

Guidance for Migrant Education Program (MEP) Eligibility Under the Every Student Succeeds Act (ESSA)



May 23, 2017

OBJECTIVES

- Understand the basic requirements for MEP eligibility under the ESSA
- Become familiar with the Department's Non-Regulatory Guidance on Child Eligibility (Chapter II)
- Accurately apply these requirements, in accordance with the Department's Guidance, using eligibility scenarios

REFERENCES

Statute

- Sections 1115(b) and (c), 1304(c)(2), and 1309 of the *Elementary and Secondary Education Act (ESEA)* of 1965, as amended by the *Every Student Succeeds Act (ESSA)* of 2015

Code of Federal Regulations

- 34 C.F.R. 200.81, 200.103, and 200.89(c)
- *National Certificate of Eligibility (COE) Instructions* (OMB)
- Control Number 1810-0662)

Guidance

- Chapter II of the *Non-Regulatory Guidance for the Title I, Part C Education of Migratory Children*³ (March 2017)

TRANSITION TO ESSA'S MEP ELIGIBILITY REQUIREMENTS

- New statutory provisions under the ESSA for the MEP will take effect for Fiscal Year (FY) 2017 grants awarded to SEAs on July 1, 2017.
- All MEP-specific statutory provisions in Title I, Part C of the ESEA, as amended by the ESSA, including the program definitions affecting child eligibility, will also be effective on July 1, 2017.
- All SEAs must begin using the revised national Certificate of Eligibility (COE)* for all MEP eligibility determinations made on or after July 1, 2017.

*Provided it has by then been approved by the Office of Management and Budget (OMB)



SUMMARY OF CHANGES TO MEP ELIGIBILITY

CHANGES TO MEP PROGRAM DEFINITIONS —SECTION 1309

(2) **MIGRATORY AGRICULTURAL WORKER.**— The term ‘migratory agricultural worker’ means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in agriculture, which may be dairy work or the initial processing of raw agricultural products. If an individual did not engage in such new employment soon after a qualifying move, such individual may be considered a migratory agricultural worker if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal agricultural employment.

(3) **MIGRATORY CHILD.**—The term ‘migratory child’ means a child or youth who made a qualifying move in the preceding 36 months—

- (A) as a migratory agricultural worker or a migratory fisher; or
- (B) with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

CHANGES TO MEP PROGRAM DEFINITIONS —SECTION 1309

(4) **MIGRATORY FISHER.**—The term ‘migratory fisher’ means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in fishing. If the individual did not engage in such new employment soon after the move, the individual may be considered a migratory fisher if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal fishing employment.

(5) **QUALIFYING MOVE.**—The term ‘qualifying move’ means a move due to economic necessity—

(A) from one residence to another residence; and

(B) from one school district to another school district, except—

- i. in the case of a State that is comprised of a single school district, wherein a qualifying move is from one administrative area to another within such district; or
- ii. in the case of a school district of more than 15,000 square miles, wherein a qualifying move is a distance of 20 miles or more to a temporary residence.

WHAT REMAINS THE SAME

1. Children ages birth – age 21, who are entitled to a free public education through grade 12 in the State (or are not yet at a grade level at which the local educational agency (LEA) provides a free public education- e.g., preschool children) *(see Chapter II, A1, A3, and A4 of MEP Non-Regulatory Guidance (NRG))*

2. Children who moved:
 - a) As a migratory agricultural worker or migratory fisher, OR
 - b) With or to join a parent/guardian or spouse who is a migratory agricultural worker or migratory fisher*(see Chapter II, A1 of MEP NRG)*

3. Migratory children are eligible for the MEP for 36 months from their most recent qualifying arrival date (QAD) *(see Chapter II, E1 of MEP NRG)*

“QUALIFYING WORK”

We use the abbreviated term “qualifying work” to mean temporary or seasonal employment (or personal subsistence) in agriculture or fishing. *(see Chapter II, C3 and F27 of MEP NRG)*

