# PART B, CHAPTER 6: TRIAL WORK EXPERIENCE (TWE)

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| **Policy Number** | **Authority** | **Scope**  | **Effective Date** |
| Part B, Chapter 6 | 34 CFR [§361.42(e)](https://www.ecfr.gov/current/title-34/part-361#p-361.42(e)) and TWC Rule [§856.22](https://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=856&rl=22)  | 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 adherence to the requirement that TWC-VR cannot determine an individual ineligible and unable to benefit from TWC-VR services in terms of an employment outcome due to the severity of their disability without clear and convincing evidence through Trial Work Experiences (TWE).

## DEFINITIONS

Good Faith Effort: When TWC-VR staff make three or more attempts to contact the customer, on more than one date, and using more than one method of contact (e.g., phone, email, SARA).

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, as it relates to choosing TWE services and the providers of those services.

Social Security Disability Insurance (SSDI): Financial assistance to individuals who are unable to work due to a significant disability. Designed as a safety net for workers who have paid into the Social Security system through payroll taxes, SSDI benefits are based on an individual's work history and earnings record.

Sufficient Evidence: The clear (i.e., unequivocal) and convincing evidence required before the VR Counselor can conclude that an individual is incapable of benefiting from TWC-VR services, in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in the civil system of law and is to be applied on a case-by-case basis.

Sufficient Period of Time: An individualized amount of time, based on the unique circumstances of the individual, to provide enough services and supports to make a determination of eligibility.

Sufficient Variety: An individual must receive, at minimum, two TWEs in various work settings to make an ineligibility determination based on their disability being too significant to benefit from services.

Supplemental Security Income (SSI): Needs-based disability benefits paid to disabled individuals who have limited income and resources. Disability benefits under SSI include 1) Childhood SSI (for those under age 18) and 2) SSI Adult Disabled/Blind (for those age 18 to 65).

Trial Work Experience: Provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

Trial Work Plan: Similar to an Individualized Plan for Employment (IPE), a Trial Work Plan (TWP) is used to provide services, including TWEs, needed to assess an individual's abilities, capabilities, and capacity to perform in competitive integrated work situations.

## POLICY

### General Overview

Prior to any determination that an individual with a disability is unable to benefit from TWC-VR services in terms of an employment outcome due to the severity of that individual's disability or that the customer is ineligible for TWC-VR services based on the severity of their disability, the VR Counselor must conduct an exploration of the customer's abilities, capabilities, and capacity to perform in realistic work situations (i.e., TWEs). Trial Work justification must be documented in a case note.

### Trial Work Experience(s)

TWEs must be provided in competitive integrated employment settings, to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual. TWEs must be of a sufficient variety and over a sufficient period of time, so that the VR Counselor can determine that—

* There is sufficient evidence to conclude that the individual can benefit from the provision of TWC-VR services in terms of an employment outcome; or
* There is clear and convincing evidence that due to the severity of the individual's disability, the individual is incapable of benefitting from the provision of TWC-VR services in terms of an employment outcome.

During the TWEs, TWC-VR must provide appropriate supports, including, but not limited to, assistive technology devices and services and personal assistance services to accommodate the rehabilitation needs of the individual.

### TWE Timelines

If a TWE is determined necessary, the VR Counselor must develop a TWP as soon as possible but no later than 60 days after an individual has applied for TWC-VR services. A TWP will meet the same timeline requirement as if a determination of eligibility has been made.

### SSI/SSDI Customers

When the customer is receiving Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI), due to their own disability, the VR Counselor must make a determination of eligibility on the same business day that the SSI/SSDI verification is received, unless there is a question about the customer’s ability to benefit from TWC-VR services in terms of achieving an employment outcome due to the severity of their disability.

If there is a question about the customer’s ability to achieve an employment outcome due to the severity of their disability, completing a TWP and moving the case into trial work services meets the requirement of making a determination of eligibility within 60 days even if that decision is that TWEs are required prior to determining eligibility. If the customer is not available, an appointment must be scheduled with the customer to complete the TWP as soon as possible. Presumptive eligibility and the need for TWE must be clearly documented in the case record (e.g., case notes, SSI/SSDI verification).

### Annual Review of Ineligibility

Review within 12 months (and annually thereafter, if requested by the customer or, if appropriate, by the customer's representative) any ineligibility determination that is based on a finding that the customer is incapable of achieving an employment outcome due to the severity of their disability. If the customer's circumstances have changed, a new application should be completed.

This review is not required when the individual has refused it, the individual is no longer present in the State of Texas, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

## PROCEDURES

### Determination of a TWE

A TWE should only be initiated when there is significant concern by the VR Counselor that the individual’s disability or disabilities is/are of such severity that there are no jobs in which the individual may be reasonably expected to be successfully employed, even with appropriate supports. This concern may be based on previous work experiences, medical or psychological information of record, self-report, observation, or other verifiable information.

TWC-VR staff must understand that all individuals are presumed to be able to benefit in terms of an employment outcome, including individuals with the most significant and/or multiple disabilities.

Once the VR Counselor determines the need for a TWE (documented in the case record), a TWP is completed with the customer.

### Trial Work Plan

The VR Counselor selects TWP in RHW. If RHW is not available, the *Individualized Trial Work Plan (VR5161)* must be used.

* When developing the TWP, the VR Counselor should consider the need for interpreter, translator, reader, personal assistant services, rehabilitation technology, and/or other support services that are needed by the customer.
* A signed TWP, by the VR Counselor and customer, is required before any services, including TWEs, can be purchased, provided, or arranged for the customer.
* The TWP must include objectives, timeframes, responsible persons, evaluation of progress timeframes, anticipated services, and anticipated start and end dates for services, as well as the responsibilities of the VR Counselor and customer.

### TWE Services

All VRSM policies related to purchasing, arranging, or providing specific goods or services for TWC-VR customers are applicable to customers receiving services under a TWP. If a good or service has special requirements or restrictions for eligible customers, those same requirements and restrictions apply.

TWEs can include the following:

* Supported Employment (SE) Services;
* On-the-Job Training (OJT) Services;
* Work Experience Services (excluding Paid Work Experience purchased from the Local Workforce Development Boards);
* Wage Services for Work Experience through WorkQuest;
* Work Adjustment Training (WAT) Services; and/or
* Other experiences using real work settings.

Progress reports must be maintained in the case record showing the outcomes of all services provided in a TWP.

### Frequency of Contact for TWEs

It is critical that the VR Counselor maintains contact with the customer and service providers during their TWEs. Because of the nature of TWEs, this contact should be consistent and agreed upon by the parties involved and documented on the TWP. Additionally, if services provided (e.g., SE) have specific frequency of contacts required, these must also be followed.

All contacts and progress of the TWEs must be documented in case notes, including good faith efforts.

### Comparable Services and Benefits

When comparable services and benefits are readily available (e.g., Medicaid Waiver job coaching), the VR Counselor should use these benefits, as appropriate, during the TWEs. However, if the use of comparable services and benefits would interrupt or delay the individual's eligibility assessment, the VR Counselor must document the reason that comparable services and benefits are not being used in a case note and move forward with coordinating necessary assessments.

### Customer Participation in the Cost of TWE Services

Because TWE services are considered assessments for the determination of eligibility, customers are not required to participate in the cost of such services; therefore, VR Counselors must not apply Basic Living Requirements (BLR) for these customers.

### Ending TWEs

As soon as there is enough information to determine that the individual can benefit from TWC-VR services in terms of an employment outcome, the VR Counselor must determine the customer eligible for TWC-VR services and develop an IPE. If the customer is unsuccessful in the TWEs after all of the requirements above are met, the VR Counselor should determine the customer to be ineligible based on the severity of their disability preventing them from benefiting from TWC-VR services in terms of an employment outcome.

The case remains in Pre-Eligibility/Trial Work phase in RHW while the customer is participating in TWEs. When there is sufficient evidence to make a determination of eligibility (i.e., eligible or ineligible) or when the case is closed for another reason (e.g., customer request), the case will move into the next phase in RHW.

To move the customer's case out of Pre-Eligibility/Trial Work and to the appropriate next phase, the VR Counselor must do the following:

* Enter the eligibility or ineligibility decision in RHW; or
* Close the case with the appropriate corresponding reason in RHW;
* Document the decision in a case note; and
* Notify the customer of the decision and their appeal rights, including the “Can We Talk?” brochure.

## APPROVALS & CONSULTATIONS

TWC-VR staff must follow the following approvals and consultations:

* *VR Supervisor approval is required for a TWE plan lasting longer than 12 months. A full case review in TxROCS must be completed before approving the extension of the TWE.*
* *VR Supervisor approval is required for the following services and goods, when provided as part of the TWE plan:*
	+ *Residential modifications;*
	+ *Worksite modifications;*
	+ *Durable medical good;*
	+ *Orthotics and prosthetics;*
	+ *Any services related to self-employment;*
	+ *Modification of vehicles;*
	+ *Academic or vocational training;*
	+ *Medical services; and*
	+ *Services or goods to support any of the above services.*

**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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| **Date** | **Type** | **Change Description** |
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