# PART A, CHAPTER 4: APPEALS AND DUE PROCESS

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| **Policy Number** | **Authority** | **Scope**  | **Effective Date** |
| Part A, Chapter 4 | 34 CFR [§361.57](https://www.ecfr.gov/current/title-34/section-361.57) and TWC Rule [Chapter 850 Subpart E](https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=850&sch=E&rl=Y) | All TWC-VR staff | 9/3/2024 |

## PURPOSE

In accordance with the authority (Federal and State) listed above, this policy is issued by the Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR). Adherence to these rules and regulations issued under the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), supports Texans with disabilities in gaining, maintaining, and advancing in competitive integrated employment (CIE).

Specifically, the purpose of this policy and these procedures is to ensure TWC-VR customers are afforded their right to appeal decisions related to their TWC-VR case, and that procedural due process is clearly outlined for customers and stakeholders.

## DEFINITIONS

Appeal: A request for a due process hearing to resolve disputes about determinations made by TWC-VR personnel that affect the provision of TWC-VR or Older Individuals who are Blind (OIB) services.

The Appellant: An applicant, eligible individual, authorized representative, or parent who has initiated formal procedures.

Discovery: The process by which a party, before a hearing on the merits, may obtain evidence and other information relevant to a claim or defense in the appeal.

Hearing: A formal review, including prehearing conferences.

Informed Choice: The means by which a customer chooses their rehabilitation path, from options based on their needs and circumstances and the TWC-VR rules, including the right to appeal TWC-VR decisions.

Mediation: Voluntary process in which an appellant and a TWC-VR representative may work with a trained mediator, who is not a TWC employee, to try to resolve a dispute prior to the due process hearing.

Witness: An individual with personal knowledge of the facts or special knowledge (i.e., expert) of the facts and issues. It is generally expected that the appellant's VR Counselor will be called as a witness.

## POLICY

### General Overview

TWC-VR has established protocols, some of which include TWC’s Office of General Counsel (OGC), to ensure that TWC-VR applicants, eligible individuals, and customers who are dissatisfied with any determination made by TWC-VR staff, that affects the provision of VR services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination.

### Basic Rights

TWC-VR customers are afforded certain basic rights as it pertains to appealing decisions regarding their planned services or their eligibility for such services. Additional information can be found in the "Can We Talk?" brochure.

### Complaints

TWC-VR staff explore all options in policy to resolve a complaint through an informal resolution process. To avoid an interruption of services, TWC-VR handles complaints promptly and at the lowest possible management level. However, if the VR Counselor or their VR Supervisor or VR Manager cannot resolve the complaint, the customer must be given the right to appeal.

### Mediation

Any party in an appeal may request mediation. Participation in the mediation process is voluntary. The mediation process cannot deny or delay the following:

* The appellant's right to an impartial hearing held 60 days from receipt of the appellant's request; or
* Any other rights described in this chapter.

At any point during mediation, either party or the mediator may decide to end the process. When mediation is ended, either party may pursue resolution through an impartial hearing.

Discussions that occur during the mediation process are kept confidential and are not used as evidence in any subsequent due-process hearing or civil proceedings.

### Client Assistance Program (CAP)

TWC-VR staff informs customers of the Client Assistance Program (CAP) when TWC-VR decisions affect the provision of TWC-VR services.

## PROCEDURES

### TWC Office of General Counsel (OGC)

When contacting the OGC regarding proper protocols, TWC-VR staff members should adhere to the following steps:

1. Review the information and instructions in this chapter that seem most directly related to their question. Be prepared to provide OGC any relevant sources and/or documents.
2. Call, email, or open a ticket in the Legal Portal to submit the question.
	* Calling provides the fastest response. TWC-VR staff can email or use the Legal Portal if the question or issue would be easier to explain in writing. However, if the issue requires more than a quick response, it should be entered into the Legal Portal.
	* Subpoenas, court orders, letters from attorneys, and out-of-the-ordinary customer releases should promptly be provided to OGC for review. The Legal Portal to submit subpoenas and customer releases is located at TWC-OGC portal.

### Open Record Request

For general questions, call or email the Open Records Department or the attorney designated to support their division. Calls may be placed through the OGC receptionist at (512) 463-3300 or directly to the main number, (512) 463-2422. Email open records at open.records@twc.texas.gov.

