submitted more than one late report within the 12  
30 months before the date of the facility announcement.  
31
  - 32 (8) If unassigned, the licensee shall have fulfilled all resignation requirements in  
33 the licensee's most recent facility assignment or be displaced and eligible to  
34 apply for a facility.  
35
  - 36 (9) The manager shall have an inventory of merchandise and expendables in the  
37 manager's current facility that the Agency has determined sufficient for its  
38 satisfactory operation.  
39
  - 40 (10) The licensee shall satisfy the Agency that he or she can maintain the  
41 merchandise and expendables required for the available facility.  
42  
43  
44

- 1 (11) A licensee who has been placed on probation is not eligible for promotion and  
2 transfer for 30 days from the effective date of the most recent release from  
3 probation.  
4
- 5 (12) A licensee who has been placed on probation twice within a 12-month period  
6 is not eligible for promotion or transfer for six months from the effective date  
7 of the most recent release from probation.  
8
- 9 (13) A licensee who has been placed on probation three times within a two-year  
10 period is not eligible for promotion or transfer for one year from the effective  
11 date of the most recent release from probation.  
12

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17  
18 **§854.24. Career Advancement Assignment Application.**  
19

- 20 (a) BET application deadline. A licensee may apply for an available facility by applying  
21 electronically, by hand, or by mail not later than the 12th business day (exclusive of  
22 date of mailing) after the date the facility notice was published. The submission date  
23 shall be:  
24
- 25 (1) the date the application is delivered electronically or by hand to the Agency; or  
26
- 27 (2) three days after postmark of the application in the US postal service,  
28 whichever is earlier; or  
29
- 30 (3) the date the application is delivered to an overnight courier.  
31
- 32 (b) BET application contents. A copy of the current form of the application shall be  
33 included in the BET manual. The substance of the application form shall not be  
34 modified except by action of the Agency. Modifications shall be provided to all  
35 licensees before their effective date. Upon request by the manager and before the  
36 submission deadline, assistance is available from the local BET staff and ECM  
37 representative in completing the BET application form.  
38
- 39 (c) Preliminary review of applications. The Agency staff and the ECM representative in  
40 each geographic area in which the applying licensees are located shall review all  
41 applications from their areas and shall verify the applicants' eligibility. If an ECM  
42 representative is an applicant for an available BET facility, the ECM chair shall  
43 appoint another ECM member for the review. Completed applications shall then be  
44 forwarded to the BET director, who shall provide copies to the ECM and Agency  
45 staff in the area in which the available facility is located.  
46

1 (d) Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET  
2 director after reviewing the assessments of all applicants conducted by the ECM  
3 representative and Agency staff, and the subsequent recommendations, for the  
4 regions in which the available facilities are located. Panel members shall rank all  
5 eligible applicants using a worksheet that weights the applicant's performance by 50  
6 percent for the applicant's most recent annual performance evaluation completed  
7 before the date of the facility advertisement, 25 percent for interview performance,  
8 and 25 percent for the submitted BET application form. Any other materials  
9 submitted by the applicants shall be provided by the same deadline as the BET  
10 application form and will be included in the 25 percent interview performance  
11 weighting component.  
12

13 (e) Level 2 assignments. For Level 2 assignments, the following procedures, in addition  
14 to Level 1 procedures, shall apply:  
15

16 (1) Business plan. An applicant shall submit a business plan to the BET director  
17 no later than the 20th business day after the postmark date on the notice of  
18 facility availability. Upon request by an applicant, Agency staff in the area in  
19 which the available facility is located shall provide the applicant with a  
20 standard packet of information that is necessary to prepare the business plan.  
21 Agency staff shall deliver the packet to the applicant no later than the third  
22 business day after receiving a request.  
23

24 (2) Establishment of a pool of impartial and qualified individuals. The Agency  
25 shall establish and maintain a pool of qualified individuals who:  
26

27 (A) have no personal, professional, or financial interest that would conflict  
28 with the objectivity of the individual;  
29

30 (B) neither have nor have had any association with the Agency or BET  
31 before being considered as a pool member; and  
32

33 (C) have at least five years' experience in business at a managerial or  
34 executive level, including experience in budget preparation and  
35 administration, personnel supervision or management, and  
36 administration of business plans or equivalents to business plans in the  
37 sector of business in which the individual has experience.  
38

39 (3) Evaluation of business plans. All business plans shall be reviewed and  
40 evaluated by an individual chosen at random from the pool of impartial and  
41 qualified individuals. Business plans shall be evaluated and scored based on a  
42 scoring system of 100 points. The evaluations and scores shall then be  
43 forwarded to the BET director for consideration by the selection panel in the  
44 selection process.  
45

- 1 (4) Selection panel. A selection panel consisting of one representative from the  
2 ECM, one Agency staff member, and one individual from the pool of impartial  
3 and qualified individuals shall be chosen by means of a computer program that  
4 selects randomly from a database. The selection of each panel member shall be  
5 from among all individuals within their respective categories, except that the  
6 impartial member may not be the individual who evaluated the business plans.  
7 If the member of a category of panel members who is selected is unable or  
8 refuses to serve, the BET director shall use the same method of random  
9 selection until three members are chosen.
- 10
- 11 (5) Presiding officer. The impartial panel member shall serve as the presiding  
12 officer of the selection panel.
- 13
- 14 (6) Interview notices. At least 10 business days before the convening of the  
15 selection panel, applicants shall be notified electronically, or, upon request, by  
16 first-class mail, of the date, place, and time of the selection panel interview.
- 17
- 18 (7) Selection panel materials. Completed applications, business plans, and each  
19 applicant's most recent performance evaluation completed before the date of  
20 the facility advertisement shall be provided to the selection panel members at  
21 least five business days before the date that the selection panel is to convene.
- 22
- 23 (8) Duties of selection panel. The selection panel shall review the documents  
24 provided and interview the applicants. The panel shall prepare a tabulation  
25 sheet for each applicant on which the panel member shall enter the business  
26 plan score and performance evaluation score previously received by the  
27 applicant. A third score shall be awarded by each panel member for the  
28 interview performance of the applicant. Each interview shall be rated on a  
29 maximum score of 100, based on such areas as the quality of the applicant's  
30 presentation, knowledge of the submitted business plan, and preparation for the  
31 assignment. Each applicant shall be interviewed on the same areas and given a  
32 similar amount of time to present his or her case. While questions must be  
33 tailored to each applicant's business plan, presentation, and knowledge, the  
34 panel should strive to conduct the interviews as similarly as possible. The  
35 selection panel shall then rank the top three applicants. An applicant's ranking  
36 shall be determined after weighting each applicant's business plan score by 25  
37 percent, weighting each applicant's most recent performance evaluation  
38 completed before the date of the facility advertisement by 50 percent, and  
39 weighting the average interview score awarded by panel members by 25  
40 percent. If there is a tie between applicants, the panel awards one point to the  
41 applicant who has the greater length of accumulated service as an assigned  
42 manager in a BET facility according to BET records. The selections shall be  
43 transmitted to the BET director, who shall in turn notify the highest ranked  
44 eligible applicant of the decision of the selection panel. The available facility  
45 shall be offered to the eligible applicants in order of ranking.
- 46

