# Vocational Rehabilitation Services Manual A-200: Customer Rights and Legal Issues

**Retired/replaced January 15, 2020** - This entire chapter has been reorganized and content moved to and from this chapter with no substantial changes except for clarifying content, such as litigation. This represents the contents of this chapter prior to January 15, 2020.

## Introduction

Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR) places the highest priority on maintaining the customer's rights while the customer participates in the rehabilitation process. The customer should know that VR counselors and staff members actively protect the customer's personal information and safety.

Systems to monitor service delivery include explicit and implicit processes for maintaining a safe and secure environment within which the customer progresses toward goals. When the VR counselor and the customer do not agree about furnishing or denying services, systems exist to safeguard the customer's:

* right to appeal,
* access to mediation, and
* process for resolving disagreements.

Maintaining these rights supports the key values of VR.

## A-201: Legal Authorization

The Rehabilitation Act of 1973 (Act) was amended by the Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014. Changes to the Act made by WIOA have been implemented through amendments to the regulations governing the State Vocational Rehabilitation Services program (VR program) [34 CFR part 361] and State Supported Employment Services program (Supported Employment program) [34 CFR part 363], administered by the Rehabilitation Services Administration (RSA).

1. Consumer rights under the individualized plan for employment (IPE)

The changes to 34 CFR §361.45, "Development of the individualized plan for employment," are intended to efficiently and effectively serve eligible individuals, move them through the VR process with minimal delay, and achieve employment outcomes in competitive integrated employment.

It is important to note that the state is required to provide certain information to each eligible individual or, as appropriate, the individual's representative, which include the option to develop all or part of the IPE, with assistance from various individuals or organizations; an explanation for determining an eligible individual's financial commitments under an IPE; a description of the rights and remedies available to the individual; and a description of and contact information for a client assistance program (CAP). Subsection (c) of 34 CFR 361.45 is set out below, relating to requirements for development of the IPE.

§361.45 (c) Required information. The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) Options for developing an individualized plan for employment. Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit;

(C) A disability advocacy organization; or

(D) Resources other than those in paragraph (c)(1)(ii)(A) through (C) of this section.

(2) Additional information. Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including—

(i) Information describing the full range of components that must be included in an individualized plan for employment;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an individualized plan for employment;

(B) Information on the availability of assistance in completing State unit forms required as part of the individualized plan for employment; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the individualized plan for employment;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in §361.57; and

(iv) A description of the availability of a client assistance program established under part 370 of this chapter and information on how to contact the client assistance program.

(3) Individuals entitled to benefits under Title II or XVI of the Social Security Act. For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the State unit must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

2. Consumer rights to review of determinations

Section 102(c) of the Act, as amended by WIOA, establishes an appeals process for individuals who are not satisfied with the services that the VR program is or is not providing, giving individuals the right to pursue mediation as a means of resolving the complaint. The Act also establishes a formal hearing process and a judicial review process for individuals.

Additionally, the Act establishes the Client Assistance Program (CAP) to assist individuals in resolving disputes with the VR agency. The CAP has the authority to advocate on an individual's behalf to resolve a dispute between the individual and the VR agency. Customers can contact the CAP in their state directly for further advice and assistance regarding rights to appeal.

Section 361.57 of 34 CFR requires the designated state unit (DSU) to develop and implement procedures to ensure a customer can request a review of any determination made by DSU personnel. These procedures must provide notification of the customer's rights, including the right to obtain a review of DSU determinations through an impartial due process hearing or through mediation, and the right to receive assistance from the CAP through either process.

It is important to note that the DSU may not suspend, reduce, or terminate a customer's VR services pending resolution through an informal process, mediation, or a formal hearing unless the customer or their representative, as appropriate, agrees or TWC has evidence that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct. The Office of the Attorney General will inform the VR counselor if TWC has evidence that services have been obtained through unlawful means.

TWC rules governing VR hearings and mediation procedures were transferred from the Department of Assistive and Regulatory Services (DARS) and are found in 40 Texas Administrative Code, Chapter 850.

### National Voter Registration Act of 1993

[52 USC §20506](http://uscode.house.gov/view.xhtml?path=/prelim@title52/subtitle2/chapter205&edition=prelim) requires that states designate the offices that provide services to individuals with disabilities as "voter registration agencies."

"(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official."

[Tex. Elec Code §20.001.1](http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.20.htm) requires National Voter Registration Act implementation in Texas.

## A-202: Basic Rights

VR customers are afforded certain basic rights, which include:

* the right to informed choice;
* the right to be informed in writing of their rights;
* the right to services that are nondiscriminatory;
* the right to protection of personal information contained in the division's records, and
* the right to appeal decisions regarding their planned services or their eligibility for such services.

Applicant and customer rights applicable to each VR program are summarized in a brochure entitled [Vocational Rehabilitation Appeal Procedures - Can We Talk? (PDF)](https://twc.texas.gov/files/jobseekers/vocational-rehabilitation-appeal-process-twc.pdf). A copy of the brochure is to be provided to the customer, at a minimum:

* at application;
* at the time of initial plan development, if one is developed;
* when services are being denied, reduced, suspended, or terminated; and
* upon applicant/customer request.

For a detailed description of the appeals process, see [VRSM A-204: Appeals and Hearings](https://twc.texas.gov/vr-services-manual/vrsm-a-200#a204) in this chapter.

Note: The VR counselor must document in the case file (on the VR application, IPE, letter, or in a case note) any time the "Can We Talk?" brochure is provided to an applicant or a customer.

Applicants and customers may call TWC at 1-800-252-3642 or the CAP at 1-800-252-9108 for more information about their rights.

### A-202-1: Nondiscrimination Policy

VR does not exclude, deny benefits, limit participation, or otherwise discriminate against any individual who is otherwise qualified in the administration of services based on:

* race;
* color;
* sex;
* national origin;
* age;
* disability; or
* religion.

### A-202-2: Civil Rights Complaints

All discrimination complaints received by VR, either directly from a customer or through an external compliance agency, must be forwarded immediately to the TWC Equal Opportunity Officer (Attn: EO Program, Regulatory Integrity Division) by the VR staff member receiving the complaint.

Detailed information about policies, services, and procedures may be found on TWC's "Equal Opportunity is the Law" web page.

### A-202-3: Allegations of Abuse, Neglect, or Exploitation

[Texas Family Code §261.101](http://www.statutes.legis.state.tx.us/SOTWDocs/FA/htm/FA.261.htm#261.101) requires a professional individual who has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any individual to immediately (within 48 hours) report the suspected abuse.

[Texas Human Resources Code §48.051](http://www.statutes.legis.state.tx.us/SOTWDocs/HR/htm/HR.48.htm#48.051) requires a professional individual to make a report if there is cause to believe that a person age 65 or older or a person with a disability is being abused, neglected, or exploited.

To report allegations of abuse, neglect, or exploitation, the individual who has cause to believe that abuse, neglect, or exploitation has occurred immediately:

* contacts law enforcement if the incident is a threat to health or safety;
* reports the incident to the appropriate investigatory agency, as listed in the table below; and
* notifies their manager, supervisor, or the appropriate contract manager of the allegation.

The supervisor, manager, or the appropriate contract manager:

* consults with TWC Regulatory Integrity Division for next steps;
* consults with TWC Office of General Counsel (OGC), as appropriate;
* consults with TWC Human Resources for next steps;
* fills out an RSM-3120, Security Incident Report, on the same day, but no later than 48 hours after the date the allegation was made, and forwards it by email to Incident Reports – RSM, and to his or her chain-of-command; and
* documents which investigatory agency was contacted in the customer's case file, including the reference number provided by the investigatory agency.

Any staff member who has cause to believe that a minor child, an adult with a disability, or an individual 65 years of age or older is at risk of or in a state of harm due to abuse, neglect, or exploitation shall immediately report the information to the appropriate investigatory agency and, if the incident is a threat to health or safety, the local law enforcement agency.

Reporting suspected abuse, neglect, or exploitation to the appropriate investigatory agency directly is required, regardless of the circumstances.

The reporting process is as follows.

| **If the alleged abuse, neglect, or exploitation occurs in:** | **The TWC staff member who has cause to believe abuse, neglect, or exploitation has occurred reports the information to:** |
| --- | --- |
| * a Texas Department of Family and Protective Services–licensed child care operation, including a residential child care operation;
* a state-licensed facility or community center that provides services for mental health, intellectual disabilities, or related conditions;
* an adult foster home (with three or fewer customers, which is not licensed by the Texas Health and Human Services Commission (HHSC));
* an unlicensed room-and-board facility;
* a school; or
* an individual's own home.
 | Texas Department of Family and Protective Services Statewide IntakeP.O. Box 149030Austin, Texas 78714-9030Voice 1-800-252-5400Fax 512-832-2090[Texas Abuse Hotline](http://www.txabusehotline.org/) |
| an HHSC-licensed entity, including:* assisted-living care facility;
* nursing home;
* adult day care;
* private intermediate care facility for individuals with intellectual disability; or
* adult foster care.
 | [Texas Abuse Hotline](http://www.txabusehotline.org/) |
| a Texas Department of State Health Services licensed substance-abuse facility or program | Texas Department of State Health ServicesSubstance Abuse Compliance GroupInvestigations1100 W. 49th St.Austin, Texas 78756Mail Code 28231-800-832-9623 |
| a Texas Department of State Health Service–licensed hospital | Texas Department of State Health ServicesFacility Licensing Group1100 W. 49th St.Austin, Texas 78756Complaint Hotline1-888- 973-0022 |

### A-202-4: Allegations of Fraud or Employee Misconduct

TWC employees should contact the following to report suspected fraud, waste, and abuse of government resources, and TWC employee misconduct:

TWC Fraud Hotline: 1-800-252-3642

TWC website: [Reporting Fraud in Programs - TWC](http://intra.twc.state.tx.us/intranet/manuals/bpm/Reporting%20Fraud%20in%20Programs%20-%20TWC)

TWC mailing address:

Texas Workforce Commission
Attn: Office of Investigations
101 E. 15th St., Room 214T
Austin, Texas 78778-0001

See the [TWC Personnel Manual, 1.19 Reporting Fraud, Theft, Waste and Program Abuse (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/ch1.pdf#page=79) for additional information.

## A-203: Mediation

Any party in an appeal may request mediation. Mediation is a voluntary process in which an appellant and a VR representative may work with a trained mediator to try to resolve a dispute with VR about determinations that affect the appellant's VR services.

Participation in the mediation process is voluntary on the part of the customer and VR.

The mediation process cannot deny or delay:

* the appellant's right to pursue resolution of the dispute through an impartial hearing held 60 days from receipt of the appellant's request for a due-process hearing; or
* any other rights described in this chapter.

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

When the VR hearings coordinator receives a request for mediation, the hearings coordinator selects an individual from a list of qualified mediators who are knowledgeable about the laws and regulations concerning VR services.

Mediation sessions are scheduled and conducted in a timely manner, and can be held over the telephone, if that is the customer's preference, or in person. If an in-person hearing is conducted, the location is usually the VR regional or field office nearest the appellant's residence, or a place agreed to by both parties. Arrangements can be made to address the need for any accommodations.

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. The parties to the mediation process may be required to sign a confidentiality pledge before the process begins.

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.

VR pays the cost of a mediation session. However, VR does not pay for costs related to the appellant's representation by counsel or another advocate selected by the appellant.

## A-204: Appeals and Hearings

An appeal, also known as a due-process hearing, provides the opportunity to:

* resolve disputes about decisions concerning furnishing or denying services; and
* submit additional evidence and information to an impartial hearing officer (IHO), who decides on the issues in dispute.

VR fairly and impartially addresses a customer's complaints about furnishing or denying services. To avoid an interruption of services, VR handles complaints promptly and at the lowest possible management level.

It is TWC's policy to explore all options in VR policy to resolve the complaint. This requires VR staff to address any complaint through an informal resolution process. However, if the VR counselor or his or her supervisor cannot resolve the complaint, the customer must be given the right to appeal.

This policy applies to customer appeals involving VR and Independent Living Services for Older Individuals Who Are Blind.

### A-204-1: Notifying the Customer of the Appeals Process

VR provides a customer (or as appropriate, the customer's representative) written notice of:

* the right to a review of VR determinations that affect the provision of services to the customer through an impartial due-process hearing as described in this chapter;
* the right to pursue mediation with respect to VR determinations that affect the customer's VR services;
* the address of OGC, with whom the customer may file a request for mediation or a due-process hearing;
* the way a mediator or IHO may be selected consistent with the requirements of this chapter; and
* the availability of the CAP to help the customer during a mediation session or due-process hearing.

The following decisions are 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 vocational counseling services or other services provided by VR.

### A-204-2: Timeliness of an Appeal

A customer who is not satisfied with a determination by VR must file the appeal within 180 days of the date on which VR made the determination. Otherwise, the appeal is not timely.

### A-204-3: Time Limit for the Hearing

An IHO must conduct a hearing within 60 days of 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 sixtieth day; or
* agree to a specific time extension, which must be:
	+ in writing;
	+ signed by the appellant; and
	+ filed with OGC.

The IHO may grant reasonable time extensions for good cause at the request of either party.

### A-204-4: Roles and Responsibilities in a Due-Process Hearing

The IHO's authority is limited to reviewing the appellant's dissatisfaction with the furnishing or denial of services by TWC-VR.

The IHO may not:

* change TWC rules, policies, or procedures;
* hear alleged violations of the Americans with Disabilities Act, § 504 of the Rehabilitation Act, or other federal laws;
* hear or decide class actions; or
* grant compensatory or monetary relief.

OGC provides administrative support to the IHO during the appeal process and is the point of contact for the appellant's questions about the due-process hearing.

The role of OGC depends on whether the appellant represents himself or herself or designates an attorney as a representative.

If the appellant represents himself or herself, or is represented by someone who is not an attorney, the role of OGC is primarily that of advisor to the VR representative. The VR representative prepares and presents the case. OGC provides all requested support to the VR representative.

Before the hearing, OGC is available to meet with the VR representative to discuss:

* developing the issues;
* gathering the evidence;
* preparing witnesses; and
* preparing exhibits.

If the appellant's representative is an attorney, OGC prepares and presents the case with the VR representative's help.

#### VR Representative

The VR representative is a VR deputy regional director or regional director.

If the appellant is not represented by an attorney, the VR representative:

* has the authority to settle the dispute with the appellant;
* prepares and presents the case;
* represents 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 VR representative:

* no longer has total responsibility for the due-process hearing;
* supports counsel legal staff who are representing VR;
* is the rehabilitation content and case file expert; and
* helps counsel legal staff to reach a settlement.

The 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.

#### The Appellant

The appellant is a customer who has filed an appeal and is the primary party to the hearing process. The purpose of the hearing is to resolve the issues that the appellant raised in the petition.

When the appellant does not have a representative, the appellant presents the case (for example, presents all the evidence and witness testimony) alone.

#### A Witness

A witness has:

* personal knowledge of the facts; or
* special knowledge (expert) of the alleged facts and issues.

A witness is usually prepared for testimony by the party's representative. An untrained witness may be asked to provide "impressions," and an expert is often asked to render an opinion based on a hypothetical question. All admissible witness testimony is entered into the record.

It is generally expected that the appellant's VR counselor is called as a witness.

### A-204-5: Impact on Services

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.

### A-204-6: Designating an Appellant's Representative

An appellant may represent himself or herself, or may designate someone to act as his or her representative by completing [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html). The representative may be an attorney licensed to practice law in Texas, but he or she is not required to be an attorney.

