

**MEMORANDUM
DEPARTMENT OF EDUCATION
OSERS/RSA Washington, D.C. 20202**

TO: RSA Regional Commissioner Region IX
FROM: Commissioner of Rehabilitation Services
Subject: CAP's Discretion to Determine Services to be Provided
PRM 1003-86-18
November 21, 1986

Question: Is the CAP obligated to assist a client in preparing for a fair hearing when the CAP has determined that the client's dispute lacks merit?

Discussion: The type of assistance requested by the client, preparation for a fair hearing, is one type of assistance that CAP can provide to a client in pursuing administrative remedies when necessary to ensure the protection of the client's rights under the Act. However, provision of this assistance is not an absolute entitlement or right of every individual eligible for CAP services. CAP does not have to provide every available type of assistance to every client who requests it. The CAP has the discretion to determine what CAP services will be provided and when it is appropriate to provide such services to a client.

This discretion to determine the CAP services to be provided to an individual client or client applicant is based on the Department of Education Secretary's belief "that States should generally be afforded flexibility and discretion on matters not covered by the statute or by other applicable laws and regulations." (Response to general comments on CAP final regulations at 50 Fed Reg 9964 (1985)). Further, "while the Secretary expects each client assistance program to provide a mix of services that will most effectively meet the needs of clients and client applicants in that State, the Secretary believes it would be inappropriate, particularly in light of the limited funds available under this program, to specify the extent to which each State must provide particular services." (Response to comment on Section 370.10 at Fed Reg. 9965 (1985)).

While this discretion to determine what services shall be provided remains with the CAP, the needs of the individual should be given full consideration. In making these determinations it is important to bear in mind that the basic purpose of the CAP system is to assist the client to productively access rehabilitation programs. It must be remembered that the appeal process provides, in addition to simple determination of issues in controversy, opportunities for alternative solutions to be identified and agreed upon. The responsibility of CAP is to assist clients and client applicants solve problems effectively and in ways that will enhance their quality of life and that of the nation.

Response: The CAP is not obligated to assist a client in preparing for a fair hearing when the CAP has determined that the client's dispute lacks merit. The CAP has the discretion to determine when it is appropriate to provide such services to a client, however, the CAP is expected to meet its basic purpose of assisting clients and client applicants to resolve differences and find alternative solutions when possible.

Justin W. Dart, Jr.
RSA Commissioner