

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-03
ADMINISTRATION**

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1240-08-03-.01 STATE AND LOCAL ORGANIZATION AND ADMINISTRATION.

- (1) It is the responsibility of the Division's VR Program to provide services necessary for the rehabilitation of individuals with disabilities of Tennessee for the purpose of achieving competitive integrated employment.
- (2) The authority and responsibility for administration of the VR Program affecting eligibility for the nature and scope of VR services and the provision of these services is vested in the head of the Division and the VR Program. This responsibility may not be delegated to any other entity or individual.
- (3) Supervisory staff are assigned to supervise the work of VR Counselors, Pre-employment Transition Specialists, TRCS and CSU staff, and other appropriate staff.
- (4) Qualified staff in accordance with VR requirements have assigned responsibilities for determining eligibility for and the provision of services in accordance with VR Program policies and procedures.
- (5) Any applicant or individual who is eligible for VR services may contact any VR office or employee for assistance and may also seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. §§ 370.1 et seq.
- (6) Services of the Division are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 34 C.F.R. Part 361; 34 C.F.R. § 370.1, et seq.; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Amendments filed February 29, 2024; effective May 29, 2024.

1240-08-03-.02 REPEALED.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Repeal filed February 29, 2024; effective May 29, 2024.

1240-08-03-.03 STAFF DEVELOPMENT AND TRAINING.

- (1) The purpose of staff development, for all staff positions, is to ensure the availability of qualified rehabilitation personnel. The Division will, to the degree possible:
 - (a) Provide systematic training programs to improve staff effectiveness and qualifications;
 - (b) Orient new staff; and
 - (c) Provide appropriate training to all classes of personnel consistent with their needs.
- (2) Training plans and curricula are developed by the Office of Learning and Professional Development within the Department with consultation from:
 - (a) The DRS State Office staff;
 - (b) The State Rehabilitation Council;
 - (c) Regional supervisory staff; and
 - (d) Individual employees.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. §§ 361.16 and 361.18. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018.

1240-08-03-.04 REPEALED.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. §§ 361 et seq. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal filed June 30, 2009; effective September 13, 2009.

1240-08-03-.05 BACKGROUND CHECKS FOR VOCATIONAL REHABILITATION EMPLOYEES, CONTRACTORS, AND INTERNS.

- (1) Background Check Requirements for Vocational Rehabilitation Employees and Interns.
 - (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all current and prospective Vocational Rehabilitation (VR) employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history of any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of persons served by VR.
 - (b) All current and prospective VR employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must:
 1. Agree to the release and disclosure to the Department of the background information and records from any reputable source, including federal, state and

(Rule 1240-08-03-.05, continued)

local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee; and

2. Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the TBI and a national criminal history background check and investigation to be conducted by the Federal Bureau of Investigation (FBI).
 - (c) The cost of any background check conducted pursuant to this policy shall be paid by the Department.
 - (d) If an employee or prospective employee does not consent to the required background check and investigation, he or she may be deemed ineligible for employment with the Department.
- (2) Review of Findings from Criminal Background Checks.
- (a) All background investigation results from the TBI shall be sent to the Department's background check unit and reviewed to determine whether the current or prospective employee, intern, or contract worker has a history of criminal convictions that could pose a safety risk for individuals receiving VR services.
 - (b) An individual may not be eligible for a position whose duties include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals if a background investigation finds any conviction, including but not limited to the following offenses (including convictions for equivalent offenses in other states or jurisdictions):
 1. The physical, sexual or emotional abuse or neglect of a child or vulnerable person;
 2. A crime of violence against a child or any person;
 3. Any offense that presents a threat to the health, safety or welfare of children or vulnerable persons; or
 4. A felony conviction involving a crime of dishonesty or fraud within the past ten (10) years.
 - (c) A criminal background check shall be conducted on all prospective employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals prior to the commencement of work. In no event shall a person have unsupervised contact with an individual served by VR until the criminal background check has been completed.
 1. After the Department offers a Conditional Offer of Employment, the applicant or transferring employee must submit to a fingerprint background check at a Department-approved site.
 2. The background check will be completed prior to hire and results maintained in the Department's official background check system. A copy of the Findings/No Findings letter will be placed in the personnel file.
- (3) Current Vocational Rehabilitation Employees and Interns.

(Rule 1240-08-03-.05, continued)

- (a) Current VR employees in positions identified as having duties that include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must comply with the investigation requirement as directed by their supervisor as a basis for continued employment in the position.
 - 1. Employees with convictions as provided in Rule 1240-08-03-.05(2)(b) above may be deemed ineligible for employment.
 - 2. Employees who refuse to complete the fingerprint background checks or do not get fingerprinted during the allotted time may be deemed ineligible for employment.
 - (b) Current VR employees and interns whose current position does not provide an opportunity for unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties do not currently include direct responsibility for such individuals must have a criminal background check conducted before a change of responsibilities or positions to those that include such contact, access, or responsibility for such individuals.
- (4) Alleged Errors in Background Check.
 - (a) The Department does not provide the applicant, employee, or intern a copy of the FBI criminal history record. He or she may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. If he or she believes the FBI's findings contain inaccurate or incomplete information, they may contact the FBI to challenge the findings.
- (5) Vocational Rehabilitation Employees and Interns Reporting Requirements.
 - (a) Any VR employee or intern who is cited, arrested, or convicted of a crime as provided in Rule 1240-08-03-.05(2)(b) shall report this information to the investigative unit within forty-eight (48) hours of the event. The Department's background check unit will share this information with the employee's or intern's direct supervisor if the event equates to a disqualifying offense.
 - (b) Failure of a VR employee or intern to report a citation, arrest, or conviction as provided in Rule 1240-08-03-.05(2)(b) may result in disciplinary action, up to and including termination.
 - (c) It is the responsibility of the direct supervisor or manager to report information obtained under Subparagraph (a) to the Department's Director of Human Resources and to the Department's Division of Rehabilitation Services' Director of Operations.
 - (d) After obtaining all available information, including any reports or other documentation, the supervisor, in consultation with the Director of Human Resources or designee and the Department's Division of Rehabilitation Services' Director of Operations, may recommend any disciplinary action deemed appropriate under the circumstances for a VR employee or intern, up to and including termination.
- (6) Contract Vocational Rehabilitation Workers.

(Rule 1240-08-03-.05, continued)

- (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history for any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of individuals served by VR.
- (b) All VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals must agree to the release and disclosure to the contracting agency of their background information and records from any reputable source, including federal, state, and local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee.
- (c) The cost of any background check conducted pursuant to this policy shall be paid by the contractor, unless otherwise specified by contract.
- (d) The contractor shall review all background check results so that individuals in positions whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals have passed the background check requirements and have no convictions as provided in Rule 1240-08-03-.05(2)(b).
- (e) The background check for prospective employees or interns shall be completed before entering into employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (f) The background check shall be completed for current employees or interns as a condition for maintaining employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (g) The provisions of this Paragraph do not apply to contracts entered into prior to the effective date of this Rule unless previously provided for by contract.

Authority: T.C.A. § 4-3-1208 and 34 U.S.C. § 40102(a)(1). **Administrative History:** Original rule filed December 18, 2019; effective March 17, 2020.