The appellant's representative:

* speaks for the appellant;
* handles the hearing for the appellant; and
* holds the same status in the appeals process as the:
	+ VR representative; or
	+ TWC's OGC attorney.

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

When the appellant's representative is an attorney, then:

* an attorney-client privilege relationship exists; and
* all communication with the appellant 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 the 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.

VR does not pay expenses for legal services or for witnesses requested by the appellant.

### A-204-7: Client Assistance Program

In addition to providing information about the availability of a CAP during the IPE process, TWC-VR must provide this information in any determination provided to the customer. Information specific to the hearings process is also provided by the hearings coordinator. The required information for the appellant must include the address and telephone number of the nearest CAP office.

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

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

### A-204-8: Ex Parte Communications

Unless authorized by law, the 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.

### A-204-9: Witness Mileage and Fees

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

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

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

* 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.

### A-204-10: Providing Reasonable Access

During the appeal process, VR provides reasonable access on request to the customer or other individuals with disabilities, as required by the Rehabilitation Act of 1973, as amended, §101(a)(6)(B) and §504.

Hearings or proceedings are always held at a time and place that is reasonably accessible to the appellant and any witnesses and convenient for the parties.

During the appeal process, the IHO must require that VR provide, upon reasonable notice and request, and at 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.

For an appellant who is deaf and has sign language skills, VR uses certified interpreters when possible.

A VR employee may not serve as an interpreter during an appeal process.

An appellant who has a different hearing and/or speech impairment might need communication help such as:

* special environmental arrangements; or
* other communication technologies.

Technical assistance with interpreters and other communication alternatives may be obtained from the [Texas Office of Deaf and Hard of Hearing Services](https://hhs.texas.gov/services/disability/deaf-hard-hearing).

### A-204-11: Computing Time

In computing any period stated in these procedures, the 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.

### A-204-12: Prehearing Procedure

#### Notification of Appeal

An appeal is made when the customer files a [VR1505, Request for Due Process Hearing and/or Mediation](https://twc.texas.gov/forms/index.html), with OGC. A customer may file an appeal when he or she disagrees with any determination affecting the provision of rehabilitation services.

#### Selection of the IHO

After receiving VR1505, Request for Due Process Hearing and/or Mediation, OGC randomly selects an IHO from a pool of IHOs.

#### VR Representative

If the appellant is not represented by an attorney,

* the deputy regional director prepares and presents the case; and
* OGC provides all requested support to the deputy regional director.

If the appellant is represented by an attorney, the roles change. See "Roles and Responsibilities in a Due-Process Hearing," in this section for more information.

#### Action Before the Hearing

The IHO sets the date, time, and place for the hearing and notifies the parties. Hearings can be held over the telephone or in person. If an in-person hearing is conducted, the location is usually at the VR regional or field office nearest the appellant's residence, or a place agreed to by both parties. Arrangements can be made to address the need for any accommodations.

The IHO schedules a prehearing conference to acquaint all parties with the laws, regulations, and rules to be followed during the hearing. The prehearing conference also allows all parties to raise and address concerns about any relevant matter, including:

* pending motions;
* stipulations;
* issues;
* witnesses;
* disclosures;
* reasonable access; or
* settings.

Names and addresses of witnesses must be filed before the hearing date set by the IHO.

The IHO may order that the parties be prepared to do the following at the prehearing conference:

* Discuss the prospects of settlement and report on them at the prehearing conference;
* File and discuss preliminary motions;
* Specify the facts and legal issues in the case; and
* State concisely the disputed facts and issues.

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

#### Discovery

VR must provide to the appellant, or the appellant's representative, a copy of the appellant's case file without the appellant having to request it.

A party may request in writing that the other party:

* provide the names of potential witnesses, including experts;
* summarize the anticipated testimony of the witnesses;
* state the issues as the party sees them and the factual basis for the issues; and
* provide other information requested by the IHO.

### A-204-13: Action During the Due-Process Hearing

The appellant and VR may:

* offer into evidence any relevant information;
* examine all material offered into evidence;
* object to any evidence offered;
* provide testimony;
* call witnesses to testify; and
* cross-examine witnesses.

#### 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.

#### The 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. VR may make a similar statement.
3. The IHO may allow others to make statements.
4. The appellant introduces evidence.
5. VR and any other parties may cross-examine each of the appellant's witnesses.
6. Parties may redirect and re-cross-examine.
7. Unless the statement has already been made, VR may state:
	* the claim or defense;
	* what VR expects to prove; and
	* the relief sought.
8. VR introduces evidence, if any.
9. The appellant and any other parties may cross-examine each of VR's witnesses.
10. The parties then may present rebuttal evidence.
11. 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.

At the hearing, parties must provide four copies of each exhibit offered as evidence.

No evidence may be admitted that is irrelevant, immaterial, or unduly repetitious.

### A-204-14: The Impartial Hearing Officer's Decision

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

### A-204-15: Motion for Reconsideration

Either party to a hearing may file a motion for reconsideration with OGC 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.

### A-204-16: Final Decision

The IHO acts for VR, and the IHO's decision is final.

### A-204-17: 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 district court of the United States 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 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.

## A-205: Subrogation

Subrogation is a process in which TWC recovers all or part of the costs of providing rehabilitation services when a customer:

* was injured in an accident that was somebody else's fault; and
* stands to recover monetary damages in a lawsuit or insurance settlement.

TWC-VR's statutory authority for subrogation is Tex. Lab. Code §352.058. When TWC-VR funds are expended on behalf of a customer who has filed litigation or other legal claims, TWC Office of the General Counsel (OGC) helps recover those funds.

### A-205-1: Legal Authorization

Tex. Lab. Code §352.058, provides TWC-VR to be subrogated to the customer's right of recovery when TWC-VR pays for rehabilitation or medical care services for a customer. In other words, TWC-VR is put in the customer's place and assumes the customer's right of recovery from:

* personal insurance, or
* another person for personal injury caused by the other person's negligence or wrongdoing, or
* any other source.

TWC-VR's right of subrogation is limited to the cost of the services TWC-VR has provided to the customer.

Example: TWC-VR pays for rehabilitation or medical services made necessary by a motor vehicle accident, and the customer later receives a court judgment or insurance settlement for the accident. TWC- VR is entitled to be reimbursed out of the proceeds of the settlement or judgment for the services TWC-VR provided to the customer.

TWC-VR has the ability to waive, totally or partially, TWC-VR's subrogation interest when it is found enforcement will tend to defeat the purpose of the customer's rehabilitation.

### A-205-2: Asking the Right Questions

When completing or updating the Personal Information page in ReHabWorks, the VR counselor must ask the customer whether they have retained an attorney for any issues associated with his or her disability or the services they are requesting from VR.

If the customer confirms that they have retained an attorney, then it is presumed that there is a pending claim or litigation and the VR counselor must ascertain whether TWC-VR may pursue subrogation. Refer to [A-205-3: Types of Subrogation](https://twc.texas.gov/vr-services-manual/vrsm-a-200#a205-3) for additional information about pursuing subrogation.

### A-205-3: Types of Subrogation

When the customer has retained an attorney or there is a disability related lawsuit pending, the VR counselor reviews the following scenarios with the customer to determine whether a [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html) should be completed:

#### TWC-VR pursues recovery of expenditures in the following types of cases:

1. A customer is bringing claims or suing another party for personal injury caused by the other party's negligence or wrongdoing, and when TWC-VR has expended, or will expend, funds for rehabilitation services due to the negligence or wrongdoing.
2. A customer was injured on the job, but there is no workers' compensation coverage, and the customer has filed a liability claim or lawsuit.
3. The Texas Department of Insurance, Division of Workers' Compensation, has denied the customer's claim, and the customer is appealing the denial either to the Texas Department of Insurance, Division of Workers' Compensation, or in court, and TWC-VR has provided or will provide diagnostic or restorative services related to the injury.

#### TWC does not pursue subrogation when any of the following are true:

1. The Texas Department of Insurance, Division of Workers' Compensation, is paying or will pay for the customer's medical expenses.
2. When the customer is applying for SSI or SSD benefits.
3. When TWC-VR has expended no funds and expects to spend no funds.
4. When TWC-VR expenditures in on-the-job injury cases include no medical costs relating to the original injury.

### A-205-4: Subrogation and Use of Comparable Benefits

TWC-VR usually does not purchase goods or services for customers when there are other sources to cover these expenses. However, per 34 CFR §361.53(a), VR funds can be used before a settlement or judgment is reached in a workers' compensation or liability case when funds are not available at the time needed to ensure that the customer's progress toward the employment goal is not delayed.

### A-205-5: Subrogation Procedure

If it is determined that TWC-VR may be entitled to pursue subrogation there are several steps required to ensure that OGC is notified of the pending subrogation case in a timely manner.

As part of the diagnostic interview or when completing the IPE, Joint annual Review, or IPE amendment, VR staff must complete the [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html). Include the details of the subrogation in either the diagnostic interview or another case note.

Enter "yes" in the "lawsuit pending" section of the RHW Personal Information page and send the form to the Texas Workforce Commission, Office of the General Counsel by email, fax, or regular mail to:

Legal Assistant
Office of the General Counsel
Texas Workforce Commission
101 East 15th Street, Room 608
Austin, Texas 78778

Tel: (512) 936-3511
Fax: (512) 463-1426
Email: subrogation@twc.state.tx.us

One copy of the VR3500 is filed in the customer's paper case file and another copy of the VR3500 is provided to the customer to inform them of TWC-VR's subrogation rights under Texas law.

If the customer has questions about the subrogation process, VR staff can escalate those questions through their chain of management to the TWC Office of General Counsel for additional guidance and support.

Once the [VR3500, Subrogation Report](https://intra.twc.texas.gov/intranet/gl/html/vocational_rehab_forms.html) has been completed and submitted to OGC, recovery will begin when funds that are recoverable have been encumbered,

TWC-VR field staff are not required to track a subrogated case until it is resolved.

### A-205-6: Role of Office of General Counsel in Subrogation Process

TWC Office of General Counsel provides all legal support and representation regarding subrogation, including legal intervention in lawsuits. In addition, the office acts as a liaison with the Office of the Attorney General.

Within the Office of General Counsel, the subrogation coordinator:

* helps identify cases that are appropriate for subrogation,
* begins efforts to recover costs when they are notified of a subrogation case, and
* communicates with field counselors and private attorneys to facilitate reimbursement.

### A-205-7: The Recovery Process

When OGC finalizes a settlement of a subrogation claim, the customer's attorney often will submit a request for a waiver of all or part of the TWC-VR subrogation lien. When this happens, the TWC subrogation coordinator:

* communicates with the customer's attorney regarding the subrogation claim, and
* sends a list of assessment questions to the counselor of record or the manager of that unit.

The VR counselor of record (or VR Supervisor):

* completes the list of assessment questions, and
* sends the completed document to the Subrogation Coordinator within three workdays.

When all necessary documents, including the VR counselor's assessment responses, are received, TWC-OGC will use the information provided to negotiate an appropriate settlement amount for the subrogation claim, if warranted.

The final settlement amount may range from 0 percent to 100 percent of the total lien amount claimed by TWC-VR.

## A-206: Confidentiality and Use of Customer Records and Information

This section applies to all customer records and information pertaining to individuals who apply for or receive services from VR. The [VR Release Forms Desk Aid](https://intra.twc.texas.gov/intranet/vrs/docs/vr-release-forms-desk-aide.docx) is available for additional guidance.

A customer is anyone who applies for or receives VR services.

A customer representative is any individual chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative for an applicant or eligible individual, that person is the individual's representative.

The customer representative for a child who is less than 18 years old and not emancipated or married is the parent or court-appointed guardian. The parent is presumed to be the representative unless documentation is provided showing otherwise.

For VR to safeguard the customer's confidentiality, the customer or the customer's representative must provide documentation of representation to VR. The customer's representative has responsibilities related to the provision of VR services until VR is notified by the customer or the customer's representative that the person is no longer the representative.

A customer's representative must:

* complete [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html); or
* provide power of attorney documentation, or a written statement by the customer designating a representative.

A court-appointed guardian or representative must provide current legal documentation of guardianship.

The paper case file for an emancipated or married minor child must include current legal documentation as proof of emancipation or marriage.

### A-206-1: Procedures

The VR employee contacts OGC immediately, and notifies the immediate supervisor, when:

* a customer, customer's representative, or lawyer requests that a TWC employee discuss a customer's case with a lawyer;
* a lawyer, judge, magistrate, or clerk of court calls or writes TWC concerning a subpoena; or
* the VR employee is served with a subpoena that requires a TWC employee to appear:
	+ in court;
	+ before an administrative proceeding; or
	+ for a deposition.

The VR staff member sends a copy of the subpoena via email to open.records@twc.state.tx.us or fax to 512-463-2990. Responses to subpoena, court order, or summons are centrally coordinated through the OGC Open Records Section. Release of records is prohibited unless expressly approved by OGC. The VR staff member should contact OGC via email at open.records@twc.state.tx.us or call the VR Records Coordinator at 512-936-6355 for instructions in the following circumstances.

### A-206-2: Obtaining Customer Information

Customer information usually is obtained from:

* the customer;
* another individual; and/or
* various agencies and organizations.

To authorize release of customer information at the time of application, the applicant completes and signs the [VR5060, Permission to Collect Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

### A-206-3: Safeguarding Customer Records and Information

Employees are responsible for protecting the confidential nature of information in customer case files, in accordance with this policy, and for prohibiting unauthorized access to them.

Information is not to be disclosed directly or indirectly, other than in the administration of the rehabilitation programs, unless:

* the consent of the customer has been obtained in writing;
* in compliance with a court order; or
* in accordance with a federal or state law or regulation, as described in this chapter.

The confidential information that is protected includes all customer-identifying information contained in:

* reports;
* lists; and
* other paper or electronic documents.

Specifically, this means any information that would identify an individual as being a VR customer.

Protected customer information includes information normally filed in a customer case file, such as:

* applications, medical reports, IPE, and contact reports; and
* any document held outside customer case records, such as Internal Audit reports, containing information that identifies a customer by name, Social Security number, or other means.

A customer's case files and materials scheduled for inclusion in the customer's folders are kept in a locked desk, filing cabinet, or other suitable locked container when VR employees are not present to ensure proper security.

All other information identifying the customer is kept in a locked VR building, office area, or room, when VR employees are not present to ensure proper security.

Good judgment must be exercised and reasonable precautions taken to ensure unauthorized individuals do not have access to confidential records. Employee violations of VR policy on protecting the confidential nature of customer records are grounds for appropriate disciplinary action.

All TWC employees must maintain a professional respect for the confidential nature of the data on individuals and refrain from indiscreet and/or casual conversation that might reveal to unauthorized individuals' information concerning VR customers.

### A-206-4: Release of Customer Records and Information

Unless specifically authorized by OGC, confidential customer information is released only when:

* authorized by the customer or customer's representative on a valid release;
* responding to a valid subpoena or other legal process;
* directly connected with the customer's rehabilitation; or
* needed in certain investigative and emergency circumstances.

After an Open Records request has been completed by OGC and returned to the VR counselor, the VR counselor must complete [VR1514, Request from Open Records](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), certifying that the information was released per TWC policy. The form allows the VR counselor to identify information not provided to the requestor because it would be potentially harmful to the customer if released.

#### Release of Information Obtained from Other Governmental Agencies with Restrictions on Rerelease

When information is rereleased based on a valid release by the customer or the customer's representative, personal information in the file obtained from another governmental agency or governmental organization, either local, state, or federal, can be rereleased only by, or under the conditions established by the other agency or organization, and specified in the records.

Customers are required to sign [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), during the application process. This form, when signed, is the customer's acknowledgment that personal information, by law, may be shared with other governmental entities.

It is possible that due to stringent controls, VR cannot release to the requestor the information obtained from the other agency or organization but must refer the requestor to the source to obtain the information. OGC determines when information of this type is needed to respond to a request in a court order, subpoena, or is needed for other purposes described in this chapter.

#### Release of Customer Criminal History Records Obtained from the Department of Public Safety

Occupations requiring a license permit or other credential may include a computerized criminal history search (CCH) as part of the credentialing process.

If a customer wants to work in an occupation or participate in a training program requiring a license, permit, or other type of credentialing, the VR counselor should explain to the customer why the CCH search is necessary and document in a case note the reasons for obtaining the CCH, along with a summary of the discussion with the customer.

Requests for the CCH search can be submitted only on cases determined eligible or that are in active status. Criminal history cannot be considered part of the eligibility determination process, only as part of the employment planning occurring during the comprehensive assessment and plan development process or when in active status.

To request a CCH search on a customer, the VR counselor completes [VR1510, Request for Computerized Criminal History (CCH) Search](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), and sends it by email to the regional point of contact. The CCH requested by VR covers offenses that occurred in Texas.

The CCH report is critical to the decision-making process. A VR counselor should not approve a vocational goal for any occupation requiring a license that the [Texas Department of Licensing and Regulation (TDLR)](http://www.tdlr.texas.gov/) has determined would be prohibited to individuals with criminal backgrounds. The VR counselor should discuss other vocational goals with the customer if the customer has a criminal history that precludes a licensed profession. If an occupation requires a license not issued by TDLR, the VR counselor must contact the appropriate licensing entity to determine if it is feasible for the customer to be licensed.

Refer to [VRSM B-405-4: Evaluating and Documenting Computerized Criminal History Results](https://twc.texas.gov/vr-services-manual/vrsm-b-400#b405-4) for policy and procedure on documenting and storing a CCH.

VR receives customer criminal history records from the Texas Department of Public Safety (DPS) on the assurance that the records will:

* be used for rehabilitation purposes only; and
* not be further released by VR to another organization or individual, including the customer or customer's representative, unless there is a valid release or written request from the customer or a valid court order.

Except for requests contained in valid subpoenas after the release is approved by OGC or other court orders or for a written request from a customer, the VR counselor does not honor any requests for such records and does not release the documents obtained from DPS outside of VR

Based on Government Code §411.085(a)(2).

#### Release of Information Obtained from Disability Determination Services

VR releases customer information in the customer's case record that was obtained from Disability Determination Services in accordance with the provisions of this chapter.

#### Release of Alcohol and Drug Abuse Patient Records

Customer "alcohol and drug abuse patient records" means any records in a customer's file provided to VR from an outside source and accompanied by the following written statement, attached by the source providing the records:

"This information has been disclosed to you from records protected by Federal Confidentiality rules (42 CFR 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

Alcohol and drug abuse patient records do not include records such as psychological reports or medical records, which are not accompanied by a cover sheet or other attached document containing the statement quoted above.

#### Labeling and Maintaining Alcohol and Drug Abuse Patient Records

Any time a customer's alcohol and drug abuse patient records are released, this same restrictive statement must be printed on a cover sheet and attached to the records. If the statement attached by the source providing the records to TWC was on a cover sheet, a copy of that same cover sheet may be used by VR. Otherwise, the VR counselor prints the restrictive statement on a new cover sheet and attaches it to the records.

Based on 42 CFR 2.32.

Alcohol and drug abuse patient records may not be maintained in customer files unless the file contains a properly signed [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

#### Release to Customer-Appointed Representative

Although the most common way of releasing customer information to family members and friends is using a valid release signed by the customer, occasionally information is released to an individual in his or her capacity as the customer's appointed representative. If information is to be released to an individual in his or her capacity as the customer's own representative, the customer must have appointed the representative by:

* completing the [VR1487, Designation of Applicant or Customer Representative](https://twc.texas.gov/forms/index.html);
* obtaining power of attorney; or
* providing the customer's own form designating a representative.

The VR counselor files in the customer's case file the:

* VR1487;
* power of attorney; or
* the customer's own form designating a representative.

### Disclosing or Obtaining Educational and Noneducational Records

#### Juvenile Service Provider

TWC discloses records to a juvenile service provider (JSP) to prevent the duplication of services and to improve the quality of services for certain juvenile customers. "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. (Texas Family Code §58.0051(2))

#### Educational Records

VR has the authority to obtain educational records from an independent school district or a charter school for a student who has been taken into custody or referred to a juvenile court. VR is required to certify in writing that the information will be disclosed only to another JSP to verify the identity of the student and to provide delinquency or treatment services. VR is required to provide a [VR5060, Permission to Collect Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), to a JSP when requesting educational records.

#### Noneducational Records

VR is required to disclose to a JSP a multisystem youth's personal health information or history of governmental services for the purposes of identifying the youth and to coordinate, monitor, and improve the quality of juvenile services.

Personal health information or a history of governmental services include the multisystem youth's:

* identity;
* medical records;
* assessment results;
* special needs;
* program placement; and
* psychological diagnoses.

TWC may charge a fee or may be required to pay a fee for records in accordance with the Texas Public Information Act unless an agreement with the JSP:

* prohibits the payment of a fee;
* provides for the waiver of a fee; or
* provides an alternate method of assessing a fee.

### "CONFIDENTIAL" Markings on Released Customer Records

Any customer records released must have a "CONFIDENTIAL" stamp imprint on each file, assuring that the information will:

* be safeguarded;
* be used only for the purpose provided; and
* not be released to unauthorized individuals.

Exception: If more than 10 pages are released, the pages may be stapled together with the stamp imprint on a cover page or, if appropriate, the VR counselor uses:

* [VR1515, Notice for Release of Confidential Records Pursuant to Legal Process or Investigation](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html); or
* [VR1516, Notice for Release of Confidential Records for Audit, Research, Evaluation, or Other Program Purposes](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

### Valid Release Authorized by the Customer or a Representative

When the customer or his or her representative submits a valid release, that is, a properly completed written request for information, the VR counselor must provide in a timely manner the information requested from the customer's case file. The following are valid releases and are accepted by VR:

* A properly completed [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html);
* Social Security Administration (SSA) Form SSA-827, Authorization to Disclose Information to the Social Security Administration (SSA), version dated February 2003 or later (versions of Form SSA-827 dated before February 2003 are not valid and must not be honored); or
* An authorization or form provided by the customer, which, after evaluation on a case-by-case basis, has been found to meet the criteria set forth below.

To qualify as a valid release, a customer's authorization form must:

* be in writing (either handwritten or typed);
* identify the records or other information to be released;
* be signed by the customer or a representative;
* be dated;
* identify the individual (as appropriate, by name, telephone number, address) or entity to whom VR is authorized to release the information; and
* be specifically directed to VR (Exception: Release forms that are not addressed, or releases addressed "To Whom It May Concern" or "To Custodian of Records," are valid if they identify the records to be released as VR records).

#### Examples of Invalid Releases

General release forms, not addressed to VR and not identifying the records to be released as VR records, are not valid.

Example: "I authorize any organization having any records concerning me to release those records to..."

When the customer's own form authorizes individuals or organizations that are not part of VR to release the information, the release is not valid, and VR cannot honor the request.

Example: "I authorize all doctors, hospitals, and other medical providers who have treated me to release..."

Only the records that are identified in the request may be released.

Example: "I request release of my medical records" is valid for releasing copies of medical records but not valid for release of rehabilitation records or other records in the customer's file.

