

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues that are, or otherwise would be, considered at the hearing. Negotiation and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

**§ 1326.82 Records to the public.**

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

**§ 1326.83 Use of gender and number.**

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

**§ 1326.84 Suspension of rules.**

Upon notice to all parties, the Secretary or the Secretary's designee may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

**§ 1326.85 Filing and service of papers.**

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

**§ 1326.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Secretary, or his or her designee, to the State Council on Developmental Disabilities and the

Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing and the issues that will be considered. The notice must be published in the FEDERAL REGISTER.

**§ 1326.91 Time of hearing.**

The hearing must be scheduled not less than 30 days, nor more than 60 days after the notice of the hearing is mailed to the State.

**§ 1326.92 Place.**

The hearing must be held on a date and at a time and place determined by the Secretary, or his or her designee with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

**§ 1326.93 Issues at hearing.**

(a) Prior to a hearing, the Secretary or his or her designee may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed or such later date as may be agreed to by the Secretary or his or her designee.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Secretary, or his or her designee, finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Secretary, or his or her designee, must terminate the hearing.

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under part B of the Act, of the State