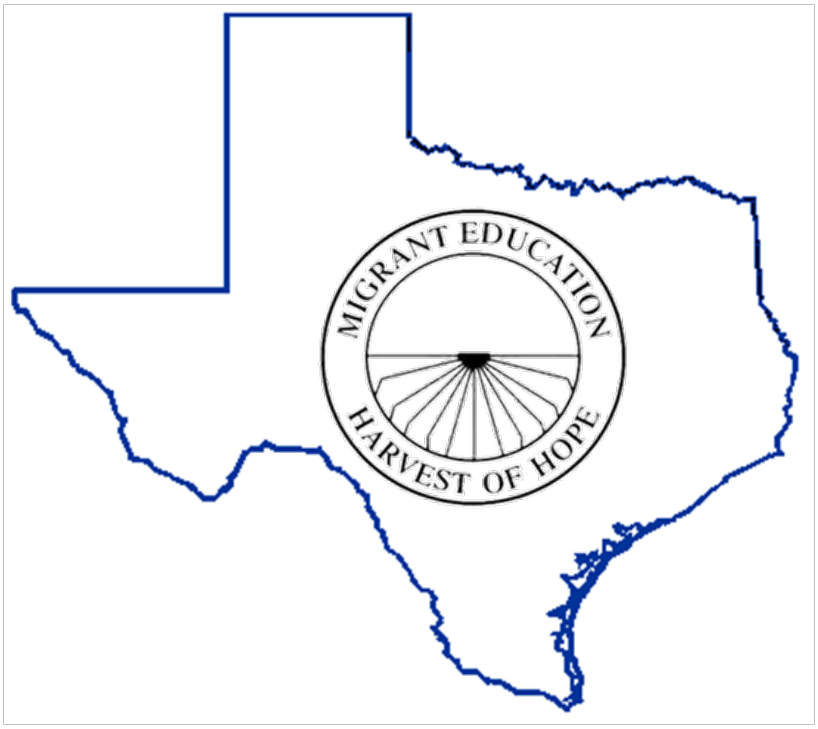
Title I, Part C
Education of Migratory Children

Texas Migrant Education Program Guidance



Based on October 23, 2003
Section A: Child Eligibility (Revised August 2010)
U.S. Department of Education Guidance

Copyright Statement

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INTRODUCTION

The Migrant Education Program (MEP) is authorized by Part C of Title I of the Elementary and Secondary Education Act (ESEA). The MEP provides formula grants to states to establish or improve education programs for migrant children. These grants assist states in improving educational opportunities for migrant children to help them succeed in the regular school program, meet the challenging State academic content and student academic achievement standards that all children are expected to meet, and graduate from high school.

STATUTORY PURPOSE OF THE PROGRAM

The general purpose of the MEP is to ensure that migrant children fully benefit from the same free public education provided to other children. To achieve this purpose, the MEP helps States and LEAs address the special educational needs of migrant children to better enable migrant children to succeed academically. More specifically, the purposes of the MEP are to:

- Support high-quality and comprehensive educational programs for migrant children in order to reduce the educational disruption and other problems that result from repeated moves;
- Ensure that migrant children who move among the states are not penalized in any manner by disparities among the states in curriculum, graduation requirements and State academic content and student academic achievement standards;
- Ensure that migrant children are provided with appropriate educational services (including supportive services) that address their special needs in a coordinated and efficient manner;
- Ensure that migrant children receive full and appropriate opportunities to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet;
- Design programs to help migrant children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit their ability to do well in school, and to prepare them to make a successful transition to postsecondary education or employment; and
- Ensure that migrant children benefit from state and local systemic reforms.

STATE APPLICATION AND FUNDING

Under the MEP, the United States Department of Education (USDE) awards grants to States for the purpose of establishing and improving programs and projects that are designed to meet the special educational needs of children of migratory agricultural workers or migratory fishers. Grants are awarded after review and approval of an application that each State submits to the USDE.

SECTION A – CHILD ELIGIBILITY

As of August 2010, the guidance provided on child eligibility in this section replaces the section (Section II) on child eligibility that was part of the guidance USDE issued on October 23, 2003.

Children are eligible to receive MEP services if (1) they meet the definition of "migratory child" and "eligible children" in the statute and regulations that apply to the MEP (or met them previously and qualify for continuation of services under section 1304(e)), and if (2) the basis for their being a "migratory child" is properly recorded on a certificate of eligibility (COE). The term "migratory child" is defined in section 1309(2) of the statute and § 200.81(e) of the MEP regulations. The term "eligible children" is defined in section 1115(b)(1)(A) of the statute and the term "children" is defined in § 200.103(a) of the Title I regulations. Determining whether a child meets these definitions requires careful consideration and depends on a recruiter's assessment of information presented by a parent, spouse or guardian responsible for the child, or by the child if the child is the migratory worker who is eligible for MEP services in his or her own right.

This section discusses issues of child eligibility and how LEAs may make these important determinations.

STATUTORY REQUIREMENTS:

Sections 1115(b)(1)(A) and 1309 of Title I, Part C

REGULATORY REQUIREMENTS:

34 CFR 200.81, 200.103

Migratory Child

A1. What is the definition of "migratory child?"

According to sections 1115(b)(1)(A) (incorporated into the MEP program by virtue of sections 1304(c)(2)) and 1309(2) of the statute and §§ 200.81(e) and 200.103(a) of the regulations, a child is a "migratory child" and is eligible for MEP services if all of the following conditions are met:

1. The child is not older than 21 years of age; *and*

2. The child is entitled to a free public education (through grade 12) under State law or is below the age of compulsory school attendance; *and*

3. The child is a migratory agricultural worker or a migratory fisher, or the child has a parent, spouse or guardian who is a migratory agricultural worker or a migratory fisher; *and*

4. The child moved within the preceding 36 months in order to seek or obtain qualifying work, or to accompany or join the migratory agricultural worker or migratory fisher identified in paragraph 3, above, in order to seek or obtain qualifying work; *and*

5. With regard to the move identified in paragraph 4, above, the child:

a. Has moved from one school district to another; *or*

b. In a State that is comprised of a single school district, has moved from one administrative area to another within such district; *or*

c. Resides in a school district of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence to engage in or to accompany or join a parent, spouse, or guardian who engages in a fishing activity. (This provision currently applies only to Alaska.)

A2. Is there a difference between a child who is eligible to receive MEP services and one who is counted for State funding purposes?

Yes. Any child, birth through age 21, who meets the statutory definition of "migratory child" (or who is eligible for continuation of services under section 1304(e)) is eligible to receive MEP services. However, as provided in section 1303(a)(1)(A) of the statute, only migratory children ages 3 through 21 may be counted for State funding purposes.

A3. Is a child eligible for MEP services after finishing high school?

Generally, no. Under section 1309(2), a migratory child is a "child" who meets the specific eligibility requirements for the MEP. While the MEP statute does not further define who is a "child," section 1304(c)(2) incorporates by reference the requirement to carry out MEP projects consistent with the basic objectives of section 1115(b), which defines eligible children to include:

(i) children not older than age 21 who are entitled to a free public education through grade 12, and

(ii) children who are not yet at a grade level at which the local educational agency provides a free public education.

See also 34 CFR § 200.103(a).

Given paragraph (i), once a migrant child has received a high school diploma or its equivalent, the individual is generally no longer entitled under State law to a free public education through grade 12 and, therefore, is not eligible as a "child" to receive MEP services.

However, in some circumstances, it might be possible that a child who finished high school may be eligible for MEP services because, under State law, he or she may still be entitled to a free public education through grade 12. For example, a child who failed the State high school exit exam *might* be allowed to re-enroll in high school under State law. If so, as long as the child is not yet 22 years of age and meets the definition of "migratory child," the child remains eligible for MEP services.

A4. Is a child who graduated from high school in his or her native country eligible for the MEP?

If the child meets the definition of "migratory child," he or she is eligible for the Texas MEP.

A5. What is the definition of "out-of-school youth?" Are such youth eligible for MEP services?

For the purposes of the MEP, an "out-of-school youth" is a child up through age 21 who is entitled to a free public education in the State and who meets the definition of "migratory child," but who is not currently enrolled in a K-12 school. This could include students who have dropped out of school, youth who are working on a general education development (GED) credential outside of a K-12 school and youth who are "here-to-work" only. It would not include children in preschool. Out-of-school youth who meet the definition of a "migratory child" as well as all other MEP eligibility criteria are eligible for the MEP.

A6. What is the definition of "emancipated youth?"

An emancipated youth is a child under the age of majority (in accordance with State law) who is no longer under the control of a parent or guardian and who is solely responsible for his or her own welfare. In order to be eligible for the MEP this youth may not be older than 21 years of age.

A7. Are emancipated youth eligible for MEP services?

Yes. Emancipated youth are eligible for the MEP so long as they meet the definition of a "migratory child" and all other MEP eligibility criteria. Out-of-school youth may or may not be "emancipated youth." See A5 of this section.

<u>Guardians and Spouses</u>

A8. May MEP eligibility be based on a guardian's status as a migratory worker?

Yes. Section 200.81(e) of the regulations specifically includes a child's move to accompany or join a guardian who is a migratory agricultural worker or a migratory fisher as a basis for a child's eligibility.

A9. Who is a "guardian" for MEP purposes?

A guardian is any person who stands in the place of the child's parent ("*in loco parentis*"), whether by voluntarily accepting responsibility for the child's welfare or by a court order.

A10. Is a legal document necessary to establish guardianship?

No. As long as the guardian stands in the place of the child's parent and accepts responsibility for the child's welfare, a legal document establishing the guardianship is not necessary.

A11. May a sibling act as a guardian to other siblings?

Yes. If a working sibling acknowledges responsibility for the child's welfare and stands in the place of the child's parent, the child may be eligible based on the working sibling's qualifying employment and qualifying move.

A12. Must a recruiter see a marriage certificate or other legal document in order to establish a spousal relationship when MEP eligibility is based on a spouse's status as a migratory worker?

No.

Migratory Workers

A13. Who is a "migratory agricultural worker?"

According to § 200.81(d) of the regulations, a "migratory agricultural worker" is a person who, in the preceding 36 months, has moved from one school district to another, or, in a State that is comprised of a single school district, from one administrative area to another, in order to obtain temporary employment or seasonal employment in agricultural work (including dairy work).

A14. Who is a "migratory fisher?"

According to § 200.81(f) of the regulations, a "migratory fisher" is a person who, in the preceding 36 months, has moved from one school district to another, or, in a State that is comprised of a single school district, from one administrative area to another, in order to obtain temporary employment or seasonal employment in fishing work. The definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles and moved a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work.

A15. Does an individual's visa status as an H-2A temporary agricultural worker have any impact on whether he or she may be considered a migratory child, migratory agricultural worker or a migratory fisher?

No. The only criteria for being considered a migratory child, migratory agricultural worker or migratory fisher are those established in § 200.81(d), (e) or (f) of the regulations.

Qualifying Move

A16. What is a "qualifying move?"

A qualifying move:

1. is across school district boundaries; *and*
2. is a change from one residence to another residence; *and*
3. is made due to economic necessity; *and*
4. is made in order to obtain qualifying work; *and*
5. occurred in the preceding 36 months.

A17. What is the definition of "move" or "moved?"

Under § 200.81(g) of the regulations, "move" or "moved" means "a change from one residence to another residence that occurs due to economic necessity."

Change of Residence and Economic Necessity

A18. What is the definition of a "residence?"

For the purposes of the MEP, a "residence" is a place where one lives and not just visits. In certain circumstances, boats, vehicles, tents, trailers, etc., may serve as a residence.

A19. What does it mean to "change from one residence to another residence?"

This means leaving the place where one currently lives and going to a new place to live, and not just to visit. Generally, a person who goes to a new place to seek or obtain work, or because the person cannot afford to stay in his or her current location, is leaving the place where he or she currently lives and is going to a new place to live–and thus, has "changed from one residence to another residence" (or "changed residence"). Similarly, a person who goes to a new place to help sick or elderly family members on an extended basis is living with those family members, and thus might meet the MEP's change of residence requirement if the person makes a return move to obtain qualifying work.

Thus, a person who leaves, on a short-term basis, the place where he or she lives to, for example, (1) visit family or friends, (2) attend a wedding or other event, (3) take a vacation, (4) have an educational or recreational experience or (5) take care of a legal matter, would not have "changed residence" because the person did not go to the new place to live, but rather to visit. Similarly, this person would not have "changed residence" upon returning home from one of these visits. Note that, in these examples, the person also has not "moved" within the meaning of § 200.81(g) of the regulations since the move was not made "due to economic necessity." See also A20 of this section.

A20. What does it mean to move "due to economic necessity?"

This means that the worker moved either because he or she could not afford to stay in the current location, or went to a new location in order to earn a living. In general, if the worker's move is related to work, e.g., a move to seek or obtain work, a move because of the loss of work or a move because of the unavailability of work, the worker moved "due to economic necessity." However, with respect to a move that is of such short duration (e.g., less than a week) that an independent reviewer might question whether the move was really "due to economic necessity," the LEA needs to document in the comment section of the COE Supplemental Documentation Form (1) the distance from the homebase to the temporary residence; and (2) where the family resided on a temporary basis. See the *Texas Manual for the Identification and Recruitment of Migrant Children* for further guidance on this issue.

A21. If a worker and his or her children go on vacation and the worker engages in qualifying work during the vacation, would the children qualify for the MEP?

In general, as noted in A19 of this section, vacations (e.g., visits to family and friends, trips for entertainment purposes, etc.) do not constitute a change of residence, much less a change of residence due to economic necessity. In these cases, the family is not moving because it cannot afford to stay and live in the current location or because it needs to go to a new location to make a living. Therefore, even if the worker engages in qualifying work, a move for vacation purposes is not a qualifying move. There might be cultural differences in how people describe the reason for their relocation and, therefore, it is recommended that the recruiter question the worker carefully to determine what is meant when the worker asserts that his or her family is going on or returning from a vacation during which family members worked.

A22. Is determining whether a worker changed residence due to economic necessity sufficient for determining that the worker made a qualifying move?

No. In order for a move to qualify under the MEP, all of the conditions in A16 of this section must be met.

"In Order To Obtain"

A23. What is the definition of the phrase "in order to obtain?"

Under § 200.81(c) of the regulations, the phrase "in order to obtain," when used to describe why a worker moved, means that one of the purposes of the move is *to seek or obtain* qualifying work. This does not have to be the only purpose, or even the principal purpose of the move, but it must be one of the purposes of the move.

A24. May a worker who asserts more than one purpose for moving be considered to have moved "in order to obtain" qualifying work?

Yes. A worker who asserts more than one purpose for moving, for example, to be closer to other family members or to find a better school for the children, may be considered to have moved "in order to obtain" qualifying work if the recruiter determines that one of the purposes of the move was also to seek or obtain qualifying work. As explained below, the phrase "in order to obtain" includes determining that the worker moved to find any kind of employment, provided that the worker obtained qualifying work soon after the move.

A25. Must a worker who states that he or she moved in order to obtain (or seek) any employment and who obtained qualifying work "soon after the move" be considered to have moved "in order to obtain" qualifying work?