Exceptions:

In responding to requests submitted on a valid release, the VR counselor may not release the following:

* Information obtained from other governmental agencies with restrictions on rerelease
* Customer criminal history records obtained from the DPS to anyone other than to the customer or the customer's representative
* Information that may be harmful to the customer, which may be released to the customer only through the customer's designated representative. (Information delivered directly to the customer's representative or a third party is releasable without regard to this restriction.) This exception does not apply to Form SSA-827 request because the information is not released directly to the customer
* Human immunodeficiency virus (HIV) test results, unless the authorization specifically states that HIV test results may be released.

#### Release to Guardian or Another Court-Appointed Representative

When a guardian or court-appointed representative of the customer asserts entitlement to receive customer information without the customer's consent, before releasing any information, the VR counselor:

* obtains from the individual a certified copy of a court-issued letter of guardianship;
* files the letter or other appointment letter in the customer's case file; and
* ensures that the appointed representative completes and provides to TWC a valid release.

This applies only to adults who have been specifically identified by the court to be the customer's representative.

#### Release to a Customer's Relative

Unless the customer's relative is the customer's authorized representative, a customer's relative may not receive the customer's records without an explicit, written, and signed authorization on a valid release by the customer or the customer's representative.

When one of the following applies, the VR counselor ensures that the relative properly completes a valid release, before releasing the information:

* The customer is a minor, and the customer's parent is the authorized representative.
* There is a judicial finding of the customer's incompetence, and a relative of the customer, who also is the customer's legal guardian, is the authorized representative.
* A relative appointed by the court, also named as the customer's guardian, is the customer's representative.

#### Release to Individuals Accompanying a Customer to a Counseling Session

When a spouse, minor child, or another individual accompanies a customer or applicant to a counseling session, unless the individual is the customer's authorized representative, a VR employee must ensure that:

* the customer completes a [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), or other valid release described in VRSM D-300: Records Management, authorizing the spouse, minor child, or other individual to be present during the discussion of confidential customer information; or
* any previously provided consent has not expired and contains information applicable to the current situation.

#### Release of HIV Test Results

VR staff members must not reveal HIV test results to anyone, including the customer, without the customer's explicit, written, and signed authorization on a valid release. The valid release must specifically authorize the release of HIV test results.

The confidentiality of customer HIV test results is strictly regulated under Health and Safety Code §85.115 and 40 TAC §101.117.

#### Release of Information Potentially Harmful to the Customer

Medical, psychological, or other information that the VR counselor (or if there is no current VR counselor, the area manager or area manager's designee) believes could be potentially harmful if released to a customer must not be released directly to the customer.

Information considered potentially harmful must be released to the customer through a third party chosen by the individual, designated by an explicit, written consent form signed by the customer using either:

* [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), or other valid release described in VRSM D-300: Records Management; or
* the customer's own form designating the third party chosen by the individual.

A third party chosen by the individual may include, among others:

* a family member;
* an advocate;
* a qualified mental health professional; or
* a medical professional.

Third parties chosen by individuals are expected to use appropriate professionals, as needed, to discuss potentially harmful information with the customer.

If the customer chooses to designate an individual already named to represent him or her before VR on one of the forms for designating a representative, then, as an exception, the additional consent form described here is not required.

When psychological or psychiatric records are stamped as "not to be shared with the customer," the VR counselor should refer the customer to the psychologist or psychiatrist limiting the distribution of the document.

#### Release to the Client Assistance Program

A customer may designate the CAP to be the third party chosen by the individual for receiving potentially harmful information.

When releasing records containing mental health information to the CAP, the VR counselor:

* obtains the customer's or court-appointed representative's signature on a valid release; and
* in the description of released records, specifically states that records related to mental health or an intellectual disability are being requested.

#### Release to a Designated Mental Health Professional

Psychological information that the counselor believes could be harmful if released to the customer may be released to a licensed psychologist whom the customer has designated as the third party chosen by the individual.

#### Release to a Designated Medical Professional

When the potentially harmful information is related to a medical condition, the representative may be a physician skilled in the diagnosis and treatment of the disorder, among others.

#### Consultation to Review Potentially Harmful Information

When comparable services and benefits are not available, TWC can pay for a single-visit consultation (in accordance with a medical access program) with a physician or psychologist, to review potentially harmful information with the customer.

Based on 34 CFR 361.38(c)(2).

#### Charging for Copies of Customer Records

VR may charge for copies of customer records. For guidance, see the [TWC Open Records Unit Manual](http://intra.twc.state.tx.us/intranet/gc/docs/iru_manual.doc).

#### Release for a Purpose Directly Connected with the Administration of the Customer's VR Program

The scope of the customer's rehabilitation is determined by the provisions of the customer's IPE.

Releasing customer information for a purpose directly connected with the customer's rehabilitation usually poses no problem. This release does not legally require express or written customer consent. At application, the customer signed [VR5061, Notice and Consent for Disclosure of Personal Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

When it is difficult to ascertain whether the purpose of the release is "directly connected with the customer's rehabilitation program," the VR counselor obtains the customer's written authorization on a valid release to provide information to an organization or individual.

Based on 34 CFR 361.38(b).

#### Release to an Employer or Prospective Employer

The VR counselor may provide to an employer or prospective employer customer information that the VR counselor considers relevant and appropriate for achieving the customer's employment goals. However, the VR counselor must not divulge any information concerning the customer's disability without the customer's permission to do so.

Additionally, the VR counselor obtains a valid release from the customer to release the information:

* when it is difficult to ascertain whether the information is relevant and appropriate to the customer's employment goals;
* before releasing information contained in customer criminal history records obtained from DPS;
* before releasing alcohol and/or drug abuse patient records; and
* before releasing HIV test results.

#### Release to Another Agency or Organization for Its Program Purposes

Unless the customer information requested by another agency or organization is for a purpose directly connected with the customer's rehabilitation program, the information may be released to another agency or organization for its own program purposes only with specific written customer authorization.

The VR counselor uses [VR1516, Notice for Release of Confidential Records for Audit, Research, Evaluation, or Other Program Purposes](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), and obtains a valid release from the customer.

After receiving a valid release containing the customer's authorization, the VR counselor enters an X in the appropriate checkboxes, signs, and attaches a copy of VR1516 as a cover sheet to the released documents. Individual documents are stamped as explained above.

#### Release to Law Enforcement and Certain Other Agencies

VR releases, with or without written consent, customer information in response to requests involving law enforcement, including official investigations concerning:

* national security violations;
* tax fraud;
* apprehension related to illegal immigration; and
* public assistance fraud.

VR also releases relevant customer information to an authorized state agency and other organizations for reports and investigations required by state law concerning:

* child support enforcement (see public law 93-647);
* child abuse; and
* abuse, exploitation, or neglect of the elderly or disabled.

Under Chapter 614 of the Texas Health and Safety Code, VR must disclose information about a customer when the disclosure supports a program under the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the customer:

* has criminal charges pending;
* has been convicted or adjudicated; or
* is in custody or under any form of criminal justice supervision.

These circumstances require TWC to provide the customer's:

* identity;
* needs, treatment, social, criminal, and vocational history;
* status of and compliance with supervision by a criminal justice agency; and
* mental and medical health history.

Except for emergency situations, or as required by law, the request must be:

* in writing;
* signed by an appropriate official, stating that the information is required for:
	+ an official investigation in connection with the above subjects; or
	+ a program under the Texas Correctional Office on Offenders with Medical or Mental Impairments; and
	+ the specific information required from the customer's record.

When releasing information to a governmental law enforcement agency, the VR counselor attaches a copy of the request and [VR1515, Notice for Release of Confidential Records Pursuant to Legal Process or Investigation](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html), with the second checkbox selected, as a cover sheet to advise the agency of the confidential nature of the documents.