If individuals do not know which attorney is designated to support their division, they can ask the OGC receptionists or legal assistants.

### Customer Rights

Customer rights applicable to each TWC-VR program are summarized in the "Can We Talk?" brochure. A copy of the brochure must be provided to potentially eligible students with disabilities, applicants, eligible individuals, and customers, at a minimum—

* At applicationor when the *Request to Receive Pre-Employment Transition Services (VR1820)* is completed for potentially eligible students;
* At the time of initial Individualized Plan for Employment (IPE) and IPE amendment;
* When services are being denied, reduced, suspended, or terminated; and
* Upon customer request.

A case note recording the date and method the brochure was given to the customer must be documented for each occurrence.

### Mediation

When the TWC-VR Hearings Coordinator receives a request for mediation, they select an individual from a list of qualified mediators who are knowledgeable about the laws and regulations concerning TWC-VR services.

* Mediation sessions are scheduled and conducted in a timely manner and can be held over the phone or in person. If an in-person mediation is conducted, the location is usually the TWC-VR regional or field office nearest the appellant's residence or a place agreed to by both parties.
* Any agreement reached during the mediation must be in writing and signed by all parties. The agreement becomes a part of the customer's record.

Mediation is provided by TWC-VR at no cost to the parties. However, TWC-VR does not pay for costs related to the appellant's representation by counsel or another advocate selected by the appellant. TWC-VR does not pay any expenses for legal services or for witnesses requested by the appellant.

### Notifying the Customer of the Appeals Process

TWC-VR provides a customer or the customer's representative written notice of the following:

* The right to a review of TWC-VR determinations that impact the provision of services to the customer through an impartial due-process hearing;
* The option to pursue mediation;
* The contact information for filing an appeal;
* The way a mediator or Impartial Hearing Officer (IHO) may be selected; and
* The availability of the CAP to help the customer during a mediation session or due-process hearing.

### Decisions Subject to Review by Appeal

* Denial, reduction, suspension, or termination of services;
* The nature or content of the customer's IPE; or
* The delivery or quality of VR counseling and guidance services or other services provided by TWC-VR.

### Time Limit of an Appeal

A customer who is not satisfied with a determination by TWC-VR must file the appeal within 180 days of the date the determination was made.

### Roles and Responsibilities in a Due-Process Hearing

The list below includes roles and responsibilities that must be followed by their respective positions to ensure due process is provided in accordance with the authority described in this policy.

1. Impartial Hearing Officer (IHO): A qualified individual who is not a TWC employee, is knowledgeable about the laws and regulations on TWC-VR services and is appointed to conduct a hearing.
2. Hearings Coordinator: The individual within OGC who provides administrative support to the IHO during the appeal process and is a point of contact for the appellant's questions about the due-process hearing.
3. TWC-VR Representative: Generally, the Deputy Regional Director or Regional Director. If the appellant is not represented by an attorney, the TWC-VR representative—
	* Has the authority to settle the dispute with the appellant;
	* Prepares and presents the case;
	* Represents TWC-VR at the due-process hearing;
	* Fields all content calls; and
	* May request support from OGC.

If the appellant is represented by an attorney, the TWC-VR representative—

* + No longer has total responsibility to represent TWC-VR;
	+ Supports the OGC attorney assigned to represent TWC-VR;
	+ Is the rehabilitation content and case file expert; as needed, assists the OGC attorney in reaching a potential settlement.

The TWC-VR representative is the contact person for witnesses who are VR employees regarding the date, time, and location of the hearing and for any changes that occur.

1. OGC: If the appellant represents themself or is represented by someone who is not an attorney, OGC's role is primarily that of advisor to the TWC-VR representative. The TWC-VR representative prepares and presents the case. OGC provides all requested support to the TWC-VR representative.

Before the hearing, OGC is available to meet with the TWC-VR representative to discuss—

* + Developing the issues;
	+ Gathering the evidence;
	+ Preparing witnesses; and
	+ Preparing exhibits.
1. If the appellant's representative is an attorney, OGC prepares and presents the case with the TWC-VR representative's help.