Under certain circumstances, yes. Workers may not always express a clear intent to move and obtain qualifying work. According to § 200.81(c)(1) of the regulations, in those situations where a worker's intent is not clearly expressed, the LEA may infer that individuals who express a general intent to have moved, for example, "for work," "to obtain work," "to obtain any type of employment" or to "take any job," may be deemed to have moved with a purpose of obtaining qualifying work if he or she obtained qualifying work soon after the move. See A36 of this section regarding "soon after the move."

A26. May a worker who asserts that he or she moved specifically to find only non-qualifying work be considered to have moved "in order to obtain" such work if the worker obtains qualifying work soon after the move?

No. Section 1309(2) of the statute requires migratory agricultural workers and fishers to move "in order to obtain" temporary or seasonal employment in agricultural or fishing work; that is, "in order to obtain" qualifying work. The phrase "in order to obtain" in this provision brings in the worker's purpose or intent. See, in this regard, the July 29, 2008 notice of final MEP regulations at 73 FR 44102, 44105.

The phrase "in order to obtain" includes workers who (a) moved to obtain qualifying work and obtained that work, and (b) moved with no specific type of work in mind and obtained qualifying work soon after the move. (*Id.*, at 44106.) Therefore, if the worker who moved to obtain any work obtains qualifying work soon after the move, it is presumed that one of the purposes of the move was to seek or obtain qualifying work.

However, if the worker asserts that he or she moved with only non-qualifying work (e.g., construction work) in mind, given the definition of a migratory child in section 1309(2) of the ESEA and § 200.81(c) of the Title I regulations, one may not presume that one of the purposes of the worker's move was to obtain qualifying work–even if the worker obtained qualifying work soon after the move.

A27. Must a recruiter ask a worker why he or she moved if the worker is engaged in qualifying work?

Yes. The fact that a worker moved and is engaged in qualifying work does not automatically establish that the worker moved "in order to obtain" that work. Consistent with the MEP regulations, the recruiter must determine whether one of the purposes of the worker's move was to obtain qualifying work or any employment, or conversely that the purpose was specifically to obtain non-qualifying work.

A28. How can a recruiter determine if one of the purposes of the worker's move was to obtain qualifying work if the recruiter finds the worker is engaged in qualifying work?

Even though a worker is engaged in qualifying work, the recruiter needs to ask the worker why he or she moved. In many cases, the response will clearly indicate that one purpose of the move was to obtain qualifying work or any employment. If this is not clear from the worker's response, the recruiter should ask whether the worker would have moved if he or she knew that no work was available. If the answer is "no," then the recruiter can presume that obtaining qualifying work was one purpose of the move.

If the worker indicates that he or she was looking for a specific type of work, which would be considered non-qualifying work, e.g., construction, for purposes of the MEP, the recruiter may follow up by asking whether the worker would have moved to the area to take any kind of work, in other words qualifying or non-qualifying work, if construction work was not available. If the answer is "yes," and the worker obtained qualifying work, then the recruiter can presume that obtaining qualifying work was one purpose of the move. However, if the worker continues to express that his or her specific intent was to obtain only non-qualifying work, the recruiter cannot find this worker eligible for the MEP based on this move, regardless of whether the worker is engaged in qualifying work.

A29. May a worker who did <u>not</u> obtain qualifying work soon after the move, be considered to have moved "in order to obtain" qualifying work?

Under certain circumstances, yes. A worker who did not obtain qualifying work "soon after a move" may *only* be considered to have moved "in order to obtain" qualifying work if:

(1) The worker states that one purpose of the move was specifically to obtain qualifying work, AND

(2) The worker has a prior history of moving to obtain qualifying work;

OR

(3) There is 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.

See § 200.81(c)(2) and A36 of this section regarding the phrase, "soon after the move."

A30. How may a recruiter determine whether a worker has a prior history of moving to obtain qualifying work?

The recruiter should ask the worker whether he or she has ever moved for temporary or seasonal employment in agricultural or fishing work, i.e., qualifying work. The recruiter may also search the New Generation System (NGS) database or the Migrant Student Information Exchange (MSIX) system to see if the worker's child, or the child, if the child is the worker, was identified as eligible for the MEP in another part of the State or in another State.

After considering the available information, if the recruiter is satisfied that (1) one of the purposes of the worker's move was specifically to obtain qualifying work and (2) the worker has a prior history of moves to obtain qualifying work, the recruiter may deem the worker's children eligible for MEP services. The recruiter should document the basis for the decision in the comment section of the COE Supplemental Documentation Form and, if available, attach the evidence he or she relied on for the decision.

A31. How far back may a recruiter look in considering "prior history of moves to obtain qualifying work?"

A worker's "prior history of moves to obtain qualifying work" does not have to have occurred within a certain time period before the most recent move, so long as the worker states that one of the purposes of his or her move was *specifically* to obtain qualifying work and not just any work, as explained in A29 of this section.

A32. What are examples of "other credible evidence" that a recruiter might rely on to determine that the worker actively sought qualifying work soon after a move but the work was unavailable for reasons beyond the worker's control?

Other credible evidence that a recruiter might consider includes:

- Information obtained from conversations with an employer, crew chief, employment agency or credible third party that indicates that the worker sought the qualifying work;
- Written information from the employer, such as a copy of an employment application or a list of recent applicants;
- Information in the public domain (e.g., newspaper) that confirms a flood or crop failure in the area.

After considering all of the available information, if the recruiter is satisfied that the worker *actively* sought qualifying work *soon after the move* and that the work was unavailable due to reasons beyond the worker's control, the recruiter may deem the worker eligible for MEP services. The recruiter should document the basis for the decision in the comment section of the COE Supplemental Documentation Form, and if available, attach the evidence he or she relied on for the decision.

A33. As discussed in criteria (1) and (3) of A29, may a worker's or family member's statement about the purpose of the move serve as both (1) the statement that the worker moved specifically to obtain qualifying work and (2) the necessary "other credible evidence" that the worker actively sought the work soon after the move?

No. The term "other credible evidence" refers to additional information that supports the worker's or family member's statement that the worker moved in order to obtain qualifying work. Therefore, this information would need to be obtained in addition to the information about the purpose of the move provided by the worker or his or her family.

A34. What happens if a worker, who moved to obtain qualifying work or any kind of job, first takes a non-qualifying job and only afterwards obtains qualifying work?

A worker does not necessarily forfeit MEP eligibility by taking a non-qualifying job for a limited period of time, so long as the worker moved in order to obtain qualifying work or any kind of job, and then obtains qualifying work that is still "soon after the move." See A36 of this section.

A35. If a worker and his or her child move weeks before qualifying work is available (e.g., three weeks prior to the tomato harvest) in order to secure housing, and at the time of the interview the worker does not yet have qualifying work, may the worker be considered to have moved "in order to obtain" qualifying work?

Yes. The regulatory definition of "in order to obtain" does not expressly address this situation. However, the recruiter may find this move to have been made "in order to obtain" the work so long as the recruiter determines that one purpose of the move was to seek or obtain qualifying work, and not just any employment–which presumably would be the case in this situation. In this situation, the recruiter should check box 4a of the COE (the section on Qualifying Move & Work), which states that "the worker moved due to economic necessity in order to obtain qualifying work and obtained qualifying work." The recruiter should document in the comment section of the COE Supplemental Documentation Form the reasons for the eligibility determination. See the *Texas Manual for the Identification and Recruitment of Migrant Children* for further guidance on this issue.

In this type of situation, consistent with § 200.81(c)(1) of the regulations, the recruiter must follow up with the worker to verify that the worker obtained qualifying work "soon after the move" (see A36 of this section). If the recruiter discovers that the worker did not obtain qualifying work "soon after the move," the recruiter must then determine, consistent with § 200.81(c)(2) of the regulations, that the worker has either a prior history of moves to obtain qualifying work or some other credible evidence that the worker actively sought qualifying work. The COE must be updated accordingly. If the recruiter cannot document a prior history or other credible evidence, this worker's children are not eligible for the MEP. The LEA must forward the COE and all supporting documentation to the ESC who will immediately consult with and forward information to the State MEP.

"Soon After the Move"

A36. How much time may separate the date of the worker's move and the date the worker obtains qualifying work to permit an LEA to reasonably conclude that the worker obtained qualifying work "soon after the move?"

Because one of the purposes of the worker's move must be to seek or obtain qualifying work, the USDE established the "soon after the move" test in the belief that the time between when the worker moves and when he or she obtains qualifying work must be small enough to reasonably presume that one of the purposes of the move was to obtain qualifying work. In these circumstances, a worker generally should obtain qualifying work within 30 days of the move. Note: "Soon after the move" is defined as within 30 days after the worker's arrival.

Duration and Distance

A37. Is there a minimum duration for a qualifying move?

Although the statute and regulations are silent on the duration of a qualifying move, a migratory worker must stay in a new place long enough to show that the worker "moved," i.e., changed residence due to economic necessity, and that one of the purposes of the move was to seek or obtain qualifying work, or any kind of work so long as the worker obtained qualifying work soon after the move. Recruiters should carefully examine and evaluate relevant factors, such as whether the worker obtained, or could have obtained, a place to live that would allow the worker and the migratory child to remain in the new location long enough for the worker to engage in qualifying work or whether the move to work was a one-time act or a series of short moves to work in order to augment the family's income. See the *Texas Manual for the Identification and Recruitment of Migrant Children* for further guidance on this issue.

A38. Is there a minimum distance requirement for a qualifying move?

No. The only requirement is that the move be across school district boundaries. See the *Texas Manual for the Identification and Recruitment of Migrant Children* for further guidance on this issue.

A39. Has a worker who travels back and forth between a residence and an agricultural or fishing job within the same day made a qualifying move?

No. Such a worker is a "day-haul" worker whose travel is a non-qualifying commute, not a qualifying migration involving a change of residence.

Moves by Boat

A40. Are there special issues that affect only the moves of migratory fishers who travel by boat?

No. These workers' moves must be across school district boundaries (i.e., from one school district to another), whether the moves are by water or by land. As with any other MEP eligibility determination, the LEA must maintain documentation of school district boundaries as they extend into the water. In addition, all other eligibility criteria must be met.

A41. Has a fisher who travels by boat and docks in a new school district made a qualifying move?

It depends. A fisher who travels by boat to a new school district, or travels 20 miles or more in Alaska, must stay in the new place long enough to show that the worker "moved," i.e., changed residence due to economic necessity, and that one of the purposes of the move was to seek or obtain qualifying work (or any kind of work, so long as the worker obtained qualified work soon after the move). See A37 of this section regarding moves of short duration. It is recommended that recruiters obtain sufficient information about this type of trip to document in the comment section of the COE Supplemental Documentation Form that the move meets these requirements.

Stopover Sites

A42. What are stopover sites?

Stopover sites are rest centers where migrant families who are in transit stop for a night or two before moving on to another locale.

A43. May LEAs *serve* eligible migrant families who stay at a stopover site?

Yes.

International Moves

A44. May a worker's move to the United States from another country qualify for the MEP?

Yes. A worker's move from another country to the U.S. may qualify if one of the purposes for the move was to seek or obtain qualifying work. For example, orchard growers in the Northeast hire contract workers from Guatemala to pick crops for a short period of time. Assuming all other eligibility criteria are met, the children of these workers would qualify because one of the purposes of the move to the U.S. was to obtain qualifying work. The workers are not disqualified if they have other reasons for moving to the U.S., even permanent relocation, so long as one of the purposes of the move is to obtain qualifying work and the other conditions are met.

A45. Is a move from the United States to another country a qualifying move?

No. The MEP was established to benefit families who perform qualifying work in the United States. Therefore, the MEP statute is not viewed as authorizing moves to another country to engage in temporary or seasonal employment in agricultural or fishing work to be considered qualifying moves.

A46. If a worker and his or her children make a non-qualifying move to the U.S. from another country, may the children be considered eligible for the MEP based on a subsequent qualifying move?

Yes.

Qualifying Arrival Date (QAD) and Move "to Join" Issues

A47. When does a child's eligibility for MEP services begin?

A child may be identified as a "migratory child" when the child and the worker complete the qualifying move. This is often referred to as the qualifying arrival date, or QAD, for purposes of the COE. However, a child is only eligible for MEP services once the LEA has determined that the child meets all eligibility criteria outlined in A1 of this section.

A48. Must a child move at the same time as the worker to be eligible for the MEP?

No; however, both the worker and child must make the move. Section 1309(2) of the ESEA provides that if the child is not the qualifying worker, the child must move to "accompany" the worker who moved in order to obtain or seek qualifying work. The regulations expand the term "accompany" to include a child who moves separately to "join" a parent, spouse or guardian. That is, under the definition of "migratory child" in § 200.81(e) of the regulations, a child who is not a migratory agricultural worker or migratory fisher qualifies if the child accompanies or "joins" a parent, spouse or guardian who is a migratory agricultural worker or migratory fisher who moves in order to obtain qualifying work. This provision means that the child's move may either precede or follow the worker's move. For example, the child may move before the worker in order to start the school year on time, or the worker may move before the child in order to secure housing. In either case, the fact that the child and his or her parent, spouse or guardian do not move at the same time does not nullify the child's eligibility for the MEP.

A49. What is the QAD when a child moves before or after the worker?

In situations where the child and worker do not move at the same time, the QAD is the day that the child and worker complete the move to be together. That is, if the child's move precedes the worker's move, the QAD is the date that the worker arrived. If the child's move follows the worker's move, the QAD is the date the child arrived.

A50. How much time may separate the worker's move from a child's move "to join" a worker?

As a best and safe practice, the child's move should generally occur within no more than 12 months of the worker's move to obtain qualifying work, since after one year it is difficult to link the child's move to the worker's move to obtain qualifying work. Nonetheless, there may be unusual circumstances that prevent a child from moving within 12 months of the worker's move.

Qualifying Work

A51. What is "qualifying work?"

Under § 200.81(i) of the regulations, "qualifying work" means temporary employment or seasonal employment in agricultural work or fishing work.

Agricultural Work or Fishing Work

Agricultural Work

A52. What is the definition of "agricultural work" for purposes of the MEP?

"Agricultural work" is:

1. the production or initial processing of crops, dairy products, poultry or livestock; as well as

   the cultivation or harvesting of trees,

   that is–

2. performed for wages or personal subsistence.

See § 200.81(a).

A53. What does "production" mean?

Agricultural production means work on farms, ranches, dairies, orchards, nurseries and greenhouses engaged in the growing and harvesting of crops, plants or vines and the keeping, grazing or feeding of livestock or livestock products for sale. The term also includes, among other things, the production of bulbs, flower seeds, vegetable seeds and specialty operations such as sod farms, mushroom cellars and cranberry bogs.

A54. What is a "crop?"

A crop is a plant that is harvested for use by people or by livestock.

A55. What are examples of agricultural work related to the production of crops?

The production of crops involves work such as preparing land or greenhouse beds, planting, seeding, watering, fertilizing, staking, pruning, thinning, weeding, transplanting, applying pesticides, harvesting, picking and gathering.

A56. Is work such as gathering decorative greens considered agricultural work?

Yes. The term "plants" includes decorative greens or ferns grown for the purpose of floral arrangements, wreaths, etc. Therefore, the collection of these plants can be considered agricultural work. For the purposes of the MEP, the collection of these greens for recreation or personal use would not be considered agricultural work.

A57. What is "livestock?"

The term "livestock" refers to any animal produced or kept primarily for breeding or slaughter purposes, including, but not limited to, beef and dairy cattle, hogs, sheep, goats and horses. For purposes of the MEP, livestock does not include animals that are raised for sport, recreation, research, service or pets. The term "livestock" does not include animals hunted or captured in the wild.

A58. What are examples of agricultural work related to the production of livestock?

The production of livestock involves raising and taking care of animals described in the previous question. Such work includes, but is not limited to: herding, handling, feeding, watering, milking, caring for, branding, tagging and assisting in the raising of livestock.

A59. Are animals such as deer, elk and bison raised on farms considered "livestock?"

Yes, so long as these animals, sometimes referred to as specialty or alternative livestock, are raised for breeding or slaughter purposes and not for sport or recreation.

Cultivation or Harvesting of Trees

A60. What does "cultivation" mean in the context of trees?

In the context of trees, "cultivation" refers to work that promotes the growth of trees.

A61. What are examples of work that can be considered the cultivation of trees?

Examples of work that can be considered the cultivation of trees include, but are not limited to: soil preparation, plowing or fertilizing land, sorting seedlings, planting seedlings, transplanting, staking, watering, removing diseased or undesirable trees, applying insecticides, shearing tops and limbs, and tending, pruning or trimming trees.

A62. What does "harvesting" mean in the context of trees?

"Harvesting" refers to the act of gathering or taking of the trees.

A63. What are examples of work that can be considered the harvesting of trees?

The harvesting of trees includes work such as topping, felling and skidding.

A64. What types of work are not considered part of the cultivation or harvesting of trees?

The following activities are *not* part of the cultivation or harvesting of trees: clearing trees in preparation for construction, trimming trees around electric power lines and cutting logs for firewood.

A65. Does transporting trees from a harvesting site to a processor (sawmill) qualify as agricultural work?

No. Transporting trees is not agricultural work for purposes of the MEP because it occurs after the cultivation and harvesting of trees.

A66. Is processing trees considered agricultural work?

No. According to § 200.81(a) of the regulations, only the cultivation or harvesting of trees is considered agricultural work. Processing trees occurs after the cultivation and harvesting.

Fishing Work

A67. What is the definition of "fishing work" for purposes of the MEP?

"Fishing work" is:

1. the catching or initial processing of fish or shellfish; as well as

   the raising or harvesting of fish or shellfish at fish farms,

   that is–

2. performed for wages or personal subsistence.

See § 200.81(b).

A68. What is a "fish farm?"

For purposes of the MEP, a fish farm is a tract of water, such as a pond, a floating net pen, a tank or a raceway reserved for the raising or harvesting of fish or shellfish. Large fish farms sometimes cultivate fish in the sea, relatively close to shore. The fish are artificially cultivated, rather than caught, as they would be in "fishing." Fish species raised on fish farms include, but are not limited to, catfish, salmon, cod, carp, eels, oysters and clams.

A69. What are examples of work on a fish farm that would qualify as fishing work?

For the purposes of the MEP, examples of work on a fish farm that would qualify as "fishing work" include, but are not limited to, raising, feeding, grading, collecting and sorting of fish, removing dead or dying fish from tanks or pens and constructing nets, long-lines and cages.

A70. Is the act of catching fish or shellfish for recreational or sport purposes "fishing work?"

No. These activities are not performed for wages or personal subsistence.

Initial Processing

A71. What does "initial processing" mean?

"Initial processing" is work that (1) is beyond the production stage of agricultural work and (2) precedes the transformation of the raw product into something more refined. It means working with a raw agricultural or fishing product.

A72. What are examples of "initial processing" work in the poultry and livestock industries?

Examples of "initial processing" work in the poultry and livestock industries include, but are not limited to: stunning, slaughtering, skinning, eviscerating, splitting carcasses, hanging, cutting, trimming, deboning and enclosing the raw product in a container.

A73. What are examples of "initial processing" work in the crop industry?

Examples of "initial processing" work in the crop industry include, but are not limited to: cleaning, weighing, cutting, grading, peeling, sorting, freezing and enclosing the raw product in a container.

A74. What are examples of "initial processing" work in the fishing industry?

Examples of "initial processing" work in the fishing industry include, but are not limited to: scaling, cutting, dressing and enclosing the raw product in a container.

A75. When does "initial processing" end?

A product is no longer in the stage of "initial processing" once the transformation of the raw product into something more refined begins. The work up to, but not including, the start of the transformation process is agricultural or fishing work for purposes of the MEP. However, work such as placing raw chicken breasts into the oven for cooking, adding starter cultures to milk to make cheese or applying necessary ingredients to a raw pork belly to begin the curing process is the beginning of the transformation process and therefore is not agricultural or fishing work for purposes of the MEP.

A76. What work is <u>not</u> considered production or initial processing?

Work such as cooking, baking, curing, fermenting, dehydrating, breading, marinating and mixing of ingredients involves transforming a raw product into a more refined product. Therefore, this work is not considered to be production or initial processing. In addition, the following work is not considered to be production or processing: placing labels on boxes/containers of refined products, selling an agricultural or fishing product, landscaping, managing a farm or processing plant, providing accounting, bookkeeping or clerical services, providing babysitting or childcare services for farmworkers or working at a bakery or restaurant. With regard to work such as repairing or maintaining equipment used for production or processing, or cleaning or sterilizing farm machinery or processing equipment, the individuals whose *profession* is to do this work, or who were hired solely to perform this work, are not considered to be performing agricultural work.

A77. Is hauling a product on a farm, ranch or other facility considered agricultural work?

Yes. Hauling a product <u>on</u> a farm, ranch or other facility is an integral part of production or initial processing and therefore, is agricultural work. However, transporting a product to a market, wholesaler or processing plant is not considered to be production or initial processing. "Shipping and trucking" is work that is often carried out by a third-party retailer, wholesaler or contractor paid to transport various products. Therefore, the service these companies or contractors provide is "shipping" or "trucking" and not production or initial processing.

A78. May a worker who performs both qualifying and non-qualifying work still be eligible for the MEP?

Yes. A worker is only required to meet the definition of a migratory agricultural worker or migratory fisher as defined in § 200.81(d) and (f) of the regulations. The fact that the worker performs non-qualifying work in addition to qualifying work has no bearing on his or her eligibility for the MEP.

Personal Subsistence

A79. What does "personal subsistence" mean?

As used in the definitions of agricultural work and fishing work in § 200.81(a) and (b) of the regulations, and as defined in § 200.81(h) of the regulations, "personal subsistence" means that the worker and the worker's family, as a matter of economic necessity, consume, as a substantial portion of their food intake, the crops, dairy products or livestock they produce or the fish they catch. Please note that the Texas MEP does not qualify families based on "personal subsistence."

Temporary and Seasonal Employment

A80. What is "seasonal employment?"

According to § 200.81(j) of the regulations, seasonal employment is employment that occurs only during a certain period of the year because of the cycles of nature and that, by its nature, may not be continuous or carried on throughout the year.

A81. How does the phrase "cycles of nature" pertain to seasonal employment?

For purposes of the MEP, the phrase "cycles of nature" is used to describe the basis for why certain types of employment in agricultural or fishing work only occur during certain, limited periods in the year. The length of "seasonal" employment is based on the distinct period of time associated with the cultivation and harvesting cycles of the agricultural or fishing work, and is not employment that is continuous or carried on throughout the year.

A82. How long may seasonal employment last?

The definition of seasonal employment in § 200.81(j) of the regulations states that it is employment that occurs only during a certain period of the year and may not be continuous or carried on throughout the year. Therefore, like temporary employment, seasonal employment may not last longer than 12 months.

A83. How may an LEA determine that a worker's job is "seasonal employment?"

A worker's employment is seasonal if:

1. it occurs during a certain period of the year; and

2. it is not continuous or carried on throughout the year.

A84. What is "temporary employment?"

According to § 200.81(k) of the regulations, temporary employment means "employment that lasts for a limited period of time, usually a few months, but no longer than 12 months."

A85. How may an LEA determine that a worker's job is "temporary employment?"

Section 200.81(k) of the regulations identifies three ways in which an LEA may determine that employment is temporary:

a. Worker Statement – The worker states that he or she does not intend to remain in that employment indefinitely (i.e., the worker's employment will not last longer than 12 months);

b. Employer Statement – The employer states that the worker was hired for a limited time frame, not to exceed 12 months;

c. State Determination – The SEA has determined on some other reasonable basis that the employment will not last longer than 12 months. (Currently, the State of Texas has not documented any temporary employment.)

A86. Is a worker who was hired to perform a series of different jobs, which together lead to the worker being employed by the same employer for more than 12 months, employed on a temporary or seasonal basis?

Neither. Workers who are hired to work for more than 12 months by the same employer regardless of how many different jobs they perform are not employed on a temporary or seasonal basis as defined in 200.81(j) and (k) of the MEP regulations.

A87. What is an example of a statement from an employer that indicates that the employment is temporary?

An example of a statement from an employer who harvests ferns for the floral industry might be: "Mrs. Doe stated that she will hire the worker only for the months of February through May to accommodate the increase in floral gifting around Valentine's Day, Easter and Mother's Day." In this example, the employer stated that she is hiring the worker for a short period of time that will not exceed 12 months.

A88. What is an example of a statement from a worker that indicates that the employment is temporary?

An example of a worker's statement might be: "the worker stated that he plans to leave the job after seven months in order to return to his home with his family." Similar to the employer's statement, the worker's statement indicates that he will only remain in the job for a short period of time that will not exceed 12 months.

A89. Must the LEA stop serving children whose parent or guardian remains employed by the same employer after 12 months even though the worker was originally employed on a temporary basis?

In general, an LEA may continue serving these children for the duration of their 36-month eligibility period. MEP eligibility is determined at the time of the interview and is based on the worker's (or employer's) stated intention at the time of the move.

A situation in which the worker continues to be employed after 12 months would be a rare occurrence and not the norm for workers who are recruited on this basis. However, if a significant number or percentage of workers recruited on this basis remains employed at a particular worksite beyond 12 months, either in the same job or in another job at the same worksite, the LEA should examine the reasons why workers are remaining employed. In some cases, the reasons may be justifiable. For example, if the economy took a turn for the worse, employees who intended to leave their employment much earlier did not do so because other jobs were not available. On the other hand, the recruiter might have made an incorrect eligibility determination because he or she did not understand the MEP definition of temporary employment. There even could be reasons to suspect fraud. In both of these latter situations, children's eligibility should be terminated immediately if the LEA determines that the original eligibility determinations were erroneous. If this occurs, the LEA should notify the ESC who will contact the State MEP for further guidance.

Thus, the reasons workers remain employed for more than 12 months will determine whether and what action the LEA needs to take.

A90. If a worker planned to work at an agricultural or fishing worksite permanently, can the worker be recruited for the MEP if the recruiter finds out later that the worker did not remain employed more than 12 months?

No. A worker who moved to seek permanent employment did not move "in order to obtain temporary or seasonal employment in agricultural or fishing work" as required by the statute.

A91. Should jobs that occur only at certain times of the year because of a holiday or event be considered as temporary employment or seasonal employment?

Jobs that occur only at certain times of the year because of a holiday or event (e.g., Thanksgiving, Christmas, etc.) should be considered temporary employment because the time of year that the work is performed is not dependent on the cycles of nature, but rather the holiday or event.

<u>Other Changes to MEP Eligibility</u>

A92. Does the migratory worker's temporary or seasonal agricultural or fishing employment have to be a "principal means of livelihood?"

No. The MEP regulations published on July 29, 2008, removed the prior requirement that one's agricultural or fishing work needs to be a principal means of livelihood.

A93. Does the fact that a worker and child moved to relocate permanently affect the child's eligibility for the MEP?

No. The July 29, 2008 regulations define "move" or "moved" as it pertains to the MEP as a change from one residence to another residence that occurs due to economic necessity. Under this definition, the fact that a worker moved to permanently relocate does not matter so long as (1) another purpose of the worker's move was to obtain either qualifying work or any employment (not to include a move specifically for non-qualifying work), (2) the worker obtained qualifying work soon after the move and (3) all other conditions of a qualifying move were met.

A94. Must the LEA consider whether an "initial commercial sale" has occurred in order to determine if the agricultural or fishing work can be considered qualifying?

No. The new regulations also removed the phrase "initial commercial sale" from the definition of agricultural work and fishing work. LEAs are no longer required to determine whether an "initial commercial sale" has occurred in order to determine if the work can be considered agricultural work or fishing work for purposes of the MEP.

Documenting Eligibility

A95. What responsibility does an LEA have to document eligibility determinations?

An LEA must document eligibility determinations in order to comply with § 76.731 of EDGAR, which provides that "[a] State and a subgrantee shall keep records to show its compliance with program requirements." As the MEP statute and regulations provide that only eligible migrant children (i.e., those who meet the definitions contained in section 1309(2) of the MEP statute and § 200.81 of the MEP regulations) may be counted for and served by the MEP, each LEA must maintain documentation to confirm the eligibility of each child whom the LEA considers to be eligible for the program. In this regard, § 200.89(c) of the regulations requires an SEA and its LEAs to use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children. (For more information about ID&R quality control requirements, see Section B titled Identification and Recruitment.)

A96. Must each LEA maintain a COE on all children eligible for the MEP?

Yes. Every child who the LEA determines is eligible for the MEP must have the basis for his or her eligibility recorded on the COE. Children within the same family may be recorded on one COE so long as all of the children have the same eligibility information.

A97. When should a recruiter complete a new COE?

In order to ensure that children remain eligible to be counted and served by the MEP as long as is appropriate, recruiters should complete a new COE every time a child makes a new qualifying move. In the case where there is a change in residency without a new QAD, please refer to the *Texas Manual for the Identification and Recruitment of Migrant Children.*

A98. Must the parent or guardian sign the COE?

Except for a few limited exceptions, yes. (By signing the COE, the parent or guardian confirms that the information he or she provided is accurate and identifies who provided the information so that the LEA can verify information contained on the COE at a later date, if necessary.

A99. Must the recruiter sign the COE?

Yes. The recruiter's signature on the COE certifies that: (1) the children are eligible for the MEP, and (2) the information upon which the recruiter based the eligibility determination is correct to the best of his or her knowledge. Moreover, under § 200.89(c) and (d), the USDE requires this signature on the COE as an element of a reasonable system of quality control.

A100. Must someone else review the information on the COE?

Yes. As part of a sound system of quality control, § 200.89(d)(4) of the MEP regulations (as revised on July 29, 2008) requires that the system of quality control that an LEA establishes must include "[a]n examination by qualified individuals at the SEA or LEA level of each COE to verify that the written documentation is sufficient and that, based on the recorded data, the child is eligible for MEP services." Therefore, the SEA may designate someone at the State, regional or local level to assume this responsibility. This person must sign and date the COE to indicate that this level of review has occurred. (For more information about ID&R quality control requirements, see 34 CFR 200.89.)

A101. May an LEA base its determination of a child's eligibility on a qualifying move that occurred in another State within the past 36 months?

Yes. It is possible that a child and his or her family will make a qualifying move, for example, to State A and then make a subsequent non-qualifying move to State B. So long as State B identifies the child within 36 months of the qualifying move, it may enroll the child in the MEP on the basis of the qualifying move to State A for the remainder of the 36 months. In doing so, State B makes its own independent determination that the child is eligible based on the earlier qualifying move as well as completes its own State's COE. LEAs are encouraged to coordinate with the State in which the qualifying move occurred to confirm the qualifying information.

