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ABSTRACT

This document provides guidelines for identifying, recruiting, and determining eligibility of students for migrant education programs. Through a question and answer format (using actual questions asked by migrant program personnel), the document addresses issues pertaining to guardianship, qualifying employment, industrial surveys, certificates of eligibility, and the Migrant Student Record Transfer System. The last section addresses miscellaneous issues such as moves made within foreign countries, moving before work is available, length of time between move and seeking employment, time limits on moves, identifying versus serving eligible migrant students, identifying students who do not receive services, and participation of tuition-paying nonmigratory children in migrant education summer projects. Each question includes the date asked and the names and titles of the persons asking and answering the question. (LP)

Selected Written Guidance Provided by The Office of Migrant Education on

STUDENT ELIGIBILITY

August 16, 1994

TABLE OF CONTENTS

ADDITIONAL IDENTIFICATION, RECRUITMENT, AND ELIGIBILITY RESOURCES TO CONSULT:

Identification and Recruitment and Eligibility Chapters from the Migrant Education Program Policy Manual

National Certificate of Eligibility

Policy Guidance Related to Conducting an Industrial Survey of an Agricultural or Fishing-Related Industry

PREFACE

The Office of Migrant Education is pleased to provide you with a compilation of selected written guidance on student eligibility issued by our office. This document was developed, in part, to respond to a need expressed by the field to augment the current system of distributing letters that elaborate on matters addressed in the *Migrant Education Program Policy Manual*.[1] This document is not a new source of policy, and serves only to support and reinforce the office's principal source of guidance, the *Migrant Education Program Policy Manual*.

We encourage State Directors to distribute this document to State and local staff who work directly with identification, recruitment and eligibility issues. We encourage anyone who has additional policy-related questions to first check with their State Director to determine if the State has established a specific State-level policy, and then, if further clarification is needed, to write to our office at the following address:

Dr. Francis V. Corrigan
U.S. Department of Education
400 Maryland Avenue, S.W., Portals Room 4100
Washington, D.C. 20202-6135

We hope you find this document useful in determining whether individual students are eligible for services through the Migrant Education Program.

[1]The Office of Migrant Education currently distributes a summary of guidance and policy-related correspondence to State Directors twice each year. State Directors may request a copy of any letter contained on that list. Average response time on requests for copies of specific letters has been less than two weeks.

I. GUARDIANSHIP ISSUES

I. GUARDIANSHIP ISSUES

Sibling as a Guardian/Qualifying Self-Employment.

Q: Can a child who is a migratory farmworker qualify his/her siblings for MEP services on the basis of his/her work? Is a youth who has not migrated previously eligible for program services based on his/her own employment?

A: Where children travel together accompanied by a nonworking parent or guardian, other children in the family would be eligible based on a brother or sister's qualifying employment as a migratory farmworker if the working brother or sister acknowledges responsibility for the children and stands in place of a parent.

The child working as a migratory farmworker could be eligible as a formerly migratory child if, within the last six years, he or she had a qualifying move with or to join a parent, guardian or other immediate family member who was a migratory worker.

The child working as a migratory farmworker could be eligible as a currently migratory child if he or she had migrated on his or her own to seek qualifying employment at least annually since the last time he or she moved with or to join a parent, guardian or other immediate family member who was a migratory worker. Section 201.3 of the program regulations provides that a child cannot qualify for MEP services on his or her own if the child either (1) has not previously moved with or to join a parent, guardian or other immediate family member who moved to seek temporary or seasonal employment in a agricultural or fishing activity, or (2) has had more than a one year lapse between moves on his or her own.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Dr. Marilyn A. Campbell, Connecticut's Acting Commissioner of Education
Date: January 24, 1992

I. GUARDIANSHIP ISSUES

Crew Chiefs as Guardians.

Q: Can an unrelated adult (such as a crew leader) who is willing to attest that he/she is responsible for the child -- on the Certificate of Eligibility -- be considered the child's guardian?

A: Yes. We have reviewed the current law and the definition in Section 201.3 of the program regulations, as well as many of the past regulations concerning this issue. We have concluded that children who move across school district boundaries to obtain temporary or seasonal employment in agricultural or fishing activities with a crew leader who is willing to assert responsibility for the children and to attest to being their guardian, are eligible for the program as currently migratory children on the basis of that move.

In the past, cases of a child or group of children being determined eligible on the basis of allowing someone to act "in loco parentis" have usually been confined to one child or one family. However, there is no reason why a single crew leader can not serve in place of a number of parents, if that crew leader is willing to assert the responsibilities of guardianship. Therefore, if these children meet all other requirements, they may be considered eligible for the Migrant Education Program.