### Time Limit for the Hearing

An IHO must conduct a hearing within 60 days of TWC-VR's receipt of a customer's request for a due-process hearing, unless the parties to the dispute—

* Achieve informal resolution or a mediation agreement before the 60th day; or
* Agree to a specific time extension, which must be—
	+ In writing;
	+ Signed by the appellant; and
	+ Filed with the Hearings Coordinator.

### Serving Customers During an Appeal

A pending appeal decision by a mediator or IHO does not suspend, reduce, or stop services being provided for an appellant, including evaluation and assessment services and plan development, unless the—

* Appellant or the appellant's representative requests it; or
* Services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by the appellant or the appellant's representative.

If a customer completes a term of training or similar services before the appeal is resolved, and the next term has not yet begun, the training or services under appeal will not continue to be provided for the next term. Training or services not under appeal will not be suspended, reduced, or stopped.

### Designating an Appellant's Representative

An appellant may represent themself, or may designate someone to act as their representative, by completing *Designation of Applicant or Customer Representative (VR1487)*. The representative may be an attorney licensed to practice law in Texas, but they are not required to be an attorney.

The appellant's representative may speak for the appellant, handle the hearing for the appellant, and hold the same status in the appeals process as the TWC-VR representative, or TWC's OGC attorney.

Once the appellant has designated a representative, the TWC-VR representative provides copies of all notices, pleadings, and other correspondence to the appellant's representative.

When the appellant's representative is an attorney, an attorney-client privilege relationship exists and all communication with the appellant regarding the appeal process must occur through the appellant's representative.

The appellant's authorized representative remains the representative of record in the absence of a formal request to withdraw and an order approving the withdrawal issued by IHO.

When the appellant or the appellant's representative communicates that a representative designation is no longer in effect, the VR representative—

* Stops communicating with the representative about the case;
* Documents the appellant's oral or written notice in a case note; and
* Asks the appellant to provide the request for revocation in writing, if applicable.

### Client Assistance Program (CAP)

TWC-VR provides information on CAP in any determination provided to the customer. TWC-VR staff must document in a case note the date and method the information was provided. The required information for the appellant must include the CAP office intake number, which is (800) 252-9108.

Information about the availability of CAP must also be provided to customers who are potentially eligible when they complete the *Request to Receive Pre-Employment Transition Services (VR1820)*.

Other free legal services and referrals may be available through [Texas Legal Services Center](https://www.tlsc.org/), [Texas Lawyers for Texas Veterans](https://www.texasbar.com/AM/Template.cfm?Section=Texas_Lawyers_for_Texas_Veterans), or, depending on the customer's location, the following:

* Legal Aid of Northwest Texas, which serves the Dallas/Fort Worth area and Northwest Texas;
* [Lone Star Legal Aid](https://www.lonestarlegal.org/), which serves the Houston area and East Texas; or
* [Texas Rio Grande Legal Aid](https://www.trla.org/), which serves the Austin/San Antonio area, El Paso area, and South Texas.

### Communications with the Impartial Hearing Officer

Unless authorized by law, the TWC-VR representative or the appellant may not communicate directly or indirectly with the IHO about any issue of fact or law unless all parties may participate in the communication.

### Witness Mileage and Fees

The party that requests the witness's appearance or deposition pays witness mileage and fees.

TWC-VR employees' expenses are paid by the office to which they are assigned.

Any witness who is not a TWC-VR employee and who is subpoenaed by TWC is entitled to the following:

* Mileage based on State travel rates for travel to and from the hearing or deposition, if the place is more than 25 miles from the individual's residence; and
* A fee of at least $10 a day for each day or part of a day that the individual is required to be present; or
* A fee equal to the per diem and travel allowances of a State employee, if an overnight stay is required.

### Providing Reasonable Access

During the appeal process, TWC-VR provides reasonable access on requests to the customer or other individuals with disabilities.

During the appeal process, the IHO must require that TWC-VR provide, upon reasonable notice and request, and at TWC-VR's expense, special communication help, including translators, readers for blind or visually impaired customers, and interpreters or communication access real-time translation (CART) for deaf and hard-of-hearing customers during proceedings.