- “Temporary employment,” “seasonal employment,” and “personal subsistence”: program regulations definitions *(see Chapter II, G1 – G12 and F28 of MEP NRG)*
- Employment in agriculture: program regulations definition of “agricultural work” + *dairy work or the initial processing of raw agricultural products* *(see Chapter II, F1 – F15, F20 – 22, F24 – F27 of MEP NRG)*
- Employment in fishing = program regulations definition of “fishing work” *(see Chapter II, F16 – F19, F20, F23 – F26 of MEP NRG)*

“QUALIFYING MOVE” AND “QUALIFYING ARRIVAL DATE” (QAD)

“Qualifying Move”

- Due to economic necessity; and
 - One residence to another; and
 - From one school district to another school district, with specific exceptions:
 - For single-district States, must be from one administrative area to another
 - For districts of 15K+ square miles, must be a move of *20+ miles to a temporary residence*

(see Chapter II, D1 – D15 of MEP NRG)

“Qualifying Arrival Date” (QAD)

- Date that begins a migratory child’s 36 months of eligibility
- The date that the child moves as a migratory agricultural worker/fisher or, (if the child is not the worker) the date that the child moves with, or to join, the worker.
- If the child and worker moved together, QAD = date they arrived in the district
- To join moves:
 - If the child moved before the worker, QAD= date that the worker arrived
 - If the child moved after the worker, QAD = date the child arrived

(see Chapter II, E1 – E4 of MEP NRG)

WHAT HAS CHANGED

Definitions of “migratory agricultural worker” and “migratory fisher”:

1. It is no longer necessary to determine whether the worker moved “in order to obtain” qualifying work, or any employment
(see Chapter II, C4 of MEP NRG)
2. “Engaged” in qualifying work soon after the move instead of “obtained” *(see Chapter II, C1 and C2 of MEP NRG)*
3. Modified criteria for individuals who did not engage in new qualifying work soon after their qualifying move *(see Chapter II, C8 – C 18 of MEP NRG)*

WHO IS A MIGRATORY AGRICULTURAL WORKER OR MIGRATORY FISHER?

1. Engaged in new qualifying work soon after a qualifying move.
2. If the individual does not meet the criteria above, he or she made a qualifying move and:
 - a) Actively sought new qualifying work;
AND
 - b) Has a recent history of moves for qualifying work

INDIVIDUALS WHO DID NOT ENGAGE IN NEW QUALIFYING WORK SOON AFTER A QUALIFYING MOVE

NCLB and 34 CFR 200.81(d)

- Must have moved in order to obtain qualifying work specifically AND
 - Have a *prior* history of moves to obtain qualifying work; OR
 - There must be *other credible evidence* that the worker actively sought qualifying work soon after the move, but for reasons beyond the worker's control, the work was not available

ESSA

- Must have:
 - Actively sought qualifying work; AND
 - Have a *recent* history of moves for qualifying work

“SOON AFTER,” “ACTIVELY SOUGHT,” AND “RECENT HISTORY”

- **“Soon After”**: *(see Chapter II, C5 – C7 of MEP NRG)*
 - Within 60 days after the qualifying move
- **“Actively Sought”**: *(see Chapter II, C10 - C12 of MEP NRG)*
 - May occur before or after the qualifying move (e.g., applied for qualifying work at a particular agricultural or fishing job site, applied for such employment before moving, or moved reasonably believing that, based on newspaper ads or word of mouth, such work would be available after the move); and
 - Should occur within 60 days of the qualifying move
- **“Recent History of Moves for...”**: *(see Chapter II, C13 – C18 of MEP NRG)*
 - Moves that resulted in engagement in qualifying work; and
 - At least two moves; and
 - Within 36 months of the recruiter’s interview



QUESTIONS?



ELIGIBILITY SCENARIOS

SCENARIO # 1

On June 1, 2017, Jessica moves with her two children, ages 6 and 8, from Omaha, NE to Wichita, KS, to live with relatives after losing her job in Omaha. Jessica is hoping to find work similar to her last job in housekeeping, but finds that she can earn more money in a job at a poultry-processing facility. She only plans to stay for a few months to save money, and begins work deboning chicken at the poultry plant on July 15, 2017.

Are Jessica's children eligible for the MEP?

Scenario #1:

Are Jessica's children eligible for the MEP?