The VR counselor contacts OGC for advice on all requests from law enforcement or other agencies.

#### Release to Other Individuals or Organizations in Emergency Situations

Emergency situations are those that pose a threat to the safety of the customer or others. The VR counselor releases only the information necessary to protect the customer or others. A written request is not required if time is of the essence to meet the threat, but the VR counselor or employee providing the information must carefully record all the facts and circumstances in the customer's case file.

The VR counselor contacts OGC for advice on all requests in emergency situations.

#### Release of Information to Members of Congress, the Texas Legislature, and Other Elected Officials

Customer information is released in accordance with federal and state laws, when requested by members of the US Congress, the Texas legislature, and other elected officials.

Upon receiving such a request, the VR counselor must forward the pertinent information to:

* the TWC-VR Inquiries Office (see [TWC's External Relations Manual, Chapter 2.0, Government Relations](http://intra.twc.state.tx.us/intranet/comm/docs/external-relations-manual-twc.pdf)), including a copy or complete description of the information requested for release; and
* TWC's External Relations Division, in coordination with OGC.

Then, the VR counselor:

* determines whether the appropriate release has been obtained; and
* notifies the customer in the event that a valid release is required.

A letter signed by a customer and delivered to a member of the legislature or other elected official requesting assistance is a sufficient authorization to release information. However, if the customer's records contain alcohol and drug abuse patient records or HIV test results, the customer must provide TWC with a valid release, and must specifically authorize the release of alcohol and drug abuse patient records or HIV test results. In other instances, if consent cannot be obtained, the VR counselor contacts OGC for advice.

VR staff members must not reveal HIV test results to anyone, including the customer, without the customer's explicit, written, and signed authorization on a valid release.

State law prohibits release by VR of criminal history record information documents received from the DPS to members of US Congress, the Texas legislature, or other elected officials. Requesters should be referred to DPS to obtain these records.

Based on Government Code §411.085(a)(2).

#### Release to an Organization or Individual for Audit, Research, or Evaluation

Under certain circumstances, VR may be authorized to release personal information to an organization, agency, or individual engaged in an audit, evaluation, or research for purposes that would significantly improve the quality of life for individuals with disabilities.

When such a request is received, the VR counselor contacts OGC to determine whether VR is authorized to provide the information and to obtain the documentation that must be signed by the recipient when such information is released.

Based on 34 CFR 361.38(d).

#### Release of Customer Records Pursuant to a Subpoena

TWC releases customer information to a federal or state court, an administrative hearing officer, or a judge when presented with a subpoena, a court order, or a summons. Valid subpoenas are binding upon TWC, with or without the customer's consent.

If the employee receives a subpoena, the VR counselor immediately contacts OGC directly. The employee notifies his or her immediate supervisor if he or she receives any subpoena, court order, or other summons.

#### Release to Workforce Solutions Offices

TWS staff employed by the local Workforce Solutions Offices are not VR staff. Therefore, when sharing information about a customer with Workforce Solutions Office staff, a [VR1517-2, Authorization for Release of Confidential Customer Records and Information](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html) is required.

#### Release for Media Purposes

TWC requires written consent from the customer to release, disseminate, and/or use the customer's information—including written or recorded information, photographs, and film or videotape—for print, broadcast, or electronic publication, including social media use. The TWC Media Release form is used to meet this requirement and is located on the [TWC Communications Department webpage](https://intra.twc.texas.gov/intranet/comm/html/index.html). It is available in both English and Spanish. The signed Media Release Form is kept in the customer's paper case file.

When circumstances arise that involve use of customer information in a media format, VR staff must consult with the unit management team and coordinate with [TWC Communications Department](https://intra.twc.texas.gov/intranet/comm/html/index.html).

For additional information about media and external communications, refer to the TWC Communication Department webpage and the [TWC External Relations Manual](https://intra.twc.texas.gov/intranet/comm/docs/external-relations-manual-twc.pdf).

Note: A Media Release Form is not required to provide VR services to a customer or for a customer to participate in public events associated with VR services and supports. Signing a TWC Media Release Form is only required if customer information will be shared as described in this section.

#### Release of Information from a Provider

A provider must not share with a customer documents received from TWC-VR. When a customer requests such documents, the provider must refer the customer to the customer's VR counselor.

A provider may share with a customer documents that relate to the services provided by the provider and that have been signed by the customer or legal guardian.

### A-206-5: Accessing Customer Records in ReHabWorks (RHW)

Records in RHW are confidential and can be accessed only for purposes directly associated with the provision of VR services.

Staff must not:

* access their own record of VR services in RHW;
* access RHW records of family members; or
* access any records in RHW for which they do not have an official VR business need.

For the purposes of this section, "family" includes the employee's:

* spouse;
* child;
* parent;
* grandparent;
* brother;
* sister;
* cousin;
* aunt;
* uncle;
* niece; and
* nephew.

"Family" also includes any individual related to the employee by:

* kinship;
* adoption; or
* marriage (such as a step relative, for example, stepchild, stepparent); and
* all related individuals who are dependent upon the employee or employee's family member for personal care or services on a continuing basis; and
* all individuals living in the same household with the employee or with an employee's family member (regardless of kinship).

For more information on ethics see the [TWC Personnel Manual, 1.9 Ethics Policy (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/ch1.pdf#page=32) and the [2017 Code of Professional Ethics for Rehabilitation Counselors (PDF)](https://www.crccertification.com/filebin/pdf/ethics/CodeOfEthics_01-01-2017.pdf).

## A-207: Incident Reporting and Documentation

### A-207-1: Procedure

When a VR employee or other reliable source is aware of or observes behavior that could pose a threat to other VR employees or to providers, it is important to capture the information as specifically and factually as possible by creating a case note in the customer's case file.

A VR employee creates a case note:

* if at any time during the rehabilitation process a customer verbally or physically threatens someone; or
* if the customer has a recent history of actual or threatened physical abuse.

The employee enters the case note in RHW, under the topic Requires Special Attention.

A case note must include as much information as possible about the incident, including:

* the date;
* the location;
* the names and addresses of witnesses and the people involved;
* what was said or done; and
* the names of those willing to testify.

The employee reports any incident affecting the security of a VR employee or division property to VR management and, if appropriate, to the local law enforcement authority. The employee places a copy of the police report in the paper file if the police were involved.

When other VR employees refer to the customer's online case record, the case note alerts them to use caution when working with the customer. Additional case notes must be entered as needed to maintain an accurate record of potential risks or of changes to the circumstances.

Although it is important to alert others to potential risk, VR employees must exercise extreme care in using a case note titled "Requires Special Attention" to avoid unnecessarily labeling a customer.

### A-207-2: Additional Information

TWC supports a safe and secure environment for employees, customers, clients, and visitors conducting business at all TWC locations. TWC has a system in place to ensure that employees report incidents as required by TWC policy.

Examples of incidents include, but are not limited to:

* workplace violence, including domestic violence situations in which the abuser seeks out the victim at work;
* automobile accident involving a state vehicle;
* automobile accident involving a personal vehicle used to conduct official state business;
* physical or sexual assault;
* serious medical emergency, death, or suicide;
* threat of harm to one's self or others;
* terrorist event or civil unrest;
* breach of information systems;
* theft or loss of personal or state property;
* mischievous or malicious destruction of state property;
* fire or hazardous materials event;
* service interruption that is due to an emergency or disaster;
* threat by personal contact, letter, phone, or email;
* intentional business interruption, including false alarms or bomb threats;
* suspicious package or material received by mail or discovered in the workplace; and
* a business disruption that results in activating partial or full continuity of operations activities (assigning staff members to work remotely or securing alternate facilities).

All incidents must be reported immediately as outlined in this policy and the [TWC Personnel Manual (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/).