### Computing Time

In computing any period stated in these procedures, the TWC-VR representative—

* Does not include the date of the act, event, or default (the period begins on the next day); and
* Includes the last day of the period, unless it falls on a Saturday, Sunday, or legal holiday. (The period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.)

Unless stated otherwise, the word "days" refers to calendar days.

### Prehearing Procedure

1. Notification of Appeal: An appeal is made when the customer files a Request for Due Process Hearing and/or Mediation (VR1505), with the Hearings Coordinator. A customer may file an appeal when they disagree with any determination affecting the provision of rehabilitation services.
2. Selection of the IHO for Hearing or Mediation: After receiving Request for Due Process Hearing and/or Mediation (VR1505), the Hearings Coordinator randomly selects an IHO from a pool of IHOs.
3. Action Before the Hearing: The IHO, with input from the parties, sets the date, time, and place for the hearing and notifies the parties. Hearings can be held over Microsoft Teams or in person.

The IHO schedules a prehearing conference to acquaint all parties with the laws, regulations, and rules to be followed during the hearing. The purpose of the prehearing is to establish the issues to be heard, and to assign a due date for submitting evidence and witness lists. The IHO will also establish the manner in which the exhibits and witness lists will be submitted to the Hearings Coordinator and exchanged between the parties.

The discovery, prehearing conference, and due-process hearing are electronically recorded. TWC-VR provides one copy of the recording at no cost to the appellant, upon request. There is a charge for additional copies or transcripts.

1. Discovery: TWC-VR must provide to the appellant, or the appellant's representative, a copy of the appellant's case file following TWC VR’s procedures without the appellant having to request it.

Files may include information that needs to be redacted or withheld.

### Conduct of the Parties During the Hearing

The IHO maintains and enforces standards of conduct. Every party, witness, attorney, and representative must participate in all proceedings with professionalism, dignity, courtesy, and respect for all other parties. For hearings conducted over Microsoft Teams, participants must join from a private/quiet location and must remain visible on camera throughout the proceeding.

### Order of Procedure at the Hearing

1. The appellant may state—
	* The claim or defense;
	* What the appellant expects to prove; and
	* The relief sought.
2. TWC-VR may make a similar statement.
3. The IHO may allow others to make statements.
4. The appellant introduces evidence.
5. TWC-VR and/or any other appropriate party may cross-examine each of the appellant's witnesses.
6. Parties may redirect and re-cross-examine.
7. TWC-VR introduces evidence, if any.
8. The appellant and/or any other appropriate party may cross-examine each of TWC-VR's witnesses.
9. The parties then may present rebuttal evidence.
10. The IHO may allow the parties to make their closing statements.

The IHO may deviate from this order of procedure in the interest of justice or to expedite the proceedings.

### The Impartial Hearing Officer's Decision

The IHO renders a decision within 30 days after the hearing completion date.

### Motion for Reconsideration

Either party may file a motion for reconsideration with the Hearings Coordinator within 20 days after the IHO issues a decision.

The motion for reconsideration must specify the matters in the IHO's decision that the party considers erroneous. The opposing party must file a response to the motion within 15 days of the date that the motion was served on the opposing party.

### Final Decision

The decision of the IHO is the final decision of the agency.

### Civil Action or Judicial Review

Any party aggrieved by an IHO's final decision may bring a civil action for review of the decision. Without regard to the amount in controversy, the action may be brought in—

* Any State court of competent jurisdiction; or
* A U.S. district court of competent jurisdiction.

In any such action, the court—

* Receives the records relating to the hearing;
* Hears additional evidence at the request of a party to the action;
* Bases a decision on the preponderance of the evidence; and grants appropriate relief.

Exhausting all administrative remedies, including a motion for reconsideration, is a prerequisite to judicial review. A party seeking judicial review of the final TWC-VR decision must begin civil action no later than 30 days after the date of the final decision.

If a party brings a civil action to challenge an IHO's final decision, the IHO's final decision must be implemented, pending a court's review.

## APPROVALS & CONSULTATIONS

There are no approvals or consultations for this policy and these procedures.

**REVIEW**

The Policy Planning and Statewide Initiatives Team, or designee, is responsible for reviewing this policy and these procedures and will update the Document History log if necessary.

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