YES

- Are the children under age 22 and still entitled to a free public education (through grade 12) in the State? **YES**
- Did the children move in the preceding 36 months, on their own OR with, or to join, a parent/guardian or spouse? **YES – with a parent/guardian**
- Was the children's move with the parent/guardian or spouse a "qualifying move"- i.e., due to economic necessity, from one residence to another, and from one school district to another? **YES**
- Is the parent/guardian or spouse with whom the children moved a "migratory agricultural worker" or "migratory fisher"? **YES. The children's mother is a migratory agricultural worker because she made a qualifying move in the preceding 36 months, soon after which she engaged in new qualifying work.**

SCENARIO #2

Joaquin, a 17-year old out-of-school youth, had not moved since he was about 10 years old. Because he could not find employment in his hometown of Eureka, CA, he moved to Yakima, WA on July 1, 2017. Within a week of moving to Yakima, he applied for seasonal employment picking apples, but did not get the job.

Is Joaquin eligible for the MEP?

Scenario #2:

Is Joaquin eligible for the MEP?



- Is the child under age 22 and still entitled to a free public education (through grade 12) in the State? **YES (scenario assumes he is still entitled to free public education in the State)**
- Did the child move in the preceding 36 months, on his own, OR with, or to join, a parent/guardian or spouse? **YES- on his own**
- Was the child's move on his own, a "qualifying move"- i.e., due to economic necessity, from one residence to another, and from one school district to another? **YES**
- Did he make a qualifying move as a "migratory agricultural worker" or "migratory fisher"? **NO. He did not engage in new qualifying work soon after the move. Although he actively sought new qualifying work after the move, he does not have a recent history of moves for qualifying work.**

SCENARIO #3

Paul, age 13, lived with his parents in Portland, ME. Unable to find work in Portland, Paul's father moved on his own to Presque Isle on September 1, 2016, and engaged in seasonal employment harvesting potatoes (within one week of his move). Paul's father returned to Portland on October 20, 2016. Shortly thereafter, Paul's mother was able to find work in a restaurant in Bangor, ME. So, Paul and his parents moved from Portland to Bangor on November 1, 2016. The ME MEP identifies Paul on July 1, 2017.

Is Paul eligible for the MEP?

Scenario #3:

Is Paul eligible for the MEP?

YES

- Is the child under age 22 and still entitled to a free public education (through grade 12) in the State? **YES**
- Did the child move in the preceding 36 months, on his own OR with, or to join, a parent/guardian or spouse? **YES – with parent/guardian**
- Was the child's move with the parent/guardian or spouse a "qualifying move"- i.e., due to economic necessity, from one residence to another, and from one school district to another? **YES**
- Is the parent/guardian or spouse with whom the child moved a "migratory agricultural worker" or "migratory fisher"? **YES. The child's father is a migratory agricultural worker because he made a qualifying move in the preceding 36 months, soon after which he engaged in new qualifying work.**

SCENARIO #4

Diana, age 15, and her parents lived in Yukon, AK. Diana and her parents moved to Dillingham, AK on June 20, 2016. For as long as Diana can remember, the family has moved to Dillingham each summer, where her father worked a temporary job canning salmon. When they moved in June 2016, Diana's father, Joe, went to the cannery where he had worked for the previous two summers and found that the cannery had closed.

Is Diana eligible for the MEP?

Scenario #4 :

Is Diana eligible for the MEP?

YES

- Is the child under age 22 and still entitled to a free public education (through grade 12) in the State? **YES**
- Did the child move in the preceding 36 months, on her own OR with or to join a parent/guardian or spouse? **YES – with parent/guardian**
- Was the child's move with the parent/guardian or spouse a “qualifying move”- i.e., due to economic necessity, from one residence to another, and from one school district to another? **YES**
- Is the parent/guardian or spouse with whom the child moved a “migratory agricultural worker” or “migratory fisher”? **YES. The child's father is a migratory fisher because he made a qualifying move in the preceding 36 months, after which he actively sought new employment in qualifying work, AND he has a recent history of moves for qualifying work.**



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Additional resources, including the MEP Non-Regulatory Guidance, are available on RESULTS.ed.gov