- 1 (9) Reports of improper contact. Members of the selection panel shall report  
2 alleged improper contacts to the BET director or VRD director. Improper  
3 contact is defined as communication with a member of the selection panel to  
4 influence or manipulate the selection of an applicant for the facility being  
5 considered for assignment by offering a thing or act of value, including  
6 promises of future benefit, or by threat. Nothing contained in this section,  
7 however, prohibits any licensee from endorsing or supporting any candidate  
8 for selection by furnishing a letter or other document to that effect to be  
9 included with the applying licensee's application. After the selection panel  
10 concludes its responsibilities, each panel member shall be required to sign a  
11 statement certifying whether the member had, or had knowledge of, improper  
12 contact during the selection proceedings.  
13
- 14 (10) Process for investigating reports of improper contact. When alleged improper  
15 contact is reported, each applicant for the facility under consideration and the  
16 ECM chair shall be informed of the occurrence of an alleged improper contact.  
17 The information provided to the applicants shall describe the nature of the  
18 alleged improper contact but shall not divulge the identities of any individuals  
19 allegedly participating in such improper contact. Each applicant may object to  
20 continuation of the existing panel and request that a new panel be formed to  
21 select the manager for the available facility. The BET director, upon the  
22 request of any applicant for the facility, shall determine whether the improper  
23 contact requires that the panel be disbanded and a new panel formed. In  
24 making that decision, the BET director shall consider all relevant factors,  
25 including the objections, if any, of the applicants, to determine whether the  
26 improper contact is likely to influence the decision of the selection panel. If the  
27 BET director determines that the improper contact occurred and is likely to  
28 influence the selection process, the BET director shall direct the panel to  
29 disband and a new panel be formed to consider the selection for the available  
30 facility. The BET director shall inform all applicants of the decision to  
31 continue the selection process with the existing panel, or to form a new panel,  
32 and shall state the basis of the decision. The actions prescribed as a  
33 consequence of improper contact set forth in rules pertaining to administrative  
34 actions shall apply whether or not any improper contact results in the panel  
35 being disbanded.  
36
- 37 (11) Exceptions to assignment and selection procedures. Unusual circumstances  
38 may require exceptions to assignment and selection procedures. Exceptions to  
39 these procedures shall be made only if the circumstance is not covered by  
40 assignment procedures and failure to react to the circumstance would be  
41 detrimental to BET or a licensee. Notwithstanding anything in this section, no  
42 exceptional procedure shall result in the removal of a manager from a facility  
43 except for reasons contained in rules pertaining to administrative actions.  
44 Assignment and selection decisions that are exceptions to these procedures  
45 shall be made by the BET director after discussing relevant information with  
46 the ECM chair and receiving the chair's recommendation. If a decision

1 contrary to the ECM chair's recommendation is made, the BET director shall  
2 provide a written explanation of the decision to the ECM chair.

3  
4 *The provisions of this §854.24 adopted to be effective September 1, 2019, 44 TexReg 3294*

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7  
8 **SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS**

9  
10 **§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.**

- 11
- 12 (a) Survey. When a BET facility becomes available for assignment, Agency staff shall  
13 conduct a survey of the site to determine the fixtures, furnishings, and equipment  
14 required to allow the facility to operate in accordance with projections by Agency  
15 staff of the potential business model for the facility. When the facility is an existing  
16 one, the survey shall consider the need for replacement or repair of fixtures,  
17 furnishings, and equipment.
- 18
- 19 (b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for  
20 fixtures, furnishings, and equipment for the facility, including specifications for each  
21 item required and a site plan of the facility depicting the placement of the fixtures,  
22 furnishings, and equipment within the facility. The facility shall be consistent with  
23 local ordinances as well as state and federal requirements.
- 24
- 25 (c) Acquisition, placement, and installation. When satisfied with the plan for the  
26 fixtures, furnishings, and equipment required for the facility, Agency staff shall  
27 procure the necessary fixtures, furnishings, and equipment to be placed or installed  
28 in the facility in accordance with the approved plans. The Agency may also purchase  
29 necessary fixtures, furnishings, and equipment for placement away from the facility  
30 for off-site storage.
- 31
- 32 (d) Ownership.
- 33
- 34 (1) All state fixtures, furnishings, and equipment within the facility shall at all  
35 times remain the property of the State of Texas. The facility manager's use of  
36 all such fixtures, furnishings, and equipment shall be as a licensee only and in  
37 accordance with the BET Equipment Loan Agreement.
- 38
- 39 (2) The Agency shall have the sole authority to direct, control, transfer, and  
40 dispose of the fixtures, furnishings, and equipment.
- 41
- 42 (e) Modifications. No modifications or alterations shall be made to state-owned fixtures,  
43 furnishings, or equipment by any individual, firm, or entity without the express prior  
44 written approval of the Agency.
- 45
- 46 (f) Upkeep and maintenance.



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- (1) The manager assigned to a facility shall be provided with manuals, instructions, and guides electronically or in a format requested by the manager. These documents for state-owned fixtures, furnishings, and equipment within the facility should be in an accessible format.
  - (2) It shall be the responsibility of the manager to keep fixtures, furnishings, and equipment clean and sanitary and to perform maintenance required or recommended by the manufacturers or vendors of the fixtures, furnishings, and equipment. This must be in accordance with the BET instructions and equipment manuals.
  - (3) The Agency has the right to perform required maintenance and require the manager to reimburse the Agency for that maintenance.
  - (4) The manager shall keep and maintain accurate records of all maintenance performed on fixtures, furnishings, and equipment. Any failure or refusal of the manager to perform the maintenance referred to in this section shall result in the manager being required to reimburse the Agency for the cost or expense resulting from the failure or refusal and may result in further administrative action.

23 (g) Repairs and replacements.

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- (1) Upon notification, the Agency shall be responsible for all necessary repairs of any of the state-owned fixtures, furnishings, and equipment located within the facility except for repairs necessitated by the negligence, abuse, or misuse of the fixtures, furnishings, or equipment by the manager or the manager's employees. Failure to comply with manufacturer's or BET's maintenance and preventive care requirements shall be considered negligence, abuse, or misuse. The cost of repairs necessitated by negligence, abuse, or misuse by the manager or the manager's employees shall be the sole responsibility of the manager. Failure to make such repairs may result in administrative action under §854.81 of this title (relating to Administrative Action Based on Unsatisfactory Performance).
  - (2) The manager shall follow the instructions as established by BET to facilitate the timely necessary repairs and for the payment for such services. The instructions provide specific procedures for initiating repairs by the manager and a list of approved vendors for repairs. The instructions provided to each manager are published revised from time to time.
  - (3) Under no circumstances is a manager authorized to have the cost of repairs charged to the Agency or to have repairs made by anyone other than approved vendors unless Agency staff has given the manager authority to do so in writing. Each vendor included in the approved list of vendors for repairs shall

1 be informed by Agency staff of this prohibition and of the procedures for  
2 authorized repairs.

3  
4 (4) Agency staff members on their own initiative or upon request shall determine  
5 the need for replacement of any fixtures, furnishings, or equipment, and they  
6 shall report it to the BET director. If the BET director authorizes the expense,  
7 the replacement fixtures, furnishings, and/or equipment shall be purchased,  
8 contingent upon availability of BET funds.

9  
10 (5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning  
11 supplies. Each manager of a facility shall be responsible for replacing all such  
12 items with items of a quality comparable to those being replaced and originally  
13 furnished by the Agency.

14  
15 (h) Initial inventory of merchandise and expendables for newly licensed managers. The  
16 Agency shall furnish without charge the initial inventory of merchandise and  
17 expendables for the initial assignment of a newly licensed licensee. The initial  
18 inventory of merchandise and expendables shall be sufficient to assist the manager  
19 with starting the business.

20  
21 (i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and  
22 expendables.

23  
24 (1) The manager shall maintain an inventory of merchandise, sanitation and  
25 cleaning supplies, and expendables in the same quantities as were transferred  
26 to the manager upon assignment to the facility. If the Agency determines that  
27 changed circumstances require different quantities of merchandise, sanitation  
28 and cleaning supplies, and expendables, the Agency shall communicate in  
29 writing to the manager the new quantities required. If the new quantities of  
30 merchandise, sanitation and cleaning supplies, and expendables are necessary  
31 to provide for the satisfactory operation of the facility, those new quantities of  
32 inventory must be maintained by the manager.

33  
34 (2) Managers assigned to any facility other than their initial assignment in Texas  
35 shall acquire the merchandise, sanitation and cleaning supplies, and  
36 expendables as determined by the Agency to be sufficient to satisfactorily  
37 operate the facility. To effectively expedite the changeover in facilities, when a  
38 facility is already stocked with merchandise, sanitation and cleaning supplies,  
39 and expendables, the existing stock shall become part of the required inventory  
40 stock level of the incoming manager. The amount owed by the incoming  
41 manager for the existing stock shall be the amount agreed to by the affected  
42 parties. If the existing inventory is the property of the state, the amount owed  
43 by the incoming manager shall be the amount paid with state funds.  
44

- 1 (j) Purchases on credit. During the first three years of being in the program, managers  
2 must notify the Agency in advance of any purchase on credit of merchandise,  
3 sanitation and cleaning supplies, and expendables.  
4
- 5 (k) Obtaining an advance from the Agency for initial inventory. A manager may apply  
6 to the Agency for an advance to purchase an initial inventory of merchandise,  
7 sanitation and cleaning supplies, and expendables. The manager must satisfy an  
8 advance received from the Agency to purchase merchandise on subsequent  
9 assignments within a 12-month period and must make monthly payments in the  
10 amount established by the Agency. The granting of an advance is discretionary and  
11 may be done only under the following conditions:  
12
- 13 (1) The manager shall justify to the Agency, in writing, the need for the advance  
14 and why the funds are not available from other sources.  
15
- 16 (2) The manager shall submit evidence satisfactory to the Agency that the  
17 financing has been sought from at least two commercial financial institutions.  
18
- 19 (3) The manager shall demonstrate to the Agency his or her ability to repay the  
20 advance within 12 months.  
21
- 22 (4) Managers with outstanding balances on advances are not eligible for transfer to  
23 another assignment.  
24
- 25 (l) Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation  
26 and cleaning supplies, and expendable items. When a manager is assigned to an  
27 existing BET facility, the responsibility for the fixtures, furnishings, and equipment  
28 of that facility, as well as its inventory of merchandise, sanitation and cleaning  
29 supplies, and expendable items shall be transferred to the incoming manager. The  
30 BET director shall follow the procedures for transferring the equipment between the  
31 incoming and outgoing managers to ensure that the managers have full knowledge of  
32 the nature and condition of the items being transferred.  
33

34 *The provisions of this §854.40 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
35 *amended to be effective July 4, 2022, 47 TexReg 3823*  
36

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38

39 **§854.41. Set-Aside Fees.**  
40

- 41 (a) The Agency requires managers to pay a set-aside fee based on the monthly net  
42 proceeds of their BET facilities. The purposes of requiring this payment are:  
43
- 44 (1) to promote to the greatest possible extent the concept of a manager being an  
45 independent business individual;  
46

- 1 (2) to cause BET to be to the greatest extent possible, self-supporting;  
2  
3 (3) to encourage and stimulate growth in BET; and  
4  
5 (4) to provide incentives for the increased employment opportunities for blind  
6 individuals physically present in Texas.  
7
- 8 (b) Use of funds. To the extent permitted or required by applicable laws, rules, and  
9 regulations, the funds collected as set-aside fees shall be used by the Agency for the  
10 following purposes:  
11
- 12 (1) maintenance and replacement of equipment for use in BET;  
13  
14 (2) purchase of new equipment for use in BET;  
15  
16 (3) management services;  
17  
18 (4) ensuring a fair minimum return to managers; and  
19  
20 (5) the establishment and maintenance of retirement or pension funds, health  
21 insurance contributions, and provision for paid sick leave and vacation time if  
22 it is so determined by a majority vote of licensed managers, after the Agency  
23 provides to each such manager information on all matters relevant to these  
24 proposed purposes.  
25
- 26 (c) Method of computing net proceeds.  
27
- 28 (1) Net proceeds are the amount remaining from the sale of merchandise of a BET  
29 facility, all vending machine income, and other income accruing to the  
30 manager from the facility after deducting the reasonable and necessary cost of  
31 such sale, but excluding set-aside charges required to be paid by the manager.  
32 The manager shall not remove any items from the inventory or other stock  
33 items of the facility unless the manager pays for those items at the actual cost.  
34
- 35 (2) Costs of sales that may be deducted from net sales to calculate net proceeds in  
36 a reporting period shall be limited to:  
37
- 38 (A) cost of merchandise sold;  
39  
40 (B) wages paid to employees;  
41  
42 (C) payroll taxes; and  
43  
44 (D) the following reasonable miscellaneous operating expenses that are  
45 directly related to the operation of the BET facility. Discretionary  
46 expenses, not to exceed 1.5 percent of the monthly net sales, or \$150,

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whichever is greater. Expenses must be verifiable, invoiced, and directly related to the operation of the facility. Acceptable expenses include:

- (i) rent and utilities authorized in the permit or contract;
- (ii) business taxes, licenses, and permits;
- (iii) telecommunication services;
- (iv) liability, property damage, and fire insurance;
- (v) worker's compensation insurance;
- (vi) employee group hospitalization or health insurance;
- (vii) employee retirement contributions (the plans must be IRS-approved and not for the manager);
- (viii) janitorial services, supplies, and equipment;
- (ix) bookkeeping and accounting services;
- (x) trash removal and disposal services;
- (xi) service contracts on file with the Agency;
- (xii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);
- (xiii) medical expenses directly related to accidents that occur to employees at the facility, not to exceed \$500;
- (xiv) purchase of personally owned or leased equipment that has been approved by the Agency for placement in the facility;
- (xv) repairs and maintenance to personally owned or leased equipment that has been approved by the Agency to be placed in the facility;
- (xvi) consumable office supplies;
- (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.

1  
2 (3) All reports by managers shall be accompanied by supporting documents  
3 required by the Agency.  
4

5 (d) Method of computing monthly set-aside fee. The monthly set-aside fee of each  
6 manager shall be a percentage of the net proceeds of the facility as determined in  
7 accordance with this section. The provisions relative to the percentage required to be  
8 paid as set-aside fees shall be reviewed by the BET director with the active  
9 participation of ECM at least annually each state fiscal year. The purpose of the  
10 review shall be to determine whether the percentage needs to be adjusted in order to  
11 meet the financial needs of the program. The percentage assessed against the net  
12 proceeds of facilities may be lowered or raised to meet the needs of the program.  
13 ECM shall be provided with all relevant financial and other information concerning  
14 the financial requirements of the program no fewer than 60 days before a review by  
15 the BET director in which the percentage is to be considered. For the period from the  
16 effective date of this amended rule until BET director undertakes his or her first  
17 annual review of the set-aside fee, the percentage shall be 5 percent.  
18

19 (e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the  
20 annual review, then ECM may choose to use the appeal process.  
21

22 (f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's  
23 monthly statement of facility operations. The manager shall use BET Monthly  
24 Facility Report, BE-117, to report monthly activities.  
25

26 (g) Adjustments to monthly set-aside fee.  
27

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

41 (A) the manager;  
42

43 (B) an individual who is blind or who has another disability at the first  
44 degree of consanguinity or affinity to the manager; or  
45  
46

1 (C) an individual who is blind or who has another disability claimed as a  
2 dependent, either in whole or in part, on the manager's federal income  
3 tax return.  
4

5 (2) Adjustments provided for in paragraph (1) of this subsection shall not apply for  
6 any month in which the set-aside fee is not paid in a timely manner.  
7

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

18 *The provisions of this §854.41 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
19 *amended to be effective July 4, 2022, 47 TexReg 3823*  
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23 **§854.42. Duties and Responsibilities of Managers.**  
24

25 (a) Managers shall comply with applicable law, the rules contained in this chapter,  
26 written agreements with hosts, the BET assignment, the requirements of the BET  
27 manual, and instruction by BET staff.  
28

29 (b) Managers shall comply with procedures prescribed by the Comptroller of Public  
30 Accounts for the payment of sales taxes and provide evidence to the Agency of  
31 timely sales tax remittances.  
32

33 (c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's  
34 right, title, and interest in the BET facility, its equipment, or the lease or agreement  
35 with the property managers.  
36

37 (d) While managing or present at their assigned BET facility, managers shall dress and  
38 act in an appropriate manner consistent with the environment in which they are  
39 operating, health and safety regulations, and anti-discrimination provisions under  
40 §854.11(h) of this title (relating to General Policies).  
41

42 (e) Managers shall open a commercial business account in which they maintain  
43 sufficient funds to operate the BET facility.  
44

45 (f) Managers shall hire sufficient employees to ensure the efficient operation of the BET  
46 facility and to provide satisfactory service to customers. If the facility is remodeled

1 or if operational areas change, the manager must have sufficient employees on hand  
2 for the necessary shutdown and reopen cleanup.

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



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

4 *The provisions of this §854.42 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
5 *amended to be effective July 4, 2022, 47 TexReg 3823*  
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9 **§854.43. Responsibilities of the Texas Workforce Commission.**  
10

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

- 1  
2 (e) Inventory payment. When a manager leaves the manager's initial assignment, the  
3 Agency shall pay the manager or the manager's heirs the value of the usable stock  
4 and supplies above the amount provided to the manager upon initial assignment.  
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6 *The provisions of this §854.43 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
7 *amended to be effective July 4, 2022, 47 TexReg 3823*  
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10  
11 **SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS**  
12

13 **§854.60. BET Elected Committee of Managers' Duties and Responsibilities.**  
14

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

1 workshops to be conducted by the BET director. The BET director will work with  
2 ECM in a good-faith effort to agree in matters related to rule and policy changes.

- 3
- 4 (e) BET administrative decisions. In matters concerning the administration of BET, the  
5 Agency holds the ultimate responsibility and authority for making administrative  
6 decisions affecting BET. The BET director shall establish and maintain a continuing  
7 dialogue and exchange of information with ECM about decisions regarding the  
8 administration of BET and shall seek ECM input and advice on all significant  
9 decisions affecting the administration of the program. In cooperation with the ECM  
10 chair and other members of ECM that the ECM chair considers necessary and  
11 appropriate, the BET director shall develop and implement methods of establishing  
12 and maintaining the dialogue and exchange of information. The methods developed  
13 shall be set out in detail in a written format and shall be included in the BET manual.  
14
- 15 (f) Exclusions from participation. ECM, its members, and BET managers are not  
16 employees, officers, or officials of the State of Texas. Therefore, ECM shall not  
17 participate in any decision-making process regarding Agency personnel, personnel  
18 policies, or personnel administration.  
19
- 20 (g) Structure. ECM shall, to the extent possible, be composed of licensees who are  
21 representative of all licensees in BET based on such factors as geography and facility  
22 type and size. Two representatives shall be elected from each designated ECM  
23 region created by the Agency with the active participation of ECM and as regions  
24 may be revised or modified.  
25
- 26 (h) Qualifications. ECM shall establish qualifications for candidates as well as the  
27 procedures for voting, tabulating, and announcing results. The Agency shall provide  
28 such advice and counsel as may be requested by ECM to accomplish all elections of  
29 representatives to ECM.  
30
- 31 (i) Term of office. The term of office for ECM members shall be two years, beginning  
32 on January 1 following the election. Even- and odd-numbered districts shall alternate  
33 election years. Any ECM member elected to fill a vacancy shall serve the remainder  
34 of the unexpired term of the manager who vacated a position.  
35
- 36 (j) Meetings. ECM shall meet once during each calendar year to elect officers and  
37 additionally as it may establish by bylaw. The ECM chair shall provide a written  
38 meeting agenda to the BET director 10 business days before each meeting.  
39
- 40 (k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal  
41 operation and order of business and shall provide the Agency with a copy.  
42
- 43 (l) Travel expenses.
- 44
- 45 (1) Expenses for travel, meals, lodging, or other related expenses incurred by  
46 ECM representatives must be preapproved by the Agency.

- 1  
2 (2) When representing a manager at a full evidentiary hearing, the ECM  
3 representative shall be reimbursed for travel, meals, and lodging at the rate  
4 allowed for travel by Agency staff members.  
5

6 *The provisions of this §854.60 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
7 *amended to be effective July 4, 2022, 47 TexReg 3823*  
8

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10  
11 **§854.61. BET Elected Committee of Managers' Conflict of Interest.**  
12

- 13 (a) The ECM representative shall immediately disclose any conflict of interest to all  
14 parties and shall withdraw from all matters related to the conflict. Final  
15 determination of a conflict of interest shall be made by the Agency.  
16  
17 (b) The ECM representative shall not use the position for private gain or act in a manner  
18 that creates the appearance of impropriety.  
19  
20 (c) The ECM representative may not vote or make recommendation on any BET  
21 promotion or transfer matter that would provide direct financial benefit to the ECM  
22 representative individually or the ECM representative's immediate family or on  
23 matters of the provision of services by the member or the entity the member  
24 represents.  
25  
26 (d) Before a discussion, vote, recommendation, or decision on any promotion or transfer  
27 matter before ECM, if a representative or an individual in the immediate family of  
28 such representative has a substantial interest in the assignment being considered, that  
29 ECM representative shall disclose the nature and extent of the interest or relationship  
30 and shall abstain from voting or making a recommendation on or in any other way  
31 participating in the decision on the matter.  
32

33 *The provisions of this §854.61 adopted to be effective September 1, 2019, 44 TexReg 3294*  
34

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36  
37 **SUBCHAPTER E. ACTION AGAINST A LICENSE**  
38

39 **§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.**  
40

- 41 (a) Causes for termination. The license of a licensee shall be terminated upon the  
42 occurrence of any one of the following:  
43  
44 (1) The licensee's visual acuity is improved by any means to the point at which the  
45 licensee no longer satisfies the definition of legally blind.  
46

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

13 (3) The licensee is unassigned and has not accepted assignment offers or applied  
14 for an assignment when facilities are available for a period of six consecutive  
15 months. The six-month deadline may be extended by periods of 30 days when  
16 facilities are not available for assignment. Any unassigned period of 12 months  
17 or more requires retraining for the licensee to become eligible to bid for, or be  
18 assigned to, available facilities.  
19

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

29 (c) Restoration of license. A license terminated under the provisions of this section may  
30 be restored at the discretion of the Agency if the condition or conditions causing the  
31 termination were resolved satisfactorily. In considering a decision with respect to  
32 whether to restore a license that was terminated according to this section, the VRD  
33 director shall consult with appropriate BET staff members, the ECM chair, and any  
34 advocate for the licensee and shall consider all pertinent information and  
35 documentation provided by any of the individuals described in this subsection.  
36

37 (d) Conditional restoration. If the VRD director determines that a license that was  
38 terminated according to this section should be restored, the VRD director may  
39 authorize the restoration of the license on any reasonable basis, such as participation  
40 in continued medical treatment or therapy, or completion of refresher or other  
41 courses of training.  
42

43 *The provisions of this §854.80 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
44 *amended to be effective July 4, 2022, 47 TexReg 3823*  
45

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1  
2 **§854.81. Administrative Action Based on Unsatisfactory Performance.**  
3

4 (a) Causes for administrative action based on unsatisfactory performance. One or more  
5 of the following acts or omissions by a manager shall subject a manager to  
6 administrative action for unsatisfactory performance:  
7

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

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

23  
24 (b) Types of administrative actions. The five types of administrative actions that are  
25 based on unsatisfactory performance are as follows:  
26

- 27 (1) Written reprimand. Written reprimand is a formal statement describing  
28 violations of applicable law, this subchapter, the requirements of the BET  
29 manual, or any instruction by Agency staff.  
30
- 31 (2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily  
32 remedy a condition that is not acceptable under this subchapter. If the  
33 condition causing probation is satisfactorily remedied within the time periods  
34 specified in the written notice of probation, the probation will be lifted. If the  
35 unacceptable condition is not remedied within the time specified, additional  
36 and more serious administrative actions may ensue. When a licensee who has  
37 been on probation two times in a three-year period qualifies for probation for  
38 the third time within those three years, the licensee's license may be revoked  
39 according to Agency rules.  
40
- 41 (3) Loss of facility. Loss of facility is the removal of a manager from the  
42 manager's current facility for administrative reasons when the manager's  
43 actions or inactions endanger the Agency's investment in the facility.  
44
- 45 (4) Termination. Termination is the revocation of a license and the removal of the  
46 licensee from BET.

1  
2 (5) Emergency removal of manager.  
3

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

10  
11 (i) result in a clear danger to the health, safety, or welfare of any  
12 individual or to the property of any individual in or around the  
13 facility; or

14  
15 (ii) result in a deterioration of the existing or future relationship with the  
16 host, thereby putting the continuation of the facility in jeopardy; or

17  
18 (iii) present a clear potential of substantial loss or damage to the property  
19 of the State of Texas.  
20

21 (B) In any case in which a manager has been summarily removed from a  
22 facility on an emergency basis for any of the reasons set forth in  
23 subparagraph (A) of this paragraph, the manager shall be entitled to have  
24 a hearing about the necessity of the removal within 10 days after the  
25 removal has occurred.  
26

27 (C) The time period for the hearing may be extended only by mutual  
28 agreement of the manager and the Agency under the following  
29 circumstances: if an official holiday of the State of Texas falls within the  
30 period, then the period shall be extended by the time of the holiday; or, if  
31 the services of an arbitrator cannot be obtained in time to hold the  
32 hearing within the period, then the period shall be extended by the time  
33 necessary to obtain the services of an arbitrator and schedule the hearing.  
34

35 (D) If the manager desires to have a hearing, the manager shall notify the  
36 Agency in writing via mail or electronically via email within 48 hours  
37 following the removal. The written notification need state only the name  
38 of the manager, the location of the facility, and that the manager desires  
39 to have a hearing about the need for summary removal. The request may  
40 be delivered to the BET director, the VRD director, or any local BET  
41 staff member in the geographic region in which the facility is located.  
42

43 (E) Upon receipt of any such request, the BET director shall obtain the  
44 services of an arbitrator from the American Arbitration Association  
45 (AAA) or other similar organization to conduct the hearing.  
46



- 1 (F) The manager shall be notified of the date, time, and place of the hearing.  
2 To the extent possible, the hearing shall be conducted in an area near the  
3 location of the facility.  
4  
5 (G) The hearing shall be conducted in accordance with the rules of AAA,  
6 except that the arbitrator shall be requested to announce orally a decision  
7 at the conclusion of the hearing.  
8  
9 (H) If the arbitrator determines that no emergency necessitating the removal  
10 of the manager exists, then the manager shall be immediately restored to  
11 the operation of the facility.  
12  
13 (I) No determination made as a result of the hearing shall operate to  
14 prejudice the rights of the manager to proceed with a grievance in  
15 accordance with the terms of this subchapter and the Act.  
16

17 (c) Administrative procedures.

- 18  
19 (1) The Agency shall decide what administrative action to take based on the  
20 seriousness of the violation, the damage to BET facilities and/or equipment,  
21 and the licensee's record.  
22  
23 (2) Upon receipt of information that indicates that administrative action may be  
24 appropriate, the Agency shall take the following actions before deciding  
25 whether to take administrative action:  
26  
27 (A) The Agency shall notify the licensee in writing via mail or electronically  
28 via email of the allegations and reasons that administrative action is  
29 being considered. The notice shall either be hand-delivered and read to  
30 the licensee, or be delivered to the licensee's work, e-mail address, or  
31 home address.  
32  
33 (B) The licensee shall have five business days to respond to the notice, either  
34 in person or in writing. The response shall be made to the individual  
35 designated in the notice. After receiving the licensee's response, the  
36 Agency shall decide what administrative action, if any, is appropriate. If  
37 no response is received from the licensee in a timely manner, the Agency  
38 shall decide without the licensee's response what administrative action, if  
39 any, will be taken.  
40  
41 (C) If a decision is made to issue a written reprimand, the written reprimand  
42 will be accompanied by a summary of the evidence justifying the  
43 reprimand, suggested steps for correcting the violation, and the  
44 consequences of not correcting the violation. All reprimands shall  
45 contain notice of the licensee's right to appeal the reprimand and a

1 statement that failure to correct the violation may result in further  
2 administrative action.

- 3  
4 (D) If a decision is made to place a licensee on probation, the Agency shall  
5 deliver to the licensee a letter of probation containing the following:  
6  
7 (i) the specific reasons for probation;  
8  
9 (ii) the remedial action required to remove the licensee from probation;  
10  
11 (iii) the time within which the remedial action must take place;  
12  
13 (iv) the consequences of failure to take remedial action within the  
14 prescribed time frame; and  
15  
16 (v) notice of the licensee's right to appeal.  
17  
18 (E) Upon satisfactory completion of the remedial action outlined in the letter  
19 of probation, a licensee shall be removed from probation.  
20  
21 (F) Failure of the licensee to complete remedial requirements within the  
22 prescribed time frame shall result in one or more of the following  
23 actions:  
24  
25 (i) required training;  
26  
27 (ii) extension of probation;  
28  
29 (iii) restrictions on applying for another facility;  
30  
31 (iv) removal from the facility; or  
32  
33 (v) termination of license.  
34  
35 (G) If, after the manager has had an opportunity to respond, a decision is  
36 made that sufficient grounds exist to remove the manager from a facility,  
37 the Agency shall notify the manager in writing by hand delivery or  
38 certified mail with a return receipt requested that the manager's  
39 assignment to the BET facility has been terminated and the manager  
40 must vacate the facility. The removal letter shall contain the following  
41 information:  
42  
43 (i) specific reasons for removal from the facility;  
44  
45 (ii) actions required by the manager, if any;  
46