A102. May a recruiter accept automatically another State's COE as evidence of a child's eligibility for the MEP?

No. Each State is responsible for making its own eligibility determination for the children it enrolls in the MEP. However, States are encouraged to share information and to utilize each other's information to assist in making eligibility determinations.

SECTION B – IDENTIFICATION AND RECRUITMENT

Finding and enrolling eligible migrant children is a cornerstone of the MEP and its importance cannot be overemphasized. Identification and recruitment are critical activities because:

- The children who are most in need of program services are often those who are the most difficult to find.
- Many migrant children would not fully benefit from school, and in some cases would not attend school at all, if states did not identify and recruit them into the MEP. This is particularly true of the most mobile migrant children who may be more difficult to identify than those who have settled in a community.
- Children cannot receive MEP services without a record of eligibility.

The State is responsible for the proper and timely identification and recruitment of all eligible migrant children in the state, including securing pertinent information to document the basis of a child's eligibility. LEAs record eligibility data on a Certificate of Eligibility (COE). Recruiters obtain the data by interviewing the person responsible for the child, or the child him or herself, in cases where the child moves on his or her own. The State has implemented procedures to ensure the accuracy of eligibility information.

This section addresses the ways in which LEAs must meet their responsibility to identify and recruit all eligible migrant children in their district.

B1. What do the terms "identification" and "recruitment" (ID&R) mean?

Identification means determining the location and presence of migrant children.

Recruitment means making contact with migrant families, explaining the MEP, securing the necessary information to make a determination that the child is eligible for the MEP, and recording the basis of the child's eligibility on a COE. Upon successful recruitment of a migrant family, eligible children may be enrolled in the MEP.

B2. Why is ID&R a unique and important aspect of the MEP?

The majority of migrant children would not fully benefit from the educational services to which they are entitled and, in some cases, would not attend school at all if states did not identify and recruit them into the MEP. This is particularly true of the most mobile migrant children, who are the most difficult to locate.

B3. What are a migrant-funded district's responsibilities regarding ID&R?

A migrant-funded district is responsible for identifying and recruiting all eligible migrant children residing in the district's boundaries.

B4. Should the LEA make an effort to determine when a child leaves the state?

Yes. To the extent feasible, the LEA should track the departure, as well as the arrival of migrant families in the district. This practice is useful because: (1) it helps the LEA plan the program by determining an accurate number of eligible migrant children in the district; (2) it allows the LEA to initiate procedures for making pertinent records available for transfer; and (3) it allows the LEA to notify the receiving state in advance that the migrant child is en route.

B5. What are the primary responsibilities of a recruiter?

A recruiter's primary responsibilities are: (1) to obtain information provided by parents, guardians and others regarding the child's eligibility for the MEP; (2) to make determinations of eligibility; and (3) to accurately and clearly record information on a COE that establishes that a child is eligible for the MEP. In every case, the recruiter (not the individual interviewed) determines the child's eligibility on the basis of the statute, regulations and policies of the Texas MEP.

Because the LEA is responsible for all determinations of MEP eligibility, the information that the recruiter records should be specific enough to be understood by a knowledgeable independent reviewer.

B6. What qualities make a recruiter effective?

The process of recruiting a migrant child by interviewing migrant parents or guardians requires careful training, planning, cultural sensitivity, knowledge of the MEP and excellent communication skills. In order to be effective, recruiters should have adequate knowledge of:

- MEP eligibility requirements;
- languages spoken by migrant workers;
- local growers and fishing companies;
- local agricultural and fishing production and processing activities;
- cycles of seasonal employment and temporary employment;
- the local school system, the services available for migrant children and their families, and the most effective strategies for recruiting within each school;
- local roads and the locations of migrant labor camps and other migrant housing;
- MEP services offered by the LEA; and
- other agencies that may provide services to migrant workers and their families, such as Migrant Health, WIA, WIC and Migrant Head Start.

B7. Is the LEA responsible for ensuring the accuracy of a recruiter's eligibility determinations?

Yes. The LEA is responsible for ensuring the accuracy of the information used to determine each child's eligibility for the MEP.

B8. Does the current statute allow an LEA to have a 5 percent margin of error in its child counts?

No. The 5 percent margin of error was part of the ESEA, as amended by the Hawkins-Stafford Amendment of 1988. This provision was eliminated in 1994 through the reauthorization of the ESEA (Improving America's School Act). There is no allowable margin of error in a State's child counts. Therefore, LEAs must ensure that only eligible children are included in the child count.

B9. Should recruiters ask migrant families for their immigration status in order to enroll them in the MEP?

No. In fact, recruiters should not request this type of information because it may discourage undocumented individuals from seeking the services they need and for which they qualify. A social security number or other proof of residency/citizenship is *not* required for recruitment in the MEP.

B10. Should the information that a recruiter records on eligible migrant children be entered into the New Generation System (NGS)?

Yes. As each child is recruited into the program, information on the child is recorded on a COE. Information from the COE must be entered into NGS according to the required timelines as outlined in the *NGS Implementation Guidelines for Districts and ESCs*.

SECTION C – COMPREHENSIVE NEEDS ASSESSMENT AND SERVICE DELIVERY PLAN

The primary purpose of the comprehensive needs assessment is to guide the *overall design* of the MEP on a statewide basis. It is not sufficient to simply document the need for the program (e.g., 50 percent of migrant students are not proficient in reading, or 30 percent of migrant students do not graduate from high school). Rather, the State and LEAs must identify the special educational needs of migrant children and determine the specific services that will help migrant children achieve the State's measurable outcomes and performance targets. Because there are never sufficient resources to meet all the needs of migrant children, the comprehensive needs assessment helps the State and LEAs prioritize those needs.

LEAs conduct individual needs assessments to: (1) determine the needs of migrant students and how those needs relate to the priorities established by the State; (2) design local services; and (3) select students for the receipt of those services. While the State and LEAs must jointly ensure that needs assessment procedures at the LEA level are aligned with those at the State level, LEAs are able to narrow their needs assessments because local staff have access to more precise information than may be available at the State level. This enables the LEA to identify such critical elements as the specific needs of children by grade levels, academic areas in which the project should focus, instructional settings, instructional materials, staffing and teaching techniques.

C1. What is a "need?"

A "need" refers to the gap or discrepancy between the present status (what is) and a desired status (what should be). The need is neither the present nor the future state; it is the gap between them.

Desired (What should be)	-	Current (What is)	=	Need (Gap)
100% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.		30% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.		70% of third grade migrant students must learn to use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.
Alternatively, using the performance of all "non-migrant" children to set the desired status				
85% of third grade non-migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.		30% of third grade migrant students use phonics knowledge and word parts to figure out how to pronounce words they do not recognize.		55% of third grade migrant children must learn to use phonics knowledge and word parts to figure out how to pronounce words they do not recognize to perform as well as their non-migrant peers.

C2. What is a "needs assessment?"

A "needs assessment" is a *systematic* assessment and decision-making process that progresses through a defined series of phases to determine needs, examine their nature and causes and set priorities for future action. A needs assessment:

- Focuses on the *ends* (i.e., outcomes) to be achieved, rather than the *means* (i.e., process). For example, reading achievement is an outcome, whereas reading instruction is a means toward that end.
- Gathers data by means of *established procedures and methods* that are thoughtfully selected to fit the purposes and context of the needs assessment.
- *Sets priorities and determines criteria* for solutions so that planners and managers can make sound decisions.
- *Sets criteria* for determining how best to allocate available money, people, facilities and other resources.
- Leads to *action* that will *improve* programs, services, organizational structure and operations, or a combination of these elements.

C3. What does "comprehensive" mean?

A needs assessment is comprehensive if it:

- Includes both needs identification and the assessment of potential solutions;
- Addresses all relevant performance targets established for migrant children (i.e., proficiency in reading, proficiency in math, graduation from high school, reduction of the dropout rate and any other program goal set for migrant children by the State, including school readiness);
- Identifies the needs of migrant children at a level that is useful for program design purposes;
- Collects data from appropriate target groups (i.e., students, parents, teachers, etc.);
- Examines need data disaggregated by key subgroups; and
- Is conducted on a statewide basis.

C4. What are the "special educational needs" of migrant children?

The "special educational needs" of migrant children, as defined in 34 CFR 200.83(a)(2), are those educational *and* educationally related needs that: (1) result from the culture of migrancy, and (2) must be met in order for migrant children to participate effectively in school.

C5. Must LEAs identify the special educational needs of all eligible migrant children?

Yes. Sections 1304(b)(1) and 1306(a)(1) of the statute require the State to ensure that the LEAs identify and address the special educational needs of migrant children.

The State conducts a comprehensive needs assessment in order to develop a comprehensive State plan for service delivery that addresses the special educational needs of migrant children. LEAs must conduct a needs assessment in order to provide services that will meet the identified needs in accordance with the comprehensive State plan for service delivery.

C6. Must LEAs identify and address the special educational needs of preschool migrant children?

Yes. The NCLB consolidated application for funding requires LEAs to ensure that they will identify and address the special educational needs of preschool migrant children.

C7. What are the benefits of conducting a needs assessment?

At the LEA level, a needs assessment determines: (1) the extent of the needs of migrant students in that project area and how those needs relate to the priorities the State has established; (2) how to design local services; and (3) which students should receive services. LEAs identify such critical elements as the specific needs of children by grade levels, the academic areas in which the project should focus, the instructional settings, materials, staffing and teaching techniques.

C8. How often must an LEA conduct a needs assessment?

LEAs are required to design and operate their programs based on a *current* comprehensive needs assessment. (See 34 CFR 200.83.) Because a quality needs assessment is an extensive undertaking and many of the needs and solutions do not change significantly from one year to the next, it is not practical to conduct a *complete* needs assessment every year. However, key sections of the needs assessment should be updated *annually* to ensure that the results of the needs assessment remain current. Information that is typically updated on an annual basis includes the data required for the NCLB consolidated application for funding.

C9. Must the State ensure that the needs assessment procedures of the LEAs are congruent with the State's needs assessment procedures?

Yes. Because the State's comprehensive State plan for service delivery is the basis for all uses of MEP funds in the state, the State and LEAs must jointly ensure that needs assessment procedures at the LEA level align with those at the State level. They also must jointly ensure that local projects focus on the unmet needs of migrant children who have a "priority for services" before serving other migrant children.

C10. What student data should LEAs use to design a program?

LEAs should use the best available data to design a program. The data should reflect either: (1) the migrant children who the LEA served most recently, or (2) particularly for newly established projects, the migrant children who are likely to be served.

C11. Should LEAs use student demographic and assessment data to help identify the special educational needs of migrant children?

Yes. Student demographic and assessment data are key data sources that LEAs should use to construct a statewide or local profile of migrant children as compared to non-migrant children and/or other appropriate comparison groups. These data are particularly useful if they are disaggregated by: (1) priority for services, (2) grade level and (3) project area (where the number of students served is sufficiently large for the data to be reliable).

C12. In conducting a needs assessment, may an LEA use testing data or other data that it receives from the student's home base state?

Yes. LEAs are encouraged to obtain and use data from other school districts that migrant students previously attended, particularly for the most mobile students and for students who plan to graduate in another state.

C13. Must LEAs identify the need for support services (e.g., health, dental, transportation and counseling services) through the needs assessment?

Yes. The need for support services is considered a part of the special educational needs of migrant children.

SECTION D – PROVISION OF SERVICES

For purposes of the MEP, "services" are a subset of all the activities that the MEP provides through its program and projects. Although LEAs may spend MEP funds on many types of allowable activities, some of these activities do not constitute a "service" (e.g., identification and recruitment or parental involvement activities). "Services" are distinct in that they are the educational or educationally related activities provided to migrant children to enable them to succeed in school. Because student success is the overarching goal of the MEP, services are a vital aspect of the program. In providing services, priority must be given to migrant children who are failing or are most at risk of failing and whose education has been interrupted during the regular school year.

D1. For purposes of the MEP, what are "services?"

"Services" are a subset of all the activities that the MEP provides through its programs and projects. "Services" are those educational or educationally related activities that: (1) directly benefit a migrant child; (2) address a need of a migrant child consistent with the State's comprehensive needs assessment and service delivery plan; (3) are grounded in scientifically based research or, in the case of support services, are a generally accepted practice; and (4) are designed to enable the program to meet its measurable outcomes and contribute to the achievement of the State's performance targets.

D2. What is "scientifically-based research?"

"Scientifically-based research" is research that involves the application of rigorous, systematic and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. This includes research that:

- Employs systematic, empirical methods that draw on observation or experiment;
- Involves rigorous data analyses that are adequate to test the stated hypothesis and justify the general conclusions drawn;
- Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
- Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
- Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
- Has been accepted by a peer-reviewed journal or approved by a panel of independent

experts through a comparably rigorous, objective and scientific review.

D3. What types of services may an LEA provide with MEP funds?

LEAs may use MEP funds to provide the following types of services:

- Instructional services (e.g., educational activities for preschool-age children and instruction in elementary and secondary schools, such as tutoring before and after school); and

- Support services (e.g., educationally related activities, such as advocacy for migrant children; health, nutrition and social services for migrant families; necessary educational supplies; transportation).

D4. What are some examples of allowable activities that do not constitute a service?

Activities related to identification and recruitment activities, parental involvement, program evaluation, professional development or administration of the program are examples of allowable activities that are not considered services. Another example would be handing out leaflets to migrant families on available reading programs as part of an effort to increase the reading skills of migrant children. Although this is an allowable activity, it is not a service because it does not meet all of the following criteria: (1) it does not directly benefit migrant children; (2) it is not grounded in scientifically based research; and (3) in and of itself, the activity will not increase children's reading skills and thereby increase their ability to meet the State's performance targets.

D5. Why is it important for LEAs to provide services of sufficient intensity in operating the MEP?

It is important to design services that are of sufficient intensity to provide reasonable promise of the project's ability to meet its measurable outcomes. In turn, the attainment of these outcomes enables the program to help migrant children succeed in school and to contribute to the achievement of the State's performance targets.

D6. How should an LEA select students for services?

The LEA should:

1. Identify the eligible migrant children with special educational needs who are expected to reside in the local area;
2. Determine the educational and educationally related needs of the children to be served;
3. Determine the focus of the program (i.e., instructional areas and/or grade levels) based on a needs assessment; and
4. Select children with the greatest need for MEP services according to the priority for services criteria in Section 1304(d) of the statute.

D7. How may LEAs provide services to migrant children?

LEAs have used a wide variety of service delivery designs. Some examples include:

1. Extended day programs;
2. Before/after school programs;
3. In-class programs;
4. Saturday or vacation programs;
5. In-home instruction (e.g., the MEP provides family literacy services to the child at home);
6. Summer or intersession programs (e.g., Project SMART); and
7. Distance learning programs (e.g., web-based or portable courses of instruction).

D8. Are there circumstances in which an LEA may continue to provide MEP services to children who are no longer eligible for the MEP?

Yes. The statute provides three circumstances in which an LEA may continue to provide services to children whose eligibility has ended:

1. A child's eligibility ends during the school term and the LEA provides services for the duration of the term (see Section 1304(e)(1));
2. A child's eligibility ends and the LEA provides services for an additional school year because comparable services are not available through other programs (see Section 1304(e)(2)); and
3. An LEA continues to serve secondary school students who were eligible for services in secondary school through credit accrual programs until they graduate (see Section 1304(e)(3)).

[Note: Before the LEA provides services under these provisions, it should consider whether the child's unmet special educational needs are addressed by the general school program and whether migrant children who have a priority for services have already been served.]

D9. Who has priority for services in the MEP?

Section 1304(d) of the statute gives priority for services to migrant children: (1) who are failing, or most at risk of failing, to meet the State's challenging State academic content standards and challenging State student academic achievement standards, ***and*** (2) whose education has been interrupted during the regular school year.

D10. How does the LEA determine which children meet the "priority for services" criteria?

The LEA must enter all required migrant-specific demographic, educational and health data into the New Generation System (NGS) according to NGS guidelines. The LEA must run NGS "Priority for Services" reports that list all students who meet the "Priority for Services" criteria based on the data entered into the system. Reports must be run on a monthly basis and as migrant student data is encoded into NGS in order to ensure that all students who fall under the "Priority for Services" category are being targeted for LEA services.

D11. What is "educational interruption" during the regular school year?

"Educational interruption" means that a student, in the preceding 12 months, changed schools or missed a "significant" amount of school time (e.g., ten days or more) during the regular school year (usually defined as September through June) due to the child's or family's migrant lifestyle.

D12. Does the educational interruption have to be caused by a move to seek qualifying work?

No. While the educational interruption must clearly be related to the migrant lifestyle, it does not need to stem from moves in which a migrant worker seeks qualifying work. For example, the interruption may be caused by an illness, such as an exposure to a pesticide that causes the student to miss a significant amount of school. The move may be a trip back to the home base from qualifying employment to enable the child to return to school, to enable the family to take care of pressing family matters or to enable the family to get ready for the next migrant move. On the other hand, a move home for a vacation would not constitute an educational interruption due to the migrant lifestyle. It is the LEA's responsibility to document educational interruptions as a result of the migrant lifestyle on the supplemental form of the COE.

D13. Does NGS use *only* the existence of a qualifying move during the school year to determine which migrant students have priority for services?

No. Although a qualifying move is a proxy measure of educational interruption and student mobility is considered an academic risk factor, NGS does not rely on one data source to determine whether a student meets both criteria of the priority for services definition. Congress defined "priority for services" as a two-pronged test and NGS uses multiple data sources to best determine who meets this definition. Such use of multiple indicators greatly improves the reliability of priority for service determinations.

D14. May the LEA serve children who do not meet the "priority for services" criteria?

Yes. LEAs must serve children who do not meet the "priority for services" criteria so long as they serve children who meet the "priority for services" criteria first.

D15. What is a Title I schoolwide program?

A Title I schoolwide program is a program in which a school combines funds from various educational programs (e.g., Title I, Part A, Part C, and other state and local resources) to upgrade the entire educational program in order to raise academic achievement of all students. Schoolwide programs do not have to identify particular children as eligible for services, separately track federal dollars or show that Part A funds are paying for supplemental services that would otherwise not be provided. Instead, schools that operate schoolwide programs may use Title I funds in the manner they choose, to implement schoolwide reform strategies that provide opportunities for all children to meet the State's proficient and advanced levels of student academic achievement, using effective methods and instructional strategies that are based on scientifically-based research. (See Section 1114(b) of the statute.)

D16. In planning a schoolwide program, must a school take the needs of migrant children into account?

Yes. (See Section 1114(b)(1)(A) of the statute.)

D17. Must a school involve parents in planning a schoolwide program?

Yes. (See Section 1114(b)(2)(B)(ii) of the statute.) If migrant children are to be part of the schoolwide program, the school should involve migrant parents in planning the program to ensure that the school effectively identifies and addresses the children's special educational needs. In addition, if the school intends to combine MEP funds in the schoolwide program, it must first meet the special educational needs of migrant children in consultation with migrant parents. (See question immediately following.)

D18. Are there any limitations on the use of MEP funds in a schoolwide program?

Yes. Section 1306(b)(4) of the statute and Sections 200.29(c)(1) and 200.86 of the regulations require schools to first use the MEP funds, in consultation with migrant parents, to meet the special educational needs of migrant children before they may combine MEP funds in a schoolwide program. The special educational needs of migrant children are: 1) the unique needs that result from the effects of their culture of migrancy, and 2) those other needs that are necessary to permit these students to participate effectively in school. The school also must verify with the State that these needs have been met before it may combine MEP funds in a schoolwide program.

D19. What is a "summer term?"

A summer term occurs only in a school that operates under a traditional-calendar school year. (Year-round schools, for purposes of the MEP, are not considered to have summer terms.) The summer term is the period of time when the regular term of the school year is not in session.

D20. What is an "intersession?"

For schools on a year-round calendar, an intersession term is one of the periods throughout the year when the school (or part of the school) is not in session or does not provide the annual instruction analogous to the traditional school-year regular term. Any break in the regular term of a year-round school is considered an intersession term, regardless of the season of the year in which it occurs.

D21. Do LEAs have a responsibility to provide services to migrant students who are limited English proficient?

Yes.

D22. May an LEA use MEP funds to provide English language services to migrant children who are limited English proficient?

Yes. Migrant children are designated as limited English proficient after they have been assessed by a State-approved English language proficiency assessment. LEAs may provide these services to migrant children who are limited English proficient if: (1) a needs assessment demonstrates that the service is necessary to address an unmet need; and (2) the funds are not used to enable the district to meet its

Title VI responsibilities. For example, a school may use MEP funds to hire bilingual staff to help limited English proficient children learn content areas such as reading and math. In addition, a school may use MEP funds to provide English language instruction to help limited English proficient children learn English. In both cases, the MEP services must supplement those that the school district offers in the regular program. (For more information on this subject, see the Title III guidance at http://www.ed.gov/offices/OELA.)

D23. Must an LEA serve migrant children who are not legally admitted into the United States?

Yes. If these children reside within the area that the LEA serves, the agency cannot deny them services on the basis that they have not been admitted legally into the United States.

D24. May a school deny children admission because they cannot meet special state or local policies that require birth certificates or social security numbers as preconditions to school enrollment?

State law requires the provision of a free public education for all children who are residents of the state. Therefore, if a local school district denies admission to children of undocumented workers who reside in the state, it is violating state law.

D25. What responsibilities do LEAs have to serve migrant children with disabilities?

Under the Part B of the Individuals with Disabilities Education Act (IDEA), LEAs must ensure that eligible children with disabilities, migrant and non-migrant alike, have available a "free appropriate public education" that includes special education and related services to meet the unique needs of the students. In addition, Section 504 of the Rehabilitation Act of 1973 (Section 504) provides that qualified individuals with a disability may not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program that receives federal financial assistance solely because of the individual's disability. Also, Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits discrimination on the basis of disability by public entities, regardless of receipt of federal funds.

D26. May the MEP serve migrant children with disabilities?

Yes. LEAs must coordinate their provision of MEP services with other federal programs, such as IDEA, in order to increase program effectiveness. (See Sections 1304(b)(1) and 1306(a)(1)(A) of the statute.) However, in providing services, LEAs must be careful not to violate the MEP's "supplement, not supplant" requirement. LEAs are required to provide migrant children access to the same federal, state and locally funded services that non-migrant children with disabilities receive to address their needs, and may not use MEP funds to provide services that school districts are required by law to provide through other programs.

D27. How may an LEA provide MEP services to migrant children with disabilities without violating the "supplement, not supplant" requirement?

In order for an LEA to provide services to migrant children with disabilities without violating the "supplement, not supplant" requirement, the LEA must:

- Design the program in such a way that it does not distinguish between disabled and non-disabled participants, but addresses the unique educational needs of migrant children (in

accordance with MEP priority for service requirements);

- Select children with disabilities for MEP services on the same basis as other eligible children (i.e., on the basis of unique educational needs and priority for services);

- Coordinate MEP services with other services that migrant children with disabilities receive under federal, state and local programs in order to increase program effectiveness, eliminate duplication and reduce fragmentation of the programs.

D28. What is an LEA's responsibility regarding migrant children with disabilities who have not been identified as such under IDEA or Section 504?

State and local systems of activities and services related to the identification, location, and evaluation of children with disabilities are commonly referred to as "child find" systems. Under the IDEA, the State has in effect policies and procedures to ensure that all children with disabilities residing in the state, who are in need of special education and related services are identified, located and evaluated. This includes migrant children.

Under Section 504, a recipient of federal financial assistance that operates a public elementary or secondary education program or activity is required to identify and locate all children with disabilities residing in the recipient's jurisdiction who are not receiving a public education, and must take appropriate steps to notify individuals with disabilities and their parents or guardians of their rights under Section 504. In addition, all children who need or are believed to need special education or related services must be evaluated in accordance with the regulations. Those operating the MEP at the local level should be aware of and coordinate with the child find system at the local level. If MEP staff believe that a child may have a disability, staff should inform the appropriate officials at the local level so that the child is identified, located and evaluated to determine eligibility for services under the IDEA, Section 504, and Title II.

D29. Must an LEA serve eligible migrant children who attend private schools?

Yes. Sections 9501 of the statute and 299.6 of the regulations require LEAs that receive MEP funds to provide special educational services or other benefits on an equitable basis to eligible children who are enrolled in private schools, and to their teachers and other educational personnel. This must be done after timely and meaningful consultation with appropriate private school officials.

D30. How does an LEA meet the consultation requirement with private school officials?

To meet this requirement, the LEA must consult with private school officials before making any decision that affects the opportunities of eligible private school children to participate in a MEP project. Consultation must cover all phases of the design and development of the MEP project, including:

- How the LEA will identify the children's needs;

- What services the LEA will offer;

- How and where the LEA will provide those services;

- Who will provide the services;

- How the LEA will assess the services and how it will use results of the assessment to improve those services;
- Amount of funds available for services;
- Size and scope of the services to be provided; and
- How and when the LEA will make decisions about the delivery of services.

D31. Which children who attend private schools are eligible to receive MEP services?

Children who attend private school are eligible to receive MEP services if they: 1) meet the statutory and regulatory definition of a migrant child; 2) meet the priority for services criteria in Section 1304(d); and 3) have special educational needs identified through the State's comprehensive needs assessment and service delivery plan.

D32. May an LEA decide not to serve eligible migrant private school children because there are too few of them to serve?

Yes. The LEA has the discretion to determine what number of eligible students is too few to serve, so long as this determination is made on an equitable basis (i.e., on the same basis as public schools). If it is feasible and equitable, LEAs may adopt alternative methods that are cost-effective to serve small numbers, such as individual tutoring programs, professional development activities with the classroom teachers of eligible migrant students or other strategies.

D33. If private school officials do not wish to have their children participate in the MEP, is the LEA still required to serve these children?

No. If, after consultation with private school officials, the officials do not wish to have their students participate in the MEP, the LEA is not required to serve these children. However, in its consultation, the LEA should explain the various ways in which the agency can help provide services to children attending private schools.

D34. Should the LEA assess the needs of private school children residing in the district?

Yes. Through the consultation process with private school officials, the LEA may assess the needs of eligible migrant children enrolled in private schools in its service area.

D35. Must the services the LEA provides private school children be the same as those it provides public school children?

No. Although the statute and regulations require LEAs to provide services on an equitable basis, the services do not have to be the same in order to be equitable. If the needs assessment reveals that private school children have different special educational needs than public school migrant children, the services offered should address those needs. (See 34 CFR 299.7(c).)

D36. How does an LEA determine whether services are equitable?

Section 299.7(b)(2) of the regulations provides that services are equitable if the LEA:

1. Addresses and assesses the specific needs and educational progress of private school children on a comparable basis as public school children;

2. Determines the number of students to be served on an equitable basis;

3. Meets the equal expenditure requirements; and

4. Provides private school children with an opportunity to participate that –

   - Is equitable to the opportunity and benefits provided to public school children; and

   - Provides reasonable promise that participating private school children will meet the challenging academic standards called for by the State's student performance standards (or equivalent standards applicable to private school children and agreed upon during consultation between public and private school officials).

D37. What happens if, after offering to provide equitable services to private school children, participation is low or the children participate only in some of the services?

If the private school children's participation is low or they choose to participate only in some of the services the LEA offers, the LEA should examine why this is so and, if appropriate, modify the project in a manner that increases participation. If modification of the project does not increase participation and the LEA determines that it is not cost-effective to provide services, the LEA may terminate the services, so long as this decision is made on an equitable basis.

D38. If children reside in a geographical area served by one LEA but their school is located in a geographical area served by another LEA, which LEA is responsible for serving them?

Both LEAs record the children on NGS. The LEA that serves the geographical area where the school is located is responsible for serving the children and recording demographic data including enrollment, educational data and health data on the system. The LEA that serves the geographical area is responsible for encoding residency data on NGS, which includes demographic data from the COE.

D39. How does the State ensure that LEAs collaborate with private school officials to provide appropriate services to migrant children enrolled in private schools?

The State uses the NCLB consolidated application process as one way to ensure that LEAs consult with private school officials in providing services to eligible migrant children. Additionally, the State uses its monitoring process to ensure that LEAs meet this requirement.

D40. May MEP personnel go on the premises of religiously-affiliated private schools to provide MEP instructional services?

Yes. MEP personnel may provide direct services to eligible private school migrant students on site at

private schools, including religiously-affiliated schools.

D41. What can a small rural LEA with a small MEP allocation do to provide equitable services to private school children?

Rural LEAs may have special problems because of small allocations, large distances between private schools and few locations to provide services. These LEAs may consider leasing rather than purchasing equipment, renting a neutral site or using home tutoring to provide equitable services. They may also consider joining a Shared Services Arrangement (SSA) through their regional Education Service Center.

SECTION E – COORDINATION

The term "coordination" refers to different yet related aspects of the MEP. These aspects include:

- Planning and carrying out programs and projects in coordination with other local, state and federal programs;
- Interstate and intrastate coordination between states and LEAs to ensure the continuity of services for children who migrate from one state or school district to another, including but not limited to, the transfer of student records; and
- Grants or contracts provided under Section 1308 to improve coordination activities among educational programs that serve migrant children.

E1. What does the statute require with regard to coordination of the MEP with other programs?

Sections 1304(b) and 1306(a) of the statute require LEAs to identify and address the special educational needs of migrant children by providing them a full range of services from appropriate local, state and federal educational programs. In providing these services, LEAs must plan jointly with local, state and federal programs and must integrate the MEP with services provided by other programs.

E2. Why should LEAs coordinate MEP services with other programs?

By coordinating with other programs, LEAs ensure that the needs of migrant children are met through a variety of sources in a way that leverages other program funds and optimizes the use of MEP funds for the unique needs of migrant children.

E3. How does an LEA meet the requirement of providing a full range of services to migrant children?

The LEA must determine the children's needs and identify all the available services that address these needs. The LEA should then coordinate with those programs and agencies that provide services that meet the identified needs and help ensure that migrant children have access to appropriate programs and services.

E4. Many migrant children are also eligible to receive services under the Title I, Part A program. How does an LEA determine whether migrant children should receive Title I, Part A services?

Section 1112(b)(1)(J) requires LEAs to ensure that eligible migrant children and formerly migrant children are selected to receive Title I, Part A services on the same basis as other eligible children. In a schoolwide program, Sections 1114(b)(1)(B)(i) and (iii) of the statute require schools to implement reform strategies that address the needs of ***all*** students in the school. In a targeted assistance program, Section 1115(b)(2)(A) of the statute provides that migrant students are eligible to participate in the Title I, Part A program on the same basis as other eligible students.