Dr. Francis V. Corrigan, Acting Director, Office of Migrant Education to Ms. Beth Arnow, Coordinator of Georgia's Migrant/ESOL Program. Date: November 27, 1989

I. GUARDIANSHIP ISSUES

Temporary Guardians.

Q: With respect to the "person standing in place of a parent" (guardian), we have encountered many young adults (ages 17 - 21) who have traveled from Mexico to Washington State, having no previous move history. These young adults travel with one or more other adults (non-family members or extended family). Often times, the traveling companions serve as "temporary guardians." They may be the same age or one or two years older. The young adults and "guardians" no longer live together, after having made the move from Mexico. The student may be on his/her own or living with relatives and/or friends. Are these young adults, through the age of 21, eligible for services under the Chapter 1 Migrant Education Program?

A: A child, through age 21, who made a move from Mexico to Washington State "to enable the child, the child's guardian or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity," *may* be eligible even if there is no previous move history. The interviewer or recruiter should explain on the COE the reasons for believing the move from another country to the new location -- as opposed to subsequent qualifying moves after arrival at the first place of residence in the U.S. -- was made to enable the child, parent, or guardian to seek or obtain qualifying agricultural work, rather than for permanent relocation. In addition, the child must meet all other MEP eligibility requirements. Other questions that you may want to ask are:

> Did the child move to *join* a parent, guardian or a family member?
>
> Is the parent, guardian or family member a migratory agricultural worker?

The migrant program regulations require that the child's parent or guardian be a migratory agricultural worker or a migratory fisher. Your facts do not address the work status of the guardian.

I. GUARDIANSHIP ISSUES

Additionally, in this case, if a traveling companion serves as a legal guardian (i.e., they are recognized by the State as a guardian after the move), *or* the companion "stands in the place of a parent to a child" after the move, then the companion would meet the regulatory requirements for guardian for eligibility purposes. However, the statement in your letter that, "...the young adults and guardians no longer live together, after having made the move from Mexico...", strongly suggests that the companion would not meet the regulatory requirements for guardian. The fact that the companion may have acted as a guardian only during the period of travel and not after travel, implies a relationship of traveling companions or acquaintances, not guardianship.

If there is no guardian that meets the regulatory requirements, and the child is on his or her own, then the second part of the definition of currently migratory child in Section 201.3, Paragraph 2, applies. In this case, the child must have been eligible in the past to be served as a currently migratory child. That is, he or she must have been the child of a parent or guardian who is (or was) a migratory agricultural worker or migratory fisher, and the child must have made a[n annual] qualifying move.

In either case, the young adults described in your letter would not be eligible for the Migrant Education Program.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Mr. Raul de la Rosa, Director of Washington's Instructional Support Services
Date: July 20, 1990

I. GUARDIANSHIP ISSUES

Spouse as a Guardian.

Q: Is a married student: 1) within the 3 to 21 age category; 2) who has not yet graduated from high school; 3) who has not traveled with a parent (or guardian) previous to his/her entrance in the migrant stream; and 4) who now moves with his/her spouse to seek temporary or seasonal agricultural work eligible for the migrant education program?

A: No. Section 201.3 of the program regulations, which has been frozen by statutory provisions, includes in the definition of currently migratory child, a child who;

> "...has been eligible to be served under the requirements...*and* who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity."

The Office of Migrant Education (OME, interprets this to mean that the child(ren) who originally qualified by moving with a parent, guardian or other member of the immediate family will qualify as currently migratory if they continue to migrate on their own on an annual basis. However, children who have not previously migrated with a parent, guardian or other member of the immediate family cannot qualify for migrant education program services by migrating on their own.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Dr. J. O. Maynes, Director of Arizona's Migrant Child Education Unit
Date: May 1, 1990

I. GUARDIANSHIP ISSUES

Boyfriend or Girlfriend as a Guardian

Q: Can a boyfriend and girlfriend who meet all other eligibility criteria serve as each other's guardian?

A: No, it is not possible for both individuals to serve as each other's guardian simultaneously, since a guardianship relationship implies that one of the individuals is responsible for the care and supervision of the other individual. It is not possible to assume the roles of guardian and ward simultaneously, since the ability to serve as a guardian negates the need to have a guardian.

It is, however, technically possible for either of the two individuals to serve as the guardian for the other if the guardianship relationship is determined by the local operating agency to be reasonable (e.g., the interviewer determines that one person is standing in the place of the parent to the other person).

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

I. GUARDIANSHIP ISSUES

Emancipated Youth.

Q: At what age can a person establish him/herself as a migrant without having migrated with or to join a parent or guardian? For example, a student who is 19 years of age and who has never migrated with a parent or guardian begins to migrate for qualifying work activities. Is the student eligible for migrant enrollment and services?

A: According to the definition of a migratory child in 34 CFR, Section 201.3, which is frozen by Section 1202(c) of the Chapter 1 statute, if a child's parent has not migrated, the child is not eligible for MEP services. However, the child may be eligible for other migrant services such as Migrant Health or the JTPA Section 402 program.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Barbara Layne, State MSRTS Coordinator, Arkansas
Date: November 20, 1992

II. QUALIFYING EMPLOYMENT

II. QUALIFYING EMPLOYMENT

Parents with Different Occupations.

Q: Should the employment of both parents be considered when making eligibility determinations? In the case described, the family moved across school district boundaries to enable the children's mother to pick apples while the father continued working at a long-term non-agricultural position.

A: No. The program regulations, in 34 CFR 201.3 (definitions for this program), clearly define a currently migratory child as a child:

> "(1) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and
>
> (2) Who has moved within the past 12 months from one school district to another...to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity..."

In the case you describe, the basic regulatory requirements (moving across school district boundaries to allow a member of the children's immediate family to obtain seasonal agricultural employment) appear, at face value, to have been satisfied. If the family moved so the mother could seek seasonal agricultural employment, the children's eligibility for services would be based on her work, regardless of whether or not the father's employment changed.

Before concluding that the children are eligible for services, however, the SEA must consider whether the family moved across school district boundaries to secure temporary or seasonal employment for the mother **OR** if they moved to relocate permanently. (Consult pages 42-43 of the *Migrant Education Policy Manual* for further guidance on what constitutes a qualifying move.) If the SEA has any reason to believe that the primary purpose of the move was to relocate, not to obtain temporary or seasonal work, the move would not qualify and consequently the children would not be eligible for migrant education program services on the basis of that move.

II. QUALIFYING EMPLOYMENT

[NOTE: The letter continued with this caveat]

The SEA should also keep in mind that enrolling a child on the COE does not automatically entitle that child to receive MEP services, even if the child is generating funds for the STATE MEP. According to the regulations in 34 CFR 201.31(a) and 201.32(a)(5), the LEA must give priority for service to currently migratory children with the greatest need for special educational assistance. If the student does not demonstrate a need for special educational assistance, the MEP is not obligated to provide services.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Mr. Jay Drake, Identification and Recruitment Coordinator, New York Migrant Education Programs
Date: November 6, 1992

II. QUALIFYING EMPLOYMENT

Parent Who is a Professional.

Q: Can a child qualify for the Migrant Education Program if he/she has a parent who is a professional?

A: While the fact that a child's parent or guardian may be a professional is not disqualifying, the child could be migratory only if the worker's agricultural activity satisfied the...[applicable definitions]. In particular, if the activity relates to the "production or processing of crops, dairy products, poultry, or livestock," the production or processing must be "for initial commercial sale *or as a principal means of personal subsistence*" (emphasis added). Where professionals or their children move to obtain qualifying employment for initial commercial sale, they would qualify. However, where the worker is a professional, or a member of the professional's household, the additional temporary or seasonal employment in agricultural production or processing may well not serve as a principal means of the family's personal subsistence. In this case, the worker (and child) would not qualify.

Dr. John Staehle, Director, Office of Migrant Education to Dr. Thomas E. Anderson, Jr., Texas' Deputy Commissioner for Finance and Compliance
Date: August 2, 1988

II. QUALIFYING EMPLOYMENT

Cutting Firewood.

Q: Is cutting firewood for resale a qualifying activity?

A: When the cutting of trees for firewood is part of an orderly process of cultivation and harvesting, it can be considered a qualifying activity. However, the chopping of already-felled trees into firewood would not be a qualifying activity since it is inadequately related to the cultivation or harvesting of trees, and is more analogous to a processing activity.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Betty Brown, MSRTS Identification and Recruitment Specialist, Montcalm Area Intermediate School District, Michigan
Date: December 3, 1993

II. QUALIFYING EMPLOYMENT

Cutting Firewood.

Q: Would the cutting of firewood by forestry workers be considered a qualifying agricultural activity?

A: In some cases. Migrant Education Program (MEP) regulations define eligible agricultural activity as "[a]ny activity directly related to the cultivation or harvesting of trees." ...Guidance states (1) that "cultivation or harvesting" includes "felling" and transporting to the sawmill by persons employed by firms that engage in harvesting, and (2) that the "processing of trees after they have been cut is sufficiently removed from the "agricultural" pursuits of cultivation or harvesting that it is deemed ineligible. (This latter exclusion stems from a 1978 Senate committee report.)

The cutting of standing trees that are later processed into firewood would be considered "harvesting of trees" and is eligible. The chopping of already-felled trees into firewood pieces would be considered "processing" and is ineligible.

The thrust of the inclusion of tree "harvesting" as an agricultural activity appears to center on extending the "front-end" activities of planting and caring for trees ("cultivation") to the ultimate purpose of these same activities, the cutting of the trees for sawmill processing ("harvesting"). Therefore, the cutting of trees for firewood that is related to an orderly process of cultivation and harvesting would be eligible, as is the cutting of Christmas trees. However, the chopping of already-felled trees into firewood pieces is inadequately related to the "agricultural" activities of tree planting, tending, pruning, or harvesting, and is more analogous to a "processing" activity, which is ineligible.

An exception to this case would be made in the instance of a firm that employs the same workers to both cut trees for firewood and chop them up into firewood-size pieces. In such an instance, the cutting of trees

would serve as the qualifying activity, which the processing activity of chopping into firewood pieces would not invalidate. This distinction would be consistent with our traditional guidance that permits an agricultural activity to include transporting logs to a sawmill by those who are employed by a firm that also engages in harvesting trees.

Mr. Ramon Ruiz, Acting Director, Office of Migrant Education to Dr. Thomas Fitzgerald, Migrant Unit, New York Department of Education Date: October 25, 1991

II. QUALIFYING EMPLOYMENT

Picking Berries for Resale.

Q: Would picking berries for resale be considered qualifying work?

A: Under Section 201.3 of the MEP regulations, an agricultural activity is one that is directly related to (1) "the production or processing of crops...for initial commercial sale or as a principal means of personal subsistence;" (2) "the cultivation or harvesting of trees;" or (3) "fish farms." Picking berries...for resale would therefore seem to fit under this regulatory definition.

Of course, in order for a child to be eligible for MEP services, these agricultural activities must be determined to be temporary or seasonal and have involved a move across school district lines to seek or obtain employment in these activities.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Betty Brown, MSRTS Identification and Recruitment Specialist, Montcalm Area Intermediate School District, Michigan
Date: August 12, 1993

II. QUALIFYING EMPLOYMENT

Work on a Family-Owned Farm.

Q: Are children who move with their parent or guardian to be employed in qualifying work activities on a farm owned by a member of the extended family eligible for migrant enrollment and services? The farm is not owned, however, by the qualifying worker.

A: If the parent is moving across school district lines to seek or obtain temporary or seasonal agricultural work, the child is eligible for services. The issue of who is employing the parent to do qualifying work is not germane.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Barbara Layne, State MSRTS Coordinator, Arkansas
Date: November 20, 1992

II. QUALIFYING EMPLOYMENT

Working One's Own Land as a Qualifying Activity.

Q: Can working your own land be considered qualifying work assuming all other eligibility criteria are met (e.g., moving across school district boundaries, etc.)?

The response found below was withdrawn by the Office of Migrant Education in a July 29, 1994 memorandum to State Directors of Migrant Education. In the memorandum, OME states that "The response, now withdrawn, indicated that children whose parents engage in agricultural or fishing activities related to their own farms or fishing boats were not eligible for the Migrant Education Program.... [However,] OME reserves the right to issue further guidance on the subject."

A: No. 34 CFR 201.3 (Definitions for this program) defines a migratory agricultural worker as a "person who has moved within the past 12 months...to enable him or her to *obtain* temporary or seasonal *employment* in an agricultural... activity..." [emphasis added]. The phrase "obtaining employment" implies an act of procuring or gaining work from another individual or company, usually for a wage. Since working one's own land, i.e., resuming or engaging in self-employment on land that the worker wholly or partially owns, is not "obtaining employment," an individual who performs such work is not a "migratory agricultural worker," and his or her child is therefore not a "currently migratory child," under 34 CFR 201.3. (Similarly, one who fishes from his/her own boat would not be a "migratory fisher," and hence the child of this individual would not be a "currently migratory child" for the purpose of establishing eligibility under the MEP.)

Of course, owning one's own land (or boat) does not preclude a worker, or a member of the worker's family, from eligibility for the Migrant Education Program based on qualifying work performed for another individual or company, provided that all other eligibility requirements have been met.

II. QUALIFYING EMPLOYMENT

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

II. QUALIFYING EMPLOYMENT

Stripping Cedar Bark.

Q: Is the seasonal activity of stripping cedar bark for making baskets a qualifying agricultural activity?

A: The description of the activity provided in your letter and attachment must be compared to the regulatory requirements for eligibility in the definitions of "migratory child" and "agricultural activity" at 34 CFR Section 201.3.

Agricultural activity means:

(1) Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence; ...

Currently migratory child means a child:

(1) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and

(2) Who has moved within the past 12 months from one school district to another -- to enable the child, the child's guardian or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity....

To begin with, the stripping of cedar bark is clearly a seasonal activity which meets the requirement for "seasonal employment" in the definition of currently migratory child. Furthermore, it may be categorized as an activity directly related to the production of crops because it involves harvesting. Harvesting is described as the picking or gathering of products, including fibers.