- 1 (iii) requirements for obtaining reassignment; and  
2  
3 (iv) notice of the manager's right to appeal under the Act.  
4  
5 (H) If, after the manager has had an opportunity to respond, a decision is  
6 made that sufficient grounds exist for termination, the Agency shall  
7 notify the manager in writing by hand delivery, e-mail, or certified mail  
8 with a return receipt requested that the Agency has decided that  
9 sufficient cause exists to terminate the manager's license and the  
10 manager must vacate the facility. The termination letter shall contain:  
11  
12 (i) specific reasons for termination;  
13  
14 (ii) actions required by the licensee, if any;  
15  
16 (iii) procedures for applying for any other Agency services for which  
17 the individual may be eligible; and  
18  
19 (iv) notice of the licensee's rights under the Randolph-Sheppard Act.  
20  
21 (3) The provisions of paragraph (2) of this subsection notwithstanding, pending a  
22 determination with respect to administrative action, a manager may be  
23 removed from a facility if the Agency considers such removal to be in the best  
24 interest of BET and if efforts to correct the deficiencies have been  
25 unsuccessful.  
26  
27 (4) During the license termination process, the manager shall not be eligible for  
28 assignment to any other BET facility.  
29  
30 (d) Before termination of a license, the Agency shall afford the licensee an opportunity  
31 for a full evidentiary hearing as described in §854.82(e) of this title (relating to  
32 Procedures for Resolution of Manager's Dissatisfaction).  
33

34 *The provisions of this §854.81 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
35 *amended to be effective July 4, 2022, 47 TexReg 3823*  
36

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39 **§854.82. Procedures for Resolution of Manager's Dissatisfaction.**  
40

- 41 (a) Appealable actions. This section provides the procedures for licensees who are  
42 dissatisfied with the Agency's action arising from the operation of BET.  
43  
44 (b) Actions not subject to appeal. The phrase "the Agency's action arising from the  
45 operation of BET" in subsection (a) of this section does not include the Agency's  
46 hiring, firing, or discipline of Agency employees.

- 1  
2 (c) Remedies. Remedies available to resolve dissatisfaction shall correct the action  
3 complained of from the earlier time of:  
4  
5 (1) agreement by the parties about an appropriate remedy; or  
6  
7 (2) a final resolution under the Randolph-Sheppard Act that the Agency acted in  
8 violation of applicable law, this subchapter, the requirements of the BET  
9 manual, or any instruction by Agency personnel, or acted unreasonably.  
10  
11 (d) Informal procedures to review dissatisfactions. At the request of a licensee, the  
12 Agency shall arrange for and participate in informal meetings to quickly resolve a  
13 matter of dissatisfaction arising from the operation or administration of BET. The  
14 informal process is for resolving an issue in controversy quickly and amicably. It is  
15 not for the purpose of denying or delaying the manager's right to pursue resolution of  
16 a matter through a full evidentiary hearing. At any point during the informal process,  
17 either party may elect to terminate the following informal process procedures:  
18  
19 (1) A licensee may initiate informal procedures by notifying the Agency in  
20 writing, via mail or electronically via email, through the BET director that the  
21 licensee is dissatisfied with a matter arising from the operation or  
22 administration of BET. The written notice must describe with reasonable  
23 particularity the specific matter in controversy, the date the action occurred, or  
24 an approximate date if the exact date is not known, and the licensee's desired  
25 relief or remedy. If the licensee is dissatisfied with a series of the same or  
26 related actions over a period, the notice shall describe, to the best of the  
27 licensee's ability, the time frame of the events and include the date of the most  
28 recent event about which the licensee is dissatisfied.  
29  
30 (2) To ensure that informal resolution is possible in a timely manner, the licensee's  
31 request to initiate informal proceedings must be filed with the Agency no later  
32 than 20 business days after the most recent event specified in the request. the  
33 Agency shall, within a reasonable time, arrange a meeting at a location, date,  
34 and time satisfactory to all parties.  
35  
36 (3) The licensee must notify the Agency when filing a request for informal  
37 proceedings if the licensee is an attorney or will be represented by legal  
38 counsel during mediation. The Agency may be represented by legal counsel  
39 only when the licensee is an attorney or is represented by legal counsel.  
40  
41 (4) Meetings shall take place in an informal environment and shall be attended by  
42 the licensee, a BET staff member with decision-making authority, and a neutral  
43 third party who shall serve as an informal mediator during the discussions.  
44  
45 (5) The neutral third party shall be an individual certified in conducting  
46 mediations.

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46
- (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.
  - (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) 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 later than the 20th business day after the occurrence of the Agency action about which the manager complains.
    - (3) A manager requesting a full evidentiary hearing after the conduct of mediated meetings described in subsection (d) of this section must request such hearing in writing no later than the 20th business day after the date on which the neutral third party in subsection (d) of this section reports an unsuccessful informal mediation or a party terminates the informal mediation process, whichever is earlier in time.
    - (4) A request for a full evidentiary hearing must be in writing and transmitted to the VRD director by mail or by email. A request that is postmarked within the designated time frame shall be considered delivered in a timely manner if properly posted.
    - (5) The request for a full evidentiary hearing must describe the specific action with reasonable particularity sufficient to provide notice as to the action that is alleged to be unreasonable or in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel. The request must, to the best of the complainant's knowledge, contain the date the action occurred, and the law or regulation must be reasonably identified if

1 an action is alleged to be in violation of law, this subchapter, the requirements  
2 of the BET manual, or regulation. The request must also identify the desired  
3 relief or remedy.  
4