E5. Many migrant children are eligible for services under Title III because they are limited English proficient. Are LEAs required to serve these children with Title III funds?

Yes. If the LEA qualifies for a Title III subgrant, migrant children who are limited English proficient must be selected to receive Title III services on the same basis as all other limited English proficient children. Limited English proficiency is determined by the definition in Title IX and by a student's performance on the State approved English proficiency assessment required under Title I, Part A and Title III.

E6. Are programs administered under Title I, Part A and Title III required by law to coordinate services with the MEP?

Yes. Section 1112(b)(1)(E)(ii) of the statute requires LEAs to coordinate and integrate Title I, Part A services with programs that serve migrant children. Also, Sections 3113(b)(4) and 3124 require LEAs to coordinate Title III programs with other appropriate programs.

E7. Are there other LEAs and organizations that offer services that may benefit MEPs operated at the local level?

Yes. The Office of Migrant Education has compiled a national directory of organizations that provide services to migrant and seasonal farmworkers and their families. A copy of this directory is available from the Department's Publication Center (ED Pubs) upon request. ED Pubs can be reached by telephone at 1-877-433-7827 or publications can be ordered online at http://www.ed.gov/about/ordering.jsp. The directory may also be downloaded from the OME website at http://www.ed.gov/offices/OESE/OME/resources.html or http://www.ed.gov/offices/OESE/OME/pubs.html.

E8. How should an LEA coordinate with other agencies?

An LEA may identify a need for coordination from the results of its annual comprehensive needs assessment or because, in the course of designing its program, it learns that certain services are available through another organization. After identifying the needs and potential services or resources, the LEA should contact the appropriate staff from the other organizations to discuss the types of services that they could coordinate. If the discussion results in a formal agreement or letter of understanding, the agreement should specify the services that each program will provide.

LEAs should communicate on an on-going basis with the organizations that they coordinate with to strengthen cross-program planning and to tap into different resources regarding the location and needs of migrant families.

E9. Why is interstate and intrastate coordination an important aspect of the MEP?

Interstate and intrastate coordination helps reduce the effects of educational disruption that migrant children suffer as a result of repeated moves.

E10. What is meant by "interstate coordination?"

Interstate coordination refers to collaborative activities undertaken by two or more states to improve the education of migrant children in those states. Ideally, this term refers to the collaborative activities that two or more states assume to improve the education of migrant children who move between those states. The

Texas MEP facilitates interstate coordination efforts by funding the Texas Migrant Interstate Program (TMIP).

E11. What is "intrastate coordination?"

Intrastate coordination refers to efforts involving two or more LEAs within a state to improve educational services to migrant children in that state.

E12. What are some interstate and intrastate coordination services?

Interstate and intrastate coordination strategies include, but are not limited to, the following types of services between and among LEAs:

- Supporting TMIP's efforts in administering the Texas Assessment of Knowledge and Skills (TAKS) test in states that receive Texas migrant students;
- Notifying "receiving" school districts about migrant families who have moved to those districts;
- Promoting the exchange of student educational records;
- Developing academic credit accrual and academic credit exchange programs;
- Implementing a dropout prevention program; and
- Exchanging information on health screenings and health problems that interrupt a student's education.

E13. What are some examples of interstate and intrastate coordination services?

A study conducted by the USDE regarding coordination efforts in the MEP found that states generally focus on four areas to promote the continuity of education for migrant students: (1) alignment of district policies, (2) improved student information exchange and access, (3) staff resources to promote academic credit accrual, and (4) opportunities for supplemental instruction. For example:

- *Alignment*. Limited English proficient students in a new school are placed in the same type of English acquisition program as in their home base school; states compare individual language assessment scores to place migrant students in the same types of coursework; and states agree on common grade placement policies.
- *Information*. Districts implement such information systems as the Texas Migrant Interstate Program, and the New Generation System to improve student information exchange and access to student academic data. These systems rely on a combination of information technologies and technical assistance and staff support.
- *Academic Credit*. To promote secondary credit accrual, particular staff members communicate with other districts to determine appropriate courses for credit accrual purposes; calculate and award partial credit; and follow up on attendance data, grades and

credit accrual information that is sent to other districts.

- *Supplemental Instruction*. There are two basic strategies in providing supplemental instruction: (1) offer flexible courses of study that help secondary students accelerate course completion or finish incomplete courses (the newest versions of these courses use technology – e.g., desktop computer labs, portable laptop computers and satellite technology – to deliver instruction); and (2) provide migrant students with additional instructional time, in the summer, in the evening, or during the school day.

E14. What does the statute require regarding the transfer of student records?

Section 1304(b)(3) requires LEAs to promote interstate and intrastate coordination by providing for educational continuity through the timely transfer of pertinent school records (including health information) when children move from one school to another, whether or not the move occurs during the regular school year.

E15. Why is this requirement an important aspect of the MEP?

The timely transfer of student records can be an effective means of reducing the effects of educational disruption on migrant students. It enables school officials (e.g., school registrars, teachers and guidance counselors) to make appropriate decisions regarding a student's enrollment in school, grade placement and academic plan (including, but not limited to, credit accrual and exchange).

E16. How do LEAs comply with this requirement?

LEAs must request the records of eligible migrant children who arrive in their district and must transmit records of those migrant children who move out of their district to another location in a timely manner.

E17. What methods do LEAs currently use to transfer student records?

LEAs must use NGS to record migrant student demographic, educational and health data. This information can then be shared electronically, if the requesting state is an NGS consortium member state or a non-member state with a "read-only" password, or via fax, if the requesting state has no means to access NGS.

E18. If a parent or guardian refuses to permit the transfer of a child's records, does the refusal affect the child's eligibility for services?

No, such a child remains eligible for services.

E19. What is the Family Educational Rights and Privacy Act of 1974 (FERPA) and how does it affect an LEA's decision to transfer a child's academic records to another LEA through the State's records transfer system?

FERPA (Section 444 of the General Education Provisions Act) is a federal statute that establishes the rights of parents to examine and question the content of their children's school records and restricts the transfer of school records without parental permission. It applies to any LEA that receives federal funds. One exception to the restriction on the transfer of school records without parental consent is if the LEA transfers the records to other school officials within the agency (whom the agency has determined to have

legitimate educational interests) or to officials of another school, school system or institution of postsecondary education where the student seeks or intends to enroll. (See 34 CFR 99.31.) This exception applies only if the LEA notifies parents annually of this policy.

E20. May an LEA release migrant student records to the State without parental consent?

Yes. FERPA provides that parental consent is not required when the disclosure is to authorized representatives of the State and LEAs for purposes of the enforcement of, or compliance with, federal legal requirements which relate to the program. (See 34 CFR 99.35.)

SECTION F – PARENTAL INVOLVEMENT

Parental involvement is an integral part of all Title I programs, including the MEP. Research shows that parents play a significant role in the academic achievement of their children. Therefore, it is important for parents and schools to develop partnerships and build ongoing dialogues to improve student achievement. Title I supports parental involvement by enlisting individual parents to help their children do well in school. In order to receive MEP funds, states and the LEAs must implement programs, activities and procedures that effectively involve migrant parents.

F1. Are LEAs required to consult with parents in planning the MEP?

Yes. Pursuant to Section 1304(c)(3), LEAs must consult with parent advisory councils in planning and operating the MEP if they operate programs of one school year in duration. The statute also requires the MEP provide for the same parental involvement as is required in Section 1118, unless extraordinary circumstances make such provision impractical. This provision requires LEAs to involve parents, in an organized, ongoing and timely way, in the planning, review and improvement of the MEP.

F2. Why is parental consultation in planning the MEP important at the local level?

As the first teachers of their children, parents know the needs of their children best and can provide insight into their children's strengths and weaknesses. As such, migrant parents can play a pivotal role in planning the educational programs and projects in which their children participate. Involving migrant parents in planning the MEP also builds their capacity to assist in their children's learning at home. In addition, parental involvement in the planning of the program enables parents to understand the program and have informed conversations with MEP and school staff regarding their children's education. Through their participation in the planning process, migrant parents are also more likely to become advocates and supporters of the program because they have a personal stake in its success.

F3. What is the function of a Parent Advisory Council (PAC)?

The PAC advises the LEA on concerns of migrant parents that relate to the planning, operation and evaluation of MEP programs and projects in which their children participate. The LEA must consult with the PAC about: (1) the comprehensive assessment of the needs of migratory children to be served; and (2) the design of the comprehensive service delivery plan.

F4. When is an LEA required to establish a PAC?

Section 1304(c)(3) of the statute requires LEAs to establish and consult with PACs in planning and operating MEP programs and projects of one school year in duration.

F5. Section 1304(c)(3) of Title I requires that PACs must be established only for "programs extending for one school year of duration." What does this mean?

The USDE interprets this phrase to mean a program or project that provides instructional or support services to migrant children and their families *throughout* the regular school year (i.e., generally, September through June, or as otherwise defined by the State).

F6. Must a project that operates only in the summer and fall establish a PAC?

No. While such a project operates *during* the regular school year, it does not operate *throughout* the regular school year. Therefore, the project is not required to have a PAC.

F7. Who is eligible to be a member of a PAC?

Parents or guardians of eligible migrant children and individuals who represent the interests of such parents are eligible to serve as PAC members.

F8. How may an LEA select PAC members?

LEAs should try to select PAC members that are a representative sample of migrant parents. Although there are a number of ways to select PAC members, to the extent feasible, parents of eligible migrant children should elect members of the PAC. In some instances, elections may not be possible because migrant families are very mobile. If elections are not possible, the LEA may select members by appointing volunteers or those nominated by other parents, teachers or administrators. In any event, the method the LEA selects should provide for maximum parental participation.

F9. Are there any "formal" procedures or scheduling requirements that govern PAC meetings?

No. However, the LEA should establish appropriate procedures and schedules that support effective consultation with the PAC in the planning, operation and evaluation of each MEP program or local project.

F10. How may LEAs facilitate effective participation of PAC members at meetings?

LEAs should provide parents the meeting location, time and agenda well in advance. Meeting times should be convenient for parents and accommodate their work schedules. The LEA may provide transportation, childcare or other reasonable and necessary costs to facilitate attendance. Meeting agendas, minutes and other materials should be in a language and format that parents understand. Meeting rules should support open discussion.

F11. What are the LEA's responsibilities if they are unable, after diligent efforts, to maintain a functioning PAC due to lack of participation?

LEAs should pursue all reasonable avenues of obtaining and reviving PAC participation before deciding that maintaining a functioning PAC is not possible. The LEA must maintain records of their ongoing efforts to maintain or establish a PAC.

F12. May MEP funds be used to pay the reasonable and necessary expenses that parent members incur to attend PAC meetings?

Yes. This may include transportation, childcare, reimbursement of lost daily wages or other reasonable and necessary expenses.

F13. May MEP funds be used to pay expenses of PAC members who are *not* the parents or guardians of eligible migrant children?

Yes. All participating members of the PAC may receive reimbursement for their expenses.

F14. Does having a PAC meet all the requirements of Section 1118?

No. However, *an active* PAC may be an appropriate focal point of an LEA's parental involvement efforts. For example, these PACs may be used to:

- Ensure full parental participation in MEP project planning, design and implementation;
- Convene an annual meeting of parents, at which school officials explain the MEP projects; and
- Provide opportunities for regular parent meetings to gather input.

To the extent that the LEA relies on a PAC to assist in meeting some of its responsibilities for parental involvement, it must also ensure the participation of individual parents through the policy involvement, shared responsibility and capacity-building activities under Section 1118.

F15. Are there any parental involvement requirements under Section 1118 that cannot be implemented through a PAC?

Yes. For example, Section 1118 requires school officials to provide parents with reports on their children's progress and to make teachers and other staff available to them for regular meetings. LEAs cannot accomplish this through PAC meetings or other group sessions. These activities require contact with individual parents.

F16. What does the statute require regarding parental involvement?

Section 1304(c)(3)(a) requires an LEA to conduct parental involvement activities "in a manner that provides for the same parental involvement as is required for programs and projects under Section 1118, unless extraordinary circumstances make such provision impractical." The statute also requires parental involvement activities to be conducted in a format and language understandable to parents.

F17. Is this requirement different from before NCLB?

Yes. The parental involvement requirement in 1304(c)(3)(a) is stricter than in past years. Before, the LEA only had to carry out the MEP "in a manner consistent with" Section 1118 "to the extent feasible." The current language of the statute creates a higher standard for complying with parental involvement requirements. Now, absent extraordinary circumstances, an LEA must follow the requirements of Section 1118 to be in compliance with Section 1304(c)(3)(a).

F18. What does Section 1118 require?

In general, Section 1118 requires:

- A written parental involvement policy;
- Policy involvement of parents in an organized, ongoing and timely way in the implementation of the MEP;
- Development of a school-parent compact in order to share the responsibility for high student academic achievement;
- Capacity building of parents and school staff for strong parental involvement; and
- Effective access to parental involvement activities.

F19. May MEP funds be used to support parental involvement activities required by Section 1118?

Yes. MEP funds may be used to pay the cost of parental involvement activities, such as: parent conferences; resource centers; training programs (including expenditures associated with attending such programs); reporting to parents on children's progress; hiring, training, and use of parental involvement liaison workers; training personnel, including pupil services personnel; providing school-to-home complementary curricula and materials in implementing home-based educational activities; providing timely information on the MEP and responses to parent recommendations; and soliciting parents' suggestions in the planning, development and operation of MEP projects.

F20. May MEP funds be used to support parents' attendance at workshops and conferences?

Yes. The LEA may use MEP funds for costs that are reasonable and necessary to support the attendance of migrant parents at workshops and conferences that enable them to participate more effectively in the local program or to conduct home-based educational activities. The LEA should develop criteria, in consultation with parents, to determine the reasonable number of parents who may attend such meetings. Upon return, attendees should provide information and, if possible, training on the conference topics to other migrant parents.

F21. May parents be paid a wage or stipend to attend parental involvement activities or meetings?

No. The statute does not authorize an LEA to pay wages to a parent to attend a meeting or training session, or to reimburse a parent for salary lost due to attendance at general parental involvement activities. Parental involvement expenditures are limited to actual expenses that a parent may incur. (Note: The rules differ for members of parent advisory councils.)

F22. May MEP funds be spent for food and refreshments provided during parent meetings or training?

Yes. Reasonable expenditures for refreshments or food, particularly when such meetings extend through

mealtime, are allowable.

F23. May parents serve as classroom aides and tutors?

Yes. However, parents with instructional duties who are paid to work in a schoolwide school, or who are paid with Title I, Part A funds to work in Title I targeted assistance program, must meet the paraprofessional education qualification requirements of Section 1119. These requirements do not apply to parents who volunteer for such duties.

SECTION G – PROGRAM EVALUATION

States are required to evaluate the effectiveness of the MEP and to provide guidance to their local projects on how to conduct local evaluations. Evaluations allow States and LEAs to: (1) determine whether the program is effective and document its impact on migrant children; (2) improve program planning by comparing the effectiveness of different types of interventions; (3) determine the degree to which projects are implemented as planned and identify problems that are encountered in program implementation; and (4) identify areas in which children may need different MEP services. A proper evaluation can provide powerful information regarding how best to use MEP funds to achieve the desired result.

This section addresses these and other aspects of evaluation under the MEP. The section is designed to help local project administrators understand the legal requirements in this area and to help them implement effective evaluation strategies.

G1. What does "evaluation" mean?

Evaluation means systematically and methodically collecting information about a program or some aspect of a program in order to improve the program or make decisions about the merit or worth of the program.

G2. What do the following terms mean: (1) "performance goal," (2) "performance indicator," (3) "performance target" and (4) "measurable outcomes?"

For purposes of the MEP, these terms represent the results that educators and education policymakers at the federal, state and local levels seek to achieve. They represent the progression from the broad goals of student achievement to very specific, concrete outcomes that are set at the State and LEA level. The terms are defined as follows:

1. *State Performance Goals*—The ESEA performance goals are the broad expression of the desired results that *all* states are working to meet. They cut across all of the major ESEA programs and reflect the overall vision of the No Child Left Behind Act of 2001, which is to improve the achievement of all students. All States agreed to adopt a set of five performance goals in their approved Consolidated State Applications. States also have the option of establishing additional State goals for improving student achievement.

2. *Performance Indicators*—The ESEA performance indicators provide a way of measuring whether states have made progress toward achieving each broad performance goal. As with the performance goals, the indicators cut across all major ESEA programs and reflect the overall vision of the No Child Left Behind Act of 2001. In 2002, all States agreed to adopt performance indicators that correspond to the five (5) performance goals in their approved Consolidated State Applications.

3. *Performance Targets*—Performance targets are the results states expect to achieve by a specified date with respect to each ESEA indicator. Each State was required, as part of the Consolidated State Application, to develop performance targets for each performance indicator.

4. *Measurable Program Outcomes*—Measurable outcomes are the results the MEP hopes to achieve at the State and LEA level through the provision of specific educational or educationally-related services. Measurable outcomes help the MEP determine whether, and to what degree, it has met the special educational needs of migrant children who the State identified through the comprehensive needs assessment. The measurable outcomes at both the State and LEA levels help migrant children achieve the State's performance targets. (See Section 1306(a)(1)(D) of the statute.)

G3. Which *performance goals* and *performance indicators* must LEAs address for purposes of the MEP?

All States have agreed to adopt five (5) performance goals and corresponding performance indicators through the approved Consolidated State application. These are broad goals and indicators for *all* of the children in the state, including migrant children. For purposes of program design and evaluation, the MEP will focus on Performance Goals 1 and 5, which are presented in the following table.

Performance Goals and Performance Indicators that the MEP *Must* Address
Performance Goal 1: By 2013-2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and math. 1.1. *Performance indicator*: The percentage of students, in the aggregate and for each subgroup, who are at or above the proficient level in reading/language arts on the State's assessment. (Note: These subgroups are those for which the ESEA requires annual State reporting on student achievement, as identified in Section 1111(h)(1)(C)(i).) 1.2. *Performance indicator*: The percentage of students, in the aggregate and in each subgroup, who are at or above the proficient level in math on the State's assessment. (Note: These subgroups are those for which the ESEA requires annual State reporting on student achievement as identified in Section 1111(h)(1)(C)(i).)
Performance Goal 5: All students will graduate from high school. 5.1. *Performance indicator*: The percentage of students who graduate from high school each year with a regular diploma, – disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged; – calculated in the same manner as used in National Center for Education Statistics reports on Common Core of Data. 5.2. *Performance indicator*: The percentage of students who drop out of school, – disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged; – calculated in the same manner as used in National Center for Education Statistics reports on Common Core of Data.

G4. Were States required to develop *performance targets* for all children?

Yes. For Performance Goals 1 and 5, all States were required by May 2003 to submit performance targets to USDE for each performance indicator and baseline data for the targets. Performance targets help ensure that all students move closer each year toward meeting the State's performance goals.

G5. Must the LEA develop *measurable outcomes*?

Yes. The LEA must develop measurable outcomes for the MEP that are appropriate measures of the success of the program and that contribute to the achievement of the State's performance targets. The LEA must then develop measurable outcomes that are aligned with the State's measurable outcomes for the MEP. (See Section 1306(a)(1)(D) of the statute.)

G6. In general, what are the requirements for evaluating the effectiveness of the MEP?

In evaluating the results of the program, each LEA must evaluate students who participate in the instructional or support service components of the MEP against the program's measurable outcomes. In addition, depending on the type of project, LEAs should measure student achievement through the TAKS. (See Section 1304(c)(5) of the statute.)

G7. How does an LEA evaluate the effectiveness of the MEP?

LEAs should evaluate the effectiveness of the program by comparing the results of the program against: (1) the measurable outcomes established for the MEP, and (2) the State's performance targets.

G8. Who is responsible for evaluating the MEP?

Both the State and its LEAs have evaluation responsibilities. LEAs must conduct a local project evaluation that measures both the implementation of the project and student performance against the project's measurable outcomes, the State's measurable outcomes and the State's performance targets.

G9. When and how often should LEAs conduct an evaluation?

LEAs should examine the *results* of the program (i.e., the degree to which the program has met the measurable state and local outcomes) on an *annual* basis. A results-based evaluation is necessary for monitoring progress toward established goals.

G10. Must an LEA focus on migrant children who have "priority for services" in its evaluation?

Yes. The LEA must focus on migrant children who are "priority for services." (See 34 CFR 200.84.) "Priority for Services" children are those who: (1) are failing, or most at risk of failing, to meet the State's challenging State academic content and student achievement standards, ***and*** (2) whose education has been interrupted during the regular school year. (See Section 1304(d) of the statute.)

G11. Are MEP preschool programs subject to the MEP program evaluation requirements?

Yes. An LEA that operates a MEP preschool project must evaluate the progress of migrant children who participate in the project. The LEA must measure the project's progress against the project's measurable

outcomes and must report its evaluation results to the State. LEAs must ensure that the results of the evaluations are used to improve services for children who participate in MEP preschool projects.

G12. What, if any, program improvement requirements apply to the MEP?

Although the school improvement requirements in Section 1116 of the statute do not apply to the MEP, LEAs may use evaluation results to improve services provided to migrant children. (See 34 CFR 200.85.) Program improvement is advanced by prompt and careful study of evaluation, needs assessment and other types of data. At any point in the year, these data may suggest a need to adjust the current program or justify a modification in program services.

G13. What documentation should the LEAs keep to demonstrate that they have used the results of their evaluations to improve MEP projects?

The LEAs must keep any information that documents how programs have changed in response to evaluation findings. Such information might include: (1) the evaluation procedures and results; (2) the previous and current applications; (3) other descriptions of program design that identify changes in the program; (4) summaries of programmatic changes that were made on the basis of evaluation results; and (5) any other evidence of program improvement.

G14. How should LEAs evaluate MEP summer programs and projects?

LEAs must evaluate both the implementation and results of summer school programs in the same way they evaluate MEP programs that operate during the regular school year. LEAs must measure summer projects against state and local measurable outcomes and the State's performance targets. Although a summer project poses special challenges because of its short duration, it is important to measure its impact on migrant children to determine whether the program is effective.

G15. How should an LEA evaluate the success of MEP support services?

The LEA should measure the effects of support services against the project's measurable outcomes.

SECTION H – PROGRAM PERFORMANCE AND CHILD COUNT REPORTING

States are required to report certain information on the MEP and other formula grant programs through a Consolidated State Performance Report. The purpose of the report is to provide timely information on the implementation of their approved Consolidated State Plans. (See Section 9303 of the statute.)

Each year, States must provide MEP specific program performance information, including: (1) the annual count of migrant children; and (2) a detailed narrative that describes the procedures the states followed to obtain and verify the child count. Each State must have procedures in place to ensure that the child counts: (1) are accurate; (2) reflect only eligible migrant children; and (3) are sufficiently well documented so that an outside reviewer who is unfamiliar with the MEP would understand the process.

H1. The MEP uses the terms (1) "eligible," (2) "entered in," (3) "enrolled" and (4) "participate" to describe aspects of a child's participation in the MEP. What do these terms mean, and which ones are used in relation to evaluation requirements and to the MEP performance report?

The following terms are *not* interchangeable:

1. The term "eligible" refers to establishing that a particular child is eligible for the MEP, generally through an interview process that results in the completion of a Certificate of Eligibility (COE).

2. The term "entered in" refers to entry of a child, or a child's education or health records, into the State's electronic migrant student record system, where, if he or she is age 3 through 21, the child will be counted for funding purposes. Generally, only states that have electronic systems use this term.

3. The term "enrolled" is generally used to refer to the enrollment of a child in any school program. In addition, the term is sometimes also used in connection with special summer funding counts to refer to students who participate in summer MEP projects. These children generate additional summer funding for those states in which they reside beyond the funding generated because of their residency.

4. The term "participate" refers to a migrant child who the State determines is eligible for the MEP *and* who receives a service that is included in the comprehensive State plan for service delivery and that contributes to the attainment of the State's measurable outcomes and performance targets.

H2. Can an LEA serve a child whose migrant status ended during a school term?

A child who ceases to be a migrant child during a school term is eligible for services until the end of the term and should be included in all counts and data collection efforts during that term. (See 1304(e) of the

statute.) However, a child whose eligibility ends during the regular school term cannot be included in the Category 2 summer child count even if he/she participates in a summer program.

H3. Is there a minimum amount of time that a child must participate in the MEP for services to be reported to the Texas Education Agency (TEA)?

No. All students who receive instruction or support services should be included in the appropriate parts of the performance report, even if some of those students were absent during some of the time that the project operated.

H4. What is a "child count?"

For purposes of the MEP, a "child count" is the State's numeric calculation of the total unduplicated number of eligible migrant students statewide who can be counted for funding purposes. The USDE collects two separate child counts, known as the Category 1 and Category 2 child counts.

H5. What is the "Category 1" child count?

The Category 1 child count is the 12-month unduplicated statewide total of children who are eligible to be counted for funding purposes. It consists of all of the migrant children ages 3 through 21 who, within three years of a qualifying move, resided in the state for one or more days during the September 1 to August 31 performance period. A "migrant child" must meet the definition in Section 1309 of the statute and Section 200.81 of the MEP regulations.

H6. What is the "Category 2" child count?

The Category 2 child count is the unduplicated statewide total summer/intersession count of eligible MEP project participants who can be counted for funding purposes. It consists of all of the migrant children who were served for one or more days in MEP-funded summer or intersession programs in the state during the September 1 – August 31 performance period.

H7. What is a "summer term?"

A summer term is any period of time in a locality that operates a traditional-calendar school year when the regular term of that school year is not in session and a federally-sponsored instructional program is offered. Year-round schools, for purposes of this report, are not considered to have summer terms. Any break in the regular term of a year-round school is considered an intersession term, regardless of the season of the year in which it occurs.

H8. What is an "intersession?"

For schools on a year-round calendar, an intersession term is the aggregate of all those periods throughout the year when the school (or part of the school) is not in session or does not provide the annual instruction analogous to the traditional school-year regular term. Even though the intersession periods occur at different times throughout the year, for purposes of this report, those periods are all considered a single term. Thus, a student who participates in intersession programs in October, February and June would be counted as participating in one intersession term (not three).

H9. Should all of the migrant children who are counted in the Category 2 child count also be counted in Category 1?

Yes. As discussed previously, the Category 1 count is the unduplicated statewide total number of eligible migrant children who were resident in a state for one or more days during the September 1 – August 31 performance period. The Category 2 unduplicated count of eligible migrant children served in summer/intersession projects is a subset of the larger Category 1 count. If an eligible migrant child was documented as being served by the MEP during the summer, he/she was clearly residing in the state that year and, therefore, should be included in the Category 1 child count. Children whose 36-month eligibility for the MEP expired prior to the beginning of the summer/intersession program may be entitled to continue receiving services under the "continuation of services" provision in Section 1304(e) of the statute, but they may *not* be included in the Category 2 child count.

H10. Is it necessary for an LEA to verify and document that a child counted under Category 1 met the definition of a migrant child and was actually resident for at least one day during the September 1 – August 31 performance period?

Yes. MEP funding depends on the accuracy of its child count data.

H11. Must a new COE be completed for every child included in the Category 1 count in order to document residency during the September 1 – August 31 performance period?

No. The LEA must use the COE from the prior year for a child whose eligibility has not expired (because of age or the 3-year limit) to establish residency.

H12. Must the LEA check records of 2 year olds to determine whether they resided in the state after they turned 3 years old?

Yes. The child counts must not include any migrant child below the age of 3. However, if records (e.g., COEs or data base records) indicate a child was below 3 years of age at the time the LEA identified him/her, the LEA should check (either by examining the recorded withdrawal date or by having a recruiter check with the family) to determine if the child resided in the state for at least one day on or after his or her third birthday. The LEA may include such a child in the child count only if it has documentation that the child was past his or her third birthday while residing during the September 1 – August 31 performance period.

H13. Should an LEA check the qualifying arrival date (QAD) of children included in the child count?

Yes. LEAs should check the QAD to ensure that only eligible migrant children who are resident in the state are included in the child count. This is particularly important for states that include children in their data base who are no longer eligible for the MEP but who continue to receive services under Sections 1304(e)(2) and 1304(e)(3) of the statute. The LEA must ensure that these children are not included in the child count because they are no longer eligible.

H14. Should the LEA verify that children included in the two child counts are eligible for the MEP?

Yes. The LEA may only include children who meet the definition of a "migratory child" in the child counts. (See Section 1309(2) of the statute and 34 CFR 200.81.) Each LEA must have a quality control process in place by which it checks the completeness and accuracy of the eligibility documentation for children included in the child count. Such a process might include periodic reviews of all, or a sample of, COEs by LEA staff.

H15. Should the LEA check the names of children included in Category 2 against enrollment documentation to verify that the LEA served the children?

Yes. As part of a quality control process, LEA staff should verify that children included in Category 2 actually received a summer service. To do so, staff may review local documentation, such as a project's enrollment lists, attendance rosters or teacher logs to confirm that the local project actually served all the children included in the State's Category 2 count.

H16. Is there a requirement that services have to be of minimum duration and intensity to enable the State to count participating children under Category 2?

No, the Department has not established such a requirement. However, states are responsible for determining whether summer and intersession services are of sufficient duration and intensity to enable the program to meet its measurable outcomes and to contribute to the achievement of the State's performance targets in order to count participating children under Category 2.

H17. Must a student participate in the entire summer program in order for the State to include him/her in the Category 2 count?

No. However, the student must participate in the program for at least one full day in order to be counted in Category 2.

H18. May an LEA count a child who received only a support service (and no instructional service) under Category 2?

Yes. A LEA may count a migrant child who received a support service through a MEP-funded summer or intersession program. Although the service does not need to be part of an instructional program, it should enable the program to meet its measurable outcomes and contribute to the achievement of the State's performance targets. Note that the student must participate in the program for at least one full day in order to be counted in Category 2.

H19. May an LEA count an eligible migrant child who was served in a summer/intersession project that was not supported by MEP funds in Category 2?

No. If no MEP funds were used to provide a summer/intersession service, the child may not be counted in the Category 2 count. The purpose of the Category 2 child count is to generate an adjustment to reflect the additional costs to the MEP of serving migrant children beyond the regular school year.

H20. May LEAs begin summer projects before the end of the regular school year?

No. Migrant children may not begin generating a summer child count for the State until the LEA's regular school year has ended.