However, the answer to your question turns on whether the bark is gathered, or the baskets are produced or used, (1) for initial commercial sale, or (2) as a principal means of personal subsistence.

II. QUALIFYING EMPLOYMENT

As part of the determination of the individual child's eligibility, the State (i.e. the interviewer or recruiter) must decide if, in a particular case, the activity falls within one of these two categories. If it does not, then it is outside the scope of the definition of "agricultural activity" and cannot be used as a basis for determining eligibility.

You stated that very few of the baskets are sold which suggests that they are not produced for initial commercial sale. You also stated that tribal members travel to other locations and use the baskets to gather roots and berries. The gathering of food *may* be a qualifying agricultural activity in and of itself, if the food is used as a principal means of personal subsistence. If the State finds that gathering roots and berries is a principal means of personal subsistence, then the food that is gathered in the basket(s) should be the food that the family subsisted on during at least part of the year. Under these circumstances, the stripping of bark for weaving becomes incidental to the qualifying activity.

In either case, it is improper to make a blanket determination that the activity is an "agricultural activity" for the purpose of Migrant Education Program eligibility. Eligibility must be determined on a case by case basis.

Dr. Francis V. Corrigan, Director, Office of Migrant Education, to Mr. Raul de la Rosa, Director of Washington State's Instructional Support Services
Date: August 1, 1990

II. QUALIFYING EMPLOYMENT

Support Staff for Migrant Farmworkers.

Q: Are cooks and babysitters who travel with crews of migratory farmworkers eligible as migratory agricultural workers?

A: It is the Office of Migrant Education's position that persons who work exclusively as cooks and babysitters do not qualify on the basis of those tasks as migratory agricultural workers.

However, if the persons who work as cooks or babysitters do not do so exclusively, but also carry out other temporary or seasonal agricultural activities, they might qualify based on these other activities.

Also, if the persons who were cooks and babysitters were themselves migratory children (aged less than 22) of migratory agricultural workers, they would be eligible for services.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Dr. Warren Taylor, Coordinator of the Idaho Migrant Education Program
Date: January 23, 1992

II. QUALIFYING EMPLOYMENT

Workers on Horse Farms.

Q: Can a worker qualify if he or she is hired temporarily to exercise race horses prior to selling the horses?

A: No. The regulations are clear that the activity must be agriculturally related to the production or processing of livestock for initial commercial sale. While it could be argued that this activity is related to the production or processing of livestock for initial commercial sale, the agricultural aspect of the work is lost because race horses are more closely associated with recreational or sport activities.

Q: Can a worker qualify if he or she is hired temporarily to clean stalls and stables of polo ponies?

A: No. Again, polo ponies, though technically livestock, are associated with recreation and sport rather than agricultural activities.

Q: Can a worker qualify if he or she is hired temporarily to perform tasks associated with a variety of farm animals? These tasks could include cleaning stalls, feeding, mending fences, etc.?

A: If the worker was hired temporarily to perform these tasks and they are not part of a series of activities which together could be considered permanent employment, a worker could qualify if the activities performed are clearly agriculturally related.

Q: Can a worker qualify if he or she is hired seasonally to grow alfalfa to feed horses?

A: Yes. If this is time limited employment and is not part of a series of other activities that could constitute year-round employment.

Q: Can a worker qualify if he or she is hired seasonally to grow alfalfa for race horses or polo ponies?

II. QUALIFYING EMPLOYMENT

A: In this situation, the growing of alfalfa is a seasonal job directly related to agriculture and therefore qualifying.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Mr. Thomas Lugo, Manager, Migrant Education Office, California State Department of Education
Date: December 31, 1990

II. QUALIFYING EMPLOYMENT

Processing Tomato Soup and Unloading Grain as Qualifying Activities.

Q: Please define initial commercial sale in relation to the following situation: making tomato soup at Campbell's soup factory is the qualifying activity. The worker is on the line working with the raw tomato, but the tomatoes were sold to Campbell's by a local farmer. Are the worker's children eligible?

A: Yes. As long as the employment is seasonal or temporary, working with the raw tomato is part of the processing of the crop (i.e., tomato soup) "for initial commercial sale" and is therefore a qualifying activity.

Q: Is unloading grain from railroad cars and truck trailers to make chicken feed for Tyson's chicken plants an eligible activity?

A: Yes. Since the unloading is apparently part of processing the grain for initial commercial sale as chicken feed (in this case, for the Tyson's plant), it is an eligible activity. If the recruiter can determine that this activity is temporary or seasonal, the children of these workers can qualify for the MEP.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Barbara Layne, State MSRTS Coordinator, Arkansas
Date: November 20, 1992

II. QUALIFYING EMPLOYMENT

Farm/Ranch Work Involving Consecutively Performed Activities.