TWC employees are also subject to state reporting requirements and must:

* know and understand the policy and procedures outlined in this chapter for incident reporting;
* inform their manager or supervisor of any situation described in this policy;
* contact law enforcement or first responders if the incident involves a threat to health or safety;
* follow the procedures in this policy to report incidents, injuries, and automobile accidents; and
* submit copies of all reports to Risk and Security Management (RSM) through the Incident Reports - RSM mailbox.

Local office managers and supervisors:

* ensure that employees know and follow the policy and procedures outlined in this policy for incident reporting;
* know and understand their role in implementing the procedures outlined in this policy;
* inform the appropriate regional program support specialist (RPSS) of incidents;
* follow the procedures to report incidents, injuries, and automobile accidents; and
* submit copies of all reports to the Incident Reports - RSM mailbox.

Headquarters managers and supervisors:

* ensure that employees know and follow the policy and procedures outlined in this policy for incident reporting;
* know and understand their role in implementing the procedures outlined in this policy;
* follow the procedures in this policy to report incidents, injuries, and automobile accidents; and
* submit copies of all reports to the Incident Reports - RSM mailbox.

Regional program support specialists:

* know and understand their role in implementing the procedures outlined in this policy;
* support local office employees who have questions about incidents;
* follow the procedures in this policy to report incidents that occur in regional locations to the RSM staff;
* review incident reports submitted and forward the reports to the Incident Reports - RSM mailbox;
* participate as subject matter experts for their region in meetings, as appropriate;
* coordinate responses from TWC;
* provide updates to the incident commander, as appropriate;
* coordinate with appropriate program managers to ensure continuation of services; and
* act as incident commanders for multiunit incidents in their region.

To report an incident at a local office:

* the employee, manager, or supervisor contacts professional first responders (911) if the incident is an immediate threat to health or safety of individuals or property;
* the employee, manager, or supervisor notifies the RPSS of the incident by telephone;
* the employee notifies a manager or supervisor of the incident; and
* the employee, supervisor, or manager fills out form RSM 4740 on the same day or within 48 hours of the incident and forwards it by email to:
	+ the RPSS;
	+ RSM;
	+ program management; and
	+ the Incident Reports - RSM mailbox.

If injuries are sustained by employees and nonemployees in conjunction with an incident, the employee must also follow the procedures outlined in the [TWC Personnel Manual (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/).

Note: A manager or supervisor completes this step for nonemployees and for employees who are unable to self-report.

### A-207-3: Security Breaches of Confidential Information

TWC defines a confidential information incident as a loss of control, a compromise, an unauthorized disclosure, an unauthorized acquisition, unauthorized access, or any similar situations in which individuals other than authorized users have, for an unauthorized purpose, access or potential access to confidential information, whether physical or electronic. The term "confidential information incident" encompasses suspected and confirmed incidents or breaches, whether intentional or inadvertent, involving confidential information, that raise a reasonable risk of harm.

To report a known or suspected breach of confidential information, the employee follows the procedures in the [TWC Personnel Manual (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/) or on the [TWC Privacy Governance](http://intra.twc.state.tx.us/intranet/gc/html/gc-privacy-index.html) page.

#### Procedures

Upon discovery of a known or suspected breach, the staff member secures any loose papers or electronic devices in a locked drawer or cabinet. If the breach is discovered on the network or in an email, the staff member notes the location or method of access or receipt.

The employee reports the incident to his or her supervisor or, if the supervisor is unavailable or if there is a potential conflict of interest, reports the incident to his or her local privacy liaison or regional program support director.

To report the incident to TWC's Privacy Office or chief information security officer, the employee uses TWC's [Open FISMA](https://openfisma.twc.state.tx.us/) site regarding compliance with the Federal Information Security Management Act.

The staff member clicks the "Report a Security Incident" button, then selects Yes for the question "Was PII Involved?" He or she makes at least one entry on each page and then clicks "Submit."

The staff member is aware of common mistakes so that his or her response to a privacy incident does not constitute another incident:

The employee does not forward or reply with compromised information (for example, information such as a Social Security number, full name, or birth date) when reporting.

When the compromised information is needed by the staff member's supervisor for TWC's Privacy Office or chief information security officer to respond to an incident, the staff member will be given instructions on whether the compromised information needs to be forwarded to officials at TWC and how to secure it properly.

### A-207-4: Injuries Unrelated to an Incident

To report injuries sustained during routine business activities by employees and nonemployees, the employee follows the procedures outlined in the [TWC Personnel Manual (PDF)](https://intra.twc.texas.gov/intranet/manuals/hr/).

## A-208: Voter Registration

On February 21, 2018, under the National Voter Registration Act of 1993 (NVRA) and Chapter 20 of the Texas Election Code, TWC-VR was designated by the Secretary of State to provide voter registration services through its VR program. TWC-VR is required to offer customers an opportunity to register to vote when they apply for services or when they report a change of address.

Note: From September 1, 2016 – May 11, 2018, policy did not require that TWC-VR staff offer voter registration services to VR customers.

VR program staff is prohibited from:

* influencing a customer's political preference or party registration;
* displaying political preference or party affiliation;
* making any statement or taking any action to discourage a customer from registering to vote; and
* documenting—in ReHabWorks case management notes or case files—any customer response or reaction to being given the opportunity to register to vote.

VR staff may email questions on policies and procedures related to TWC voter registration services to the Vocational Rehabilitation Services Manual Support mailbox at vrsm.support@twc.state.tx.us, and review [VR1680INST, Instructions for the Opportunity to Register to Vote](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html).

VR staff must inform VR customers that they can contact the Texas Secretary of State Elections Division at any time to ask questions or file a complaint, and must provide them with the contact information to do so:

Elections Division
Texas Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060
Phone: (800) 252-VOTE (8683)
Email: elections@sos.texas.gov
Website: [http://www.votetexas.gov](http://www.votetexas.gov/)

### A-208-1: Voter Registration Procedures

VR staff offer the customer the opportunity to register to vote at the time of application for services, or when the customer reports a change of address.

#### Application for Services

During application for services, VR program staff must:

* provide a voter registration application to the customer and help the customer complete the voter registration application, if the customer accepts assistance;
* mail the completed application for the customer unless the customer declines assistance with submitting the application and indicates that the customer wishes to submit the completed application themselves to the voter registrar or take the blank application form with them, in which case inform the customer that they can submit it themselves to the voter registrar;
* complete and obtain the customer's signature on [VR1680, Opportunity to Register to Vote](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html);
* sign and date VR1680 and retain it for 22 months in an office file apart from the customer's case file; and
* document in a case note that voter registration services were provided according to Vocational Rehabilitation Services Manual policy.

#### Change of Address

When a customer reports a change of address in-person, VR program staff must:

* offer the customer the opportunity to register to vote using the new address;
* provide a Texas Voter Registration Application to the customer and help the customer complete the voter registration application, if the customer accepts assistance;
* mail the completed application for the customer unless the customer declines assistance with submitting the application and indicates that the customer wishes to submit the completed application themselves to the voter registrar or take the blank application form with them, in which case inform the customer that they can submit it themselves to the voter registrar;
* complete and obtain the customer's signature on [VR1680, Opportunity to Register to Vote](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html);
* sign and date VR1680 and retain it for 22 months in an office file apart from the customer's case file; and
* document in a case note that voter registration services were provided according to Vocational Rehabilitation Services Manual policy.

When a customer reports a change of address by phone, email or other communication, it is not required to obtain the customer's signature on VR1680. VR program staff must:

* offer the customer the opportunity to register to vote using the new address;
* mail a Texas Voter Registration Application and [VR1681, Texas Voter Registration Application Letter](http://intra.twc.state.tx.us/intranet/gl/html/vocational_rehab_forms.html);
* help the customer complete the voter registration application, if customer accepts assistance; and
* document in a case note that a Texas Voter Registration Application and VR1681 were mailed to the customer's new address, and that voter registration services were provided according to Vocational Rehabilitation Services Manual policy.