Migrant children who arrive in the state before the end of the school year are entitled to receive services from the regular school program. Therefore, the MEP summer program cannot provide services that "supplant" (i.e., replace) the services that the regular school program offers.

H21. May an LEA include children in its child count who cease to be migrant during the school term and who the State continues to serve in accordance with Section 1304(e)(1) of the statute?

Yes. The LEA must include children whose eligibility expired during a school term and who the LEA continued to serve until the end of that term (fall, spring or summer). Such children only generate a Category 2 count if their eligibility expired after they began to be served in the summer or intersession term.

H22. May the LEA include children in its child count who are no longer migrant but who it continues to serve under Sections 1304(e)(2) and 1304(e)(3) of the statute?

No. Under Section 1304(e)(2), LEAs may serve children who cease to be migrant for one additional year if comparable services are not available through other programs. Section 1304(e)(3) allows LEAs to continue to serve secondary students who were eligible for services in secondary school through credit accrual programs until graduation. An LEA may not count these children in its child counts because they do not meet the definition of a "migratory child."

H23. What does "term" mean in Section 1304(e)?

USDE interprets the word "term" to mean one of the following discrete periods of the school year: fall, spring, summer, intersession. Therefore, regarding Section 1304(e)(1), a migrant child whose eligibility expires "during a school term" such as the fall term (e.g., on October 1) can still be served until the end of the fall term (e.g., the winter break), but not in the subsequent spring term, unless the exception in Section 1304(e)(2) applies.

SECTION I – FISCAL REQUIREMENTS

LEAs must comply with two fiscal requirements regarding the expenditure of state and local funds to ensure that MEP funds are used to provide services that are supplemental to the regular services migrant children receive. The statute requires LEAs to: (1) use MEP funds to "supplement, not supplant" non-federal funds; and (2) provide services to migratory children with state and local funds that are at least comparable to services provided non-migratory children. (See Sections 1120A(b) and (c) of the statute.) The statute and regulations provide an exclusion from these requirements for special state- and locally-funded programs that meet the intent and purposes of the MEP.

I1. What does "supplement, not supplant" mean?

"Supplement, not supplant" is the phrase used to describe the requirement that MEP funds may be used only to supplement the level of funds that would, in the absence of MEP funds, be made available from non-federal sources for the education of children participating in MEP projects. LEAs may not use MEP funds to supplant (i.e., replace) non-federal funds.

I2. Does the "supplement, not supplant" requirement apply to the use of MEP funds to serve migrant children who are not enrolled in grades K-12 (e.g., preschool children or older children who have dropped out of school)?

The "supplement, not supplant" requirement applies if the LEA has a non-federally funded program that serves these children in the area in which they reside. If not, the "supplement, not supplant" requirement does not apply because there is no program for MEP funds to supplant.

I3. What is "comparability?"

Comparability refers to the requirement that LEAs ensure that schools that receive MEP funds provide services that, taken as a whole, are at least comparable to services provided by schools that do not receive MEP funds. This comparison is done on a grade-span-by-grade-span basis or school-by-school basis. (See Section 1120A of the statute.)

I4. What records should an LEA maintain to document compliance with the comparability requirement?

The LEA must maintain records that document the salary schedule and policies that the agency implemented to achieve equivalence among schools in staff, materials and supplies.

I5. What does the State do if it finds that an LEA has not complied with the comparability or "supplement, not supplant" requirements?

If the exclusion in 34 CFR 200.88(b) does not apply, the State must withhold funds or require repayment of funds from the LEA.

I6. What is "maintenance of effort?"

Maintenance of effort refers to the requirement that an LEA's combined fiscal effort per student or the aggregate expenditures of the LEA and the State on free public education in the preceding fiscal year must

not be less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. (See Sections 1120A and 9521 of the statute.)

I7. Must LEAs comply with "maintenance of effort" requirements with respect to the MEP?

No. Section 299.5(b) of the regulations excludes the MEP from this requirement.

I8. What is an "allowable activity" for which a LEA may use MEP funds?

An "allowable activity" is an activity that meets the requirements of Section 1306(b) of the statute, comports with the cost principles in the Office of Management and Budget (OMB) Circular A-87 and meets the applicable requirements of EDGAR, particularly Parts 76 and 80.

I9. What does Section 1306(b) require?

Section 1306(b) requires that –

- The activities and services LEAs fund must comport with the results of the comprehensive statewide needs assessment and the requirements of the comprehensive service delivery plan.
- LEAs must first use MEP funds to meet the identified needs of migrant children that result from their migrant lifestyle, and to permit these children to participate effectively in school.
- In general, LEAs must use MEP funds to meet the needs of migrant children that are not addressed by services available from other federal or non-federal programs.

I10. What are some examples of allowable activities for which an LEA may use MEP funds?

In general, LEAs may use MEP funds for:

- Instructional services (e.g., activities for preschool-age children and instruction in elementary and secondary schools, such as tutoring before and after school);
- Support services (e.g., acting as an advocate of migrant children, providing access to health and social service providers; providing migrant families with necessary supplies);
- Professional development (e.g., training programs for school personnel to enhance their ability to understand and appropriately respond to the needs of migrant children);
- PAC and other parental involvement activities;
- Identification and recruitment;
- New Generation System (NGS);
- Coordination activities with other agencies, both within the state and with other states nationwide, including the transfer of student records;

- Comprehensive needs assessment activities; and
- Evaluation of the MEP.

I11. May an LEA use MEP funds to construct school facilities?

No. The MEP statute does not authorize the use of MEP funds for construction.

I12. May an LEA use MEP funds to pay for the utilities of a school building (e.g., janitorial and maintenance costs) that the MEP uses for a summer program?

Yes. This is an allowable cost, i.e., that the LEA does not include the costs in its indirect cost pool during the same period.

I13. May an LEA use MEP funds to support the participation of migrant students in another federally-funded educational program (e.g., a program for limited English proficient students funded by Title III)?

Yes. However, Section 1306(b)(2) and requirements of other federal programs place certain conditions on when and how this may be done.

Section 1306(b)(2) requires LEAs to provide services to migrant students from other federal programs *before* they use MEP funds to provide services. Furthermore, while each federal program has its own eligibility requirements, none permits migrant students to be excluded from services because they are eligible for the MEP. Therefore, other federal programs must select and provide services to eligible migrant students on the same basis as other eligible children. After the other federal program selects students for services, an LEA may use MEP funds to increase the number of migrant students who participate in the project and/or enhance the services that participating migrant students otherwise receive.

> Example: A Title III program that provides English classes to limited English proficient students during the summer. Many migrant children will be eligible for the Title III program because they are limited English proficient. These children may not be excluded from the Title III program simply because they are also eligible for the MEP. They must be selected for the Title III program on the same basis as other eligible children. Furthermore, Section 1306(b)(2) provides that these children should receive services from the Title III program *before* the MEP provides the same or similar service. After the Title III program selects the students who will participate, the LEA may use MEP funds to increase the number of migrant students who participate in the program by paying for the salary of an extra teacher or paying a proportional amount of the per pupil expenditure for additional migrant students.

I14. May an LEA use MEP funds to provide services that are available under Title I, Part A?

Yes, under limited circumstances. Section 1306(b)(2) provides an exception to the requirement that other federal program funds must be used *before* MEP funds to provide a service in cases where migrant children are eligible for both the MEP and another federal program.

In the case of Title I, Part A, an LEA may use MEP funds to provide services available under Title I, Part A to migrant children who are eligible for both programs. However, this exception applies only if MEP funds

remain *after* the LEA has met all of the identified needs of migrant students that result from their migrant lifestyle and that permit these children to participate effectively in school. LEAs must document that they have met the special educational needs of migrant children if they use MEP funds under this exception. If no MEP funds remain after meeting the needs that result from their culture of migrancy and that permit children to participate effectively in school, Title I, Part A must provide services to those migrant children who are eligible for the program on the same basis as other children who are eligible for Title I, Part A.

I15. May an LEA use MEP funds to support the participation of migrant children in a non federally-funded program?

Yes. However, LEAs must ensure that the use of MEP funds does not violate the "supplement, not supplant" requirement. This requirement prohibits LEAs from using MEP funds to replace services that are otherwise available from non-federal sources. Title I regulations permit one exception in cases where the non-federally funded program meets the intent and purposes of the MEP.

I16. How may an LEA combine MEP funds with a non federally-funded program?

LEAs may jointly fund activities for migrant children in a variety of ways. For example, consistent with the "supplement, not supplant" considerations, an agency may use MEP funds to pay for the salary of an extra teacher to enable more migrant students to participate in a program. The LEA may also contribute to the cost of the program by paying a proportional amount of per pupil expenditure for additional migrant students who can thereby participate.

Another example may involve co-funding a supplementary summer program for migrant and non-migrant students.

I17. May an LEA purchase equipment with MEP funds?

Yes. However, before doing so, the LEA must demonstrate through the application process that: (1) the equipment is reasonable and necessary to operate the MEP effectively; (2) existing equipment is not sufficient; and (3) the costs are reasonable. [Please note that Section 80.36 of EDGAR also has requirements regarding procurements, particularly for the LEA.]

I18. What procedures govern the use and management of equipment purchased with MEP funds?

Section 80.32(b) of EDGAR requires a state to use and manage equipment "in accordance with state laws and procedures." LEAs, as subgrantees, must follow the procedures described in Sections 80.32(c) and (d) of EDGAR and any state procedures that are consistent with these regulations.

I19. How does an LEA dispose of property purchased with MEP funds?

Section 80.32(b) of the regulations provides that a LEA must dispose of equipment "in accordance with state laws and procedures." LEAs, as subgrantees, must follow the procedures in Section 80.32(e) of EDGAR.

I20. What is an "indirect cost?"

Fiscal accounting procedures classify the costs charged for all program components as either "direct costs" or "indirect costs." These terms have precise meanings in terms of salary, materials and supplies, equipment, utilities and other kinds of expenses ("cost objectives") for which program funds may be charged.

Indirect costs are those costs that: (1) are incurred in the course of pursuing a common or joint purpose that benefits more than one cost objective; and (2) are not readily assignable to those cost objectives without an effort that is disproportionate to the benefits of doing so. They differ from direct costs which, because they can be identified specifically with a particular cost objective, may be charged directly to a particular grant or contract. While any cost conceivably could be charged to either a direct or indirect cost, those that might be charged to the MEP most readily as indirect costs include costs for electricity, janitorial service, refrigerator space, central computer use and the air conditioning that a LEA incurs to operate a building in which many programs are administered.

To determine the amount that an LEA may charge to its MEP grant as indirect costs, the LEA applies an "indirect cost rate" to the total of its program expenditures. Under Section 76.561 of EDGAR, the USDE approves the indirect cost rate for any state wishing to charge indirect costs to its MEP grant. The State then approves a rate for each LEA that requests one based on the rate the Department approved.

I21. May an LEA charge indirect costs to the MEP?

Yes. Indirect costs are allowable at both the LEA level. (See sections 76.560, 76.561, and 76.563 of EDGAR.)

I22. What is a "restricted" indirect cost rate?

Section 76.563 of EDGAR provides that LEAs must apply a restricted indirect cost rate to their MEP grants. The "restricted" rate is lower than the general "unrestricted" rate because it is based on an exclusion of certain agency-wide costs that, because of the "supplement, not supplant" provision, cannot be charged to MEP funds. Sections 76.564 through 76.569 of EDGAR describe how these restricted rates are calculated.

I23. May an LEA authorize the use of MEP funds for travel and conference costs?

Yes. MEP funds may be used if the travel and conference expenditures are reasonable and necessary and are specifically related to the MEP projects, not to the general needs of the LEA. (See OMB Circular A-87, Attachment B, Item Cost 30, regarding specific rules on conference costs.)

SECTION J – STATE SUBGRANTING PROCEDURES

J1. Is any LEA *entitled* to receive an MEP subgrant?

No. The State has the option to operate the MEP directly or through subgrants to LEAs. The State determines which LEAs, if any, receive subgrants to operate the MEP.

J2. Who is responsible for determining the amount of a subgrant to an LEA?

The State has sole responsibility for determining amounts of subgrants.

J3. How does the State distribute funds to an LEA to operate a migrant program?

In determining the amount of a subgrant, the State must distribute funds based on the requirements in section 1304(b)(5) of the statute. The State must take into account:

1. the numbers of migrant children;

2. the needs of migrant children;

3. the statutory priority to first serve children who are failing, or most at risk of failing to meet the State's challenging State academic content standards and whose education has been interrupted during the regular school year; and

4. the availability of funds from other federal, state and local programs.

J4. What MEP records are subgrantees required to keep?

Sections 76.730 and 76.731 of EDGAR require subgrantees to keep records that show:

- the amount of funds under the subgrant;
- how the subgrantee uses the funds;
- the total cost of the project;
- the share of that cost provided from other sources; and
- other records as needed to facilitate an effective audit.

In addition, a subgrantee is required to keep records to show its compliance with program requirements.

J5. How long must the LEA maintain MEP records?

Generally, records must be maintained for three (3) years after the date the grantee or LEA submits its last expenditure report for the period in question. (See sections 80.42(b) and c) of EDGAR.) If any

litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

J6. For audit purposes, how long must a grantee keep records related to a grant?

Grant records that are the subject of an audit initiated prior to the end of the record retention period must be retained until the audit, audit resolution or audit appeal is complete. Record keeping should establish an audit trail beginning with the preparation of the application, and should include records to support the application.

J7. How long must the LEA keep a COE?

The length of time that the LEA must keep a COE depends on whether the child makes subsequent qualifying moves, which will increase the amount of time. For example, a COE that indicates that a child made a qualifying move in October 2000 means that the child will remain eligible, without another qualifying move, until October 2003. A child eligible in October 2003 would be included in the Category 1 child count for the period September 1, 2003 – August 31, 2004 and would generate FY 2005 funding for the State. FY 2005 funds may be used, with carryover, until September 30, 2007. The State does not need to submit the final expenditure report for these funds to USDE until as late as December 31, 2007. *The three-year record retention period begins in December 2007 when the State submits the final expenditure report and runs until December 31, 2010. Therefore, the State would have to keep this particular certificate of eligibility until December 31, 2010.*

J8. What records are necessary to support the salary costs charged to MEP funds for an employee who has both MEP and non-MEP responsibilities?

A grantee must maintain appropriate time distribution records. Actual costs charged to each program must be based on the employee's time distribution records. For instructional staff, including teachers and instructional aides, class schedules that specify the time that such staff members devote to MEP activities may be used to demonstrate compliance with the requirement for time distribution records so long as there is corroborating evidence that the staff members actually carried out the schedules.

SECTION K – CROSS-CUTTING ISSUES

K1. How do the new Title I, Part A paraprofessional qualification requirements apply to paraprofessionals in a schoolwide program?

The requirements apply to all paraprofessionals with instructional duties in a schoolwide program, without regard to whether the position is funded with federal, state or local funds. In a schoolwide program, Title I funds support all teachers and paraprofessionals.

K2. How do the new paraprofessional qualification requirements apply to paraprofessionals in a targeted assistance program?

In a Title I targeted assistance program, the requirements apply to all paraprofessionals with instructional duties who are paid with Title I funds.

K3. Do the paraprofessional requirements apply to persons paid with MEP funds?

The paraprofessional qualification requirements do not apply to individuals paid with funds under Title I, Part C (Education of Migratory Children), unless these individuals are working in a schoolwide program school.