- 5 (6) The manager may be represented in the evidentiary hearing by legal counsel or  
6 other representative of the manager's choice, at the manager's expense.  
7
- 8 (7) The Agency shall arrange reader or other communication services for the  
9 manager, if needed, upon request by the manager at least three business days  
10 prior to the hearing date.  
11
- 12 (8) The manager shall be notified in writing of the time and place fixed for the  
13 hearing and of the manager's right to be represented by legal or other counsel.  
14
- 15 (9) Selection of the hearing officer.  
16
- 17 (A) The hearings coordinator, the Agency's Office of General Counsel, shall  
18 select, on a random basis, a hearing officer from a pool of individuals  
19 qualified according to this section.  
20
- 21 (B) The hearing officer shall be an impartial and qualified individual who:  
22
- 23 (i) is not involved either with the Agency's action that is at issue or  
24 with the administration or operation of BET;  
25
- 26 (ii) is not an employee of a public agency (other than an administrative  
27 law judge, hearing examiner, or employee of an institution of  
28 higher education);  
29
- 30 (iii) has knowledge of the Randolph-Sheppard Act and any applicable  
31 state and federal regulations governing the appeal;  
32
- 33 (iv) has received training specified by the Agency with respect to the  
34 performance of official duties; and  
35
- 36 (v) has no personal, professional, or financial interest that would  
37 compromise his or her impartiality.  
38
- 39 (C) An individual is not considered to be an employee of a public agency for  
40 the purposes of subparagraph (B)(ii) of this paragraph if the only  
41 consideration is that the individual is paid by the agency to serve as a  
42 hearing officer.  
43
- 44 (10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act,  
45 Texas Government Code, §2001.051 et seq., and this subchapter to the extent

1 that those procedures do not conflict with the Act and its implementing  
2 regulations or this subchapter.

3  
4 (11) Licensees bringing complaints shall have the burden of proving their cases by  
5 means of a preponderance of the evidence. Licensees shall present their  
6 evidence first. When a hearing is requested because of administrative action by  
7 the Agency against a licensee, The Agency shall have the burden of proving its  
8 case by a preponderance of the evidence and shall present its evidence first.  
9

10 (12) Transcription of Proceedings.

11  
12 (A) Unless precluded by law, the hearing shall be recorded electronically  
13 either by the hearing officer or by someone designated by the hearing  
14 officer. Such recording shall be the official record of the testimony  
15 recorded during the hearing. Any party, however, may request, at the  
16 party's expense, that the hearing be recorded by a court reporter if the  
17 request is made within 10 days of the date for the hearing.  
18

19 (B) In lieu either of a recording of the testimony electronically or of the  
20 reporting of testimony by a court reporter, the parties to a hearing may  
21 agree upon a statement of the evidence to use transcription as a statement  
22 of the testimonial evidence, or agree to the summarization of testimony  
23 before the hearing officer, provided, however, that proceedings or any  
24 part of them must be transcribed on written request of any party.  
25

26 (C) Unless otherwise provided in this subchapter, the party requesting a  
27 transcription of any electronic recording of the proceedings shall bear the  
28 cost for transcribing the testimony. Nothing provided for in this section  
29 limits the Agency to an electronic record of the proceedings.  
30

31 (D) The record of the proceedings, including exhibits and any transcription,  
32 shall be made available to the parties by the Agency no later than the  
33 30th business day after the close of the hearing.  
34

35 (13) The hearing officer shall issue a recommendation that shall set forth the  
36 principal issues and relevant facts that were stated at the hearing and the  
37 applicable provisions of law, rule, the requirements of the BET manual,  
38 or any instruction by Agency personnel. The recommendation shall  
39 contain findings of fact and conclusions with respect to each of the  
40 issues, and the reasons and bases for the conclusions.  
41

42 (14) In formulating a recommendation, the hearing officer shall not evaluate  
43 whether the Agency's actions were wise, efficient, or effective. Rather,  
44 the hearing officer is limited to determining whether the Agency's  
45 actions were unreasonable, or if they violated applicable law, this

1 subchapter, the requirements of the BET manual, or any instruction by  
2 Agency personnel.

- 3
- 4 (15) If the hearing officer finds that the actions taken by the Agency were  
5 unreasonable or violated applicable law, this subchapter, the  
6 requirements of the BET manual, or any instruction by Agency  
7 personnel, the hearing officer shall also recommend any prospective  
8 action necessary to correct the violations.  
9
- 10 (16) The hearing officer's recommendation shall be made no later than the  
11 30th business day after the receipt of the official transcript. The  
12 recommendation shall be delivered promptly to the VRD director.  
13
- 14 (17) The VRD director shall review the recommendation of the hearing  
15 officer and forward a decision to the manager no later than the 20th  
16 business day after receipt of the hearing officer's recommendation. The  
17 VRD director's decision shall include findings of fact and conclusions of  
18 law based on the evidence in the record and separately stated.  
19
- 20 (18) Subject to the provisions of Texas Government Code, §2001.144 and  
21 §2001.146, the VRD director's decision shall be the final decision of the  
22 Agency. Any such decision becomes the final decision of the Agency if a  
23 timely motion for rehearing or reconsideration is not filed.  
24

- 25 (f) Arbitration. A manager appealing the Agency's decision must file a complaint with  
26 the US Secretary of Education in conformity with the provisions of the implementing  
27 regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of vendor  
28 complaints.  
29

30 *The provisions of this §854.82 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
31 *amended to be effective July 4, 2022, 47 TexReg 3823*

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34  
35 **§854.83. Establishing and Closing Facilities.**  
36

- 37 (a) Establishing facilities. On its own initiative, at the request of an agency that controls  
38 federal or state property, of the ECM, or of a private organization, the Agency shall  
39 survey the property, blueprints, or other available information concerning the  
40 property to determine whether the installation of a BET facility is feasible and  
41 consonant with applicable laws and regulations and with VRD objectives. If the  
42 installation of a BET facility is determined to be feasible, the Agency shall proceed  
43 to develop plans for the establishment of a facility in accordance with procedures  
44 promulgated and implemented by Agency staff and, when the facility is developed,  
45 shall assign a manager to the facility.  
46



1 (b) Closing facilities. Except for temporary closings by Agency staff, no BET facility  
2 shall be closed by the Agency until both of the following have occurred:  
3

4 (1) The BET director has certified to the VRD director that the facility is no longer  
5 a feasible or viable BET facility and provides reasons for that opinion.  
6

7 (2) The VRD director has approved the proposed closing of the facility.  
8

9 *The provisions of this §854.83 adopted to be effective September 1, 2019, 44 TexReg 3294;*  
10 *amended to be effective July 4, 2022, 47 TexReg 3823*

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12