Q: Would a series of temporary or seasonal activities that are performed consecutively constitute qualifying employment?

A: Where a worker moves to obtain work in farm or ranch activities, the worker is migratory if he or she moved in order to obtain temporary (or seasonal) "employment" (*see* 34 CFR 201.3). The fact that each consecutive aspect of the employment (e.g., planting, cultivating, harvesting) may be temporary or seasonal is not determinative, since the pivotal factor is the nature of the employment (temporary, seasonal, or permanent) that the worker seeks to obtain. In some cases, a worker may state that he or she moved to obtain "general" farm or ranch work. In these cases, the recruiter's determination of whether the employment should be considered temporary, seasonal, or permanent may depend upon the cumulative weight of factors that include the worker's and employer's statements and the relative size of the ranch or farm.

Dr. John Staehle, Director, Office of Migrant Education to Dr. Thomas E. Anderson, Jr., Texas' Deputy Commissioner for Finance and Compliance
Date: August 2, 1988

II. QUALIFYING EMPLOYMENT

General Dairy Farm Work as a Temporary Activity.

Q: Can general dairy farm work be classified as temporary employment if adequate documentation is maintained? How must this determination be documented?

A: Yes. Children of migratory dairy workers have always been eligible to be counted and served by the Migrant Education Program, however, there have been problems in defining what "migratory dairy work" means since dairy work could be seasonal, temporary, or permanent. The issue of itinerant workers who perform agricultural work that might be permanent if they did not move from place to place is common to other areas of the country and other industries as well, most notably beef slaughtering and chicken processing. Since dairy work could be seasonal, temporary, or permanent, a COE that states merely that a worker moved to perform "temporary work" is ambiguous.... Generally, if a child moves with or to join a parent or guardian who moved to obtain qualifying employment, then the child could be counted and served by the Migrant Education Program. Workers who are hired on a seasonal basis to perform one or more activities, perform general, albeit seasonal, dairy farm work. Their work falls within the meaning of "seasonal employment."

Temporary employment is not only work that has a clear beginning and end, but work that does not have a clear beginning and end, provided that either; (1) the State has conducted an appropriate industrial survey that confirms that at least 60 percent of workers in comparable positions move within 18 months, *or* (2) the recruiter can detail specific reasons for believing that the worker does not intend to perform the tasks indefinitely. These two methods for finding work to be temporary were designed specifically to respond to workers like itinerant dairy workers.

The COE does not necessarily have to contain detail on each specific task that a recruiter learns a worker performs. Detail on specific tasks

may not even clarify whether a child can be deemed to be currently or formerly migratory. Often the fundamental question is not whether a worker's activity is agriculturally or fishing-related, but whether it is seasonal or temporary. The information on a COE should include enough detail in the comments section so that an independent reviewer (e.g. an auditor) would be able to understand why the recruiter determined the child to be migratory.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Dr. Thomas Fitzgerald, Migrant Unit, New York Department of Education
Date: May 18, 1990

II. QUALIFYING EMPLOYMENT

Documenting Temporary Dairy Work.

Q: How might you document on the COE that an individual engaged in general dairy work is temporarily employed?

A: An interviewer might document the temporary nature of the work in one of the following three ways.[2]

- Document on the COE that either the employer or the worker have established a time frame for the completion of the work. (e.g., The farmer told the interviewer that she was hiring the worker to fill in for another worker during a three month time period; the worker said he planned to leave the farm once school starts in Texas; the worker said he would leave the farm when he accumulated enough money for a deposit on an apartment), *or*

- Conduct an industrial survey to establish that dairy work in the area surveyed has been determined to be temporary employment. In the "qualifying activity" block of the COE, record:

  (1) the type of employment,
  (2) the name (or code) used to identify the industrial survey, and
  (3) the date the survey was conducted.

  An example of how this would look on a COE is: "General Dairy Work, New York Dairy Survey #1, June 5, 19_," *or*

[2]There are actually four tests for determining that work is temporary in nature, but the first test -- that the activity itself has a clearly defined beginning and end and is not one of a series of activities for the same employer that is typical of permanent employment -- would not appear to apply in this situation.

II. QUALIFYING EMPLOYMENT

- Document other reasons for believing that, while the work might be permanent, the interviewer believes that the worker is likely to leave the job in the near future (e.g., "This is the third worker employed in this position by this farmer in the last two years. Because of the long work hours and substandard housing conditions, the interviewer believes that the worker will leave within the year").

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

II. QUALIFYING EMPLOYMENT

Milk Processing as Qualifying Work.

Q: Milk processing plants employ individuals to drive trucks to individual farms, pick up bulk milk and bring it to the milk processing plant. Milk is then handled by other workers who pasteurize, heat, cool and bottle the product while others inspect for purity, bacteria, etc. These jobs are of a temporary nature. Would these milk processing plant workers be engaged in a qualifying activity under the Chapter 1 Migrant Education Program (MEP)?

A: Milk processing plant workers would include those who transport milk from the farm to the processing plant; as well as those who pasteurize; heat; cool; bottle; inspect for purity; bacteria, etc. Such activities clearly appear to qualify, under Section 201.3(b)(1) of the MEP regulations, as activities directly related to the processing of dairy products. Of course, these activities must also be determined to be temporary or seasonal, and a migration across school district lines to seek or obtain such work must also be documented in order for the children of such workers to be eligible to receive MEP services.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Mr. Jay Drake, Identification and Recruitment Coordinator, New York Migrant Education Programs
Date: June 14, 1993

II. QUALIFYING EMPLOYMENT

Second-Stage Processing.

Q: Is work in a plant that processes chicken purchased from a first-stage processor considered qualifying employment under the Chapter 1 Migrant Education Program?

A: No. The definition in 34 CFR 201.3 states, in part, that an agricultural activity includes "any activity directly related to the...processing of...poultry...for initial commercial sale [emphasis added]...." As noted on p. 58 of the *MEP Policy Manual*, initial commercial sale, and the corresponding termination of the work's status as a qualifying activity, occurs when a product or processed product is sold for refining to the next stage processor. Although the guidance on p. 57 of the *Manual* indicates that processing of a product may occur at multiple sites, this assumes that no initial commercial sale has occurred between the processing sites. Selling a partially-processed commodity to a second-stage processor must be considered the initial commercial sale referred to in the regulatory definition. Once this sale has occurred, subsequent processing activities can no longer be considered qualifying work for purposes of establishing MEP eligibility.

We recognize that this policy means that a worker engaged in a particular later-stage processing task would be performing qualifying work if the task was part of an ongoing process that occurred, even at one or more sites, before an initial commercial sale; whereas the *same task* would not be qualifying work when performed by a worker for a second-stage processor on a partially-processed commodity purchased from another, first-stage processor. Inclusion of the phrase "for initial commercial sale" in the regulatory definition of an agricultural activity clearly requires this policy.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Beth Arnow, Coordinator of the Georgia Migrant/ESOL Programs
Date: August 12, 1993

II. QUALIFYING EMPLOYMENT

Poultry Processing.

Q: Would the child of a migratory worker who is employed in a poultry processing plant (processing either live or slaughtered birds) be eligible for the migrant education program?

A: In recruiting in the poultry processing and other industries, positive responses to the following implicit questions should be applied as the criteria for determining eligibility:

(1) For a currently migratory child: Did the child move within the past 12 months from one school district to another to enable the child, the child's parent, guardian, or member of the immediate family to obtain a temporary or seasonal employment in an agricultural activity?

An agricultural activity, briefly, is any activity "directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale..."

(2) Is the work which was obtained or sought temporary or seasonal?

(3) For a formerly migratory child: Was the child eligible to be counted and served as a currently migratory child within the past five years, (The child is not presently currently migratory)?

Has the child's parent or guardian given concurrence for the child to be considered a formerly migratory child?

While the above criteria are the determinants of whether a child is to be considered migratory, I believe your specific question is: At what point does initial commercial sale occur? A related question which requires interpretation before that answer may be given is -- How do you determine the concluding processing activity for a product occurring before the initial commercial sale?

II. QUALIFYING EMPLOYMENT

The terms "initial commercial sale" and "processing" have been used for over a decade and although no written definitions exist, we accept the following meanings as generally recognized:

Producing a product and processing a product for initial commercial sale may occur at the same site or at multiple sites. In isolated instances, the refinement process of a product may occur at the site where the product is produced.

"Processing" ends at the point where the crop, dairy product, poultry, or livestock ceases to be recognized as the entity which began to be processed and becomes part of a more refined product -- potato soup, apple pie, macaroni and cheese, chicken pot pie, beef stew, etc., or when the product -- fresh packaged chicken, bagged grapefruit, boxed broccoli is readied for sale to the wholesaler or consumer.

"Initial commercial sale" occurs at the conclusion of the processing activity(ies), and the product or processed product is sold: (1) for refining to the next stage processor, (2) to the wholesaler, (3) to the retailer, or (4) directly to the consumer.

Poultry processing plants that receive live birds and that receive slaughtered birds are eligible to be considered as sites for qualifying work in connection with recruiting of children for the Migrant Education Program. You may consider the two plants as engaged in two parts of a continuous process.

Dr. John F. Staehle, Director, Office of Migrant Education to Ms. Nancee Allan, Director of Missouri's Migrant Education Program
Date: April 6, 1989

II. QUALIFYING EMPLOYMENT

Compost Processing.

Q: Is employment at a compost processing facility a qualifying activity under the Chapter 1 Migrant Education Program?

A: Yes. Based on the description of the work, the Office of Migrant Education has determined that work at a compost processing facility is a qualifying activity. In particular, the use of pine bark in producing the compost and the compost's subsequent sale directly to retailers seems to constitute the "processing of crops ... for initial commercial sale" as required under the Section 201.3(b)(1) regulatory definition for an "agricultural activity." Also, the newspaper reference to a "peak season" suggests that employment in compost processing may involve "temporary or seasonal employment in an agricultural ... activity" as is also required under Section 201.3.

Given this, we agree that it is appropriate for the Georgia MEP to conduct migrant student identification and recruitment in the compost processing industry.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Beth Arnow, Coordinator of the Georgia Migrant/ESOL Programs
Date: August 7, 1991

II. QUALIFYING EMPLOYMENT

Employment with the U.S. Forestry Service.

Q: Is working for the U.S. Forestry Service as a temporary worker qualifying employment? They hire temporary help to tag fish in the streams, etc., and re-plant forest areas that have been logged.

A: Eligibility of children of such workers would depend on the nature of the temporary work in relation to the definition in Section 201.3. In terms of the two examples of activities you provide, tagging fish would not be a qualifying activity since it does not clearly involve "production or processing of crops...for initial commercial sale or as a principal means of personal subsistence;" "the cultivation or harvesting of trees;" or (3) "any activity directly related to fish farms." On the other hand, replanting forest areas which have been logged would seem to be an eligible agricultural activity in that it involves the "cultivation...of trees." Again, however, in order for a child to be eligible for MEP services, the replanting activity must be determined to be temporary or seasonal and have involved a move across school district lines to seek or obtain the qualifying employment.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Betty Brown, MSRTS Identification and Recruitment Specialist, Montcalm Area Intermediate School District, Michigan
Date: August 12, 1993

II. QUALIFYING EMPLOYMENT

Temporary Employment in a Beef Packing Plant.

Q: Are itinerant workers employed in beef packing plants eligible for services under the MEP?

A: As described to the OME, the beef packing industry in Texas has plants that share common hiring practices. While some workers performing agriculturally related activities in these plants are employed on a regular full-time basis, may new employees apparently are not. Typically, these new employees are hired either on a regular part-time basis or, even more indefinitely, on an "as work is available" basis. The employment relationship of these new workers resembles those who are employed on a regular full-time basis in that work will customarily be available; beef packing and beef slaughtering continue indefinitely. However, these new workers lack something that is basic to the regular full-time work As we understand the situation, newly hired employees of beef packing plants often must wait considerable periods of time, often many months, for the chance to become probationary employees In some cases, even employees who have successfully completed this probationary period cannot obtain regular full-time employment until positions become available. This may take additional time. The TEA has informed us that a large proportion of new beef packing employees move to other locations and other employment before the opportunity for regular full-time employment arises.

Past OME policy did not address the hiring and employment practices of the beef packing industry. However, we are satisfied that where workers must wait substantial periods of time for the potential opportunity to attain regular permanent employment, their employment in beef packing plants is temporary. Therefore, where a recruiter has determined that a significant probability exists that a worker employed by a beef packing plant would leave his or her position before obtaining an opportunity for regular full-time employment, the SEA may consider the work to be temporary.

II. QUALIFYING EMPLOYMENT

To guide the recruiter in determining when such a significant probability exists (and ways adequately to record it), we urge the TEA to establish a process that local recruiters and it will use in determining how and when to categorize beef packing activities at each plant as temporary or permanent. That process might rely upon such factors as...the existence of a high proportion of new employees who are laid off or who terminate their employment before obtaining regular permanent status...and the period of time that these employees can reasonably expect to wait if they are to obtain that status. It might also rely upon statements of employers that the work is temporary, and will not lead soon to regular permanent employment. An employer's statement that the new worker's employment is "permanent" should be entitled to consideration, but the ultimate determination about whether the worker can reasonably expect soon to obtain regular permanent work is the TEA's....

Dr. John Staehle, Director, Office of Migrant Education to Dr. Thomas E. Anderson, Jr., Texas' Deputy Commissioner for Finance and Compliance
Date: August 2, 1988

II. QUALIFYING EMPLOYMENT

Documenting Temporary Employment Sought but Not Obtained.

Q: How might an interviewer document temporary or seasonal agricultural or fishing work that was sought -- but not obtained -- in the comment section of the COE?

A: The interviewer should specify:

(1) the type of work sought

a. temporary[3] or seasonal (If the work is temporary, document *why* it is believed to be temporary),
b. agricultural or fishing, and

(2) *why* the work was not obtained.

An example of how to document a seasonal activity that was sought but not obtained is: "Worker moved to Missouri to seek work detasseling corn. Because of