

**§ 1386.80**

other relevant material to the Commissioner, and has provided the State Council and State agency with copies of the material.

(c) The Commissioner, after review of the records and the recommendation of the Regional Office, has determined whether the State plan, in whole or in part, is not approvable. Notice of this determination has been sent to the State and contains appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with 45 CFR part 1386, subpart D.

(d) The Commissioner's decision has been forwarded to the State Council and agency by certified mail with a return receipt requested.

(e) A State has filed its request for a hearing with the Assistant Secretary within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Assistant Secretary. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing, otherwise the date of receipt shall be considered the date of filing.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

**Subpart D—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports and Federal Requirements**

GENERAL

**§ 1386.80 Definitions.**

For purposes of this subpart:

*Assistant Secretary* means the Assistant Secretary for Children and Families (ACF).

*ADD* means Administration on Developmental Disabilities, Administration for Children and Families.

*Presiding officer* means anyone designated by the Assistant Secretary to conduct any hearing held under this subpart. The term includes the Assist-

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ant Secretary if the Assistant Secretary presides over the hearing.

*Payment or Allotment* means an amount provided under Part B or C of the Developmental Disabilities Assistance and Bill of Rights Act. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms "Federal financial participation," "the State's total allotment," "further payments," "payments," "allotment" and "Federal funds."

[61 FR 51161, Sept. 30, 1996]

**§ 1386.81 Scope of rules.**

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

(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 which are, or otherwise would be, considered at the hearing. Negotiations, 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.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987]

**§ 1386.82 Records to be 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.

**§ 1386.83 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.

**§ 1386.84 Suspension of rules.**

Upon notice to all parties, the Assistant Secretary 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.

**§ 1386.85 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.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

PRELIMINARY MATTERS—NOTICE AND PARTIES

**§ 1386.90 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Assistant Secretary to the State Developmental Disabilities Council 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 which will be considered. The notice must be published in the FEDERAL REGISTER.

[49 FR 11779, Mar. 27, 1984, as amended at 61 FR 51161, Sept. 30, 1996]

**§ 1386.91 Time of hearing.**

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

**§ 1386.92 Place.**

The hearing must be held on a date and at a time and place determined by the Assistant Secretary 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.

[61 FR 51162, Sept. 30, 1996]

**§ 1386.93 Issues at hearing.**

(a) Prior to a hearing, the Assistant Secretary 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 Assistant Secretary.

(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 Assistant Secretary 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 Assistant Secretary 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 plan or the activities of the State's Protection and Advocacy System, the Assistant Secretary must provide all parties other than the Department and the State (see §1386.94(b)) with the statement of his or her intention to remove an issue from the hearings and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's protection and advocacy system on which the State and the Assistant Secretary have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under Part B of the Act with the State plan or with Federal requirements or compliance of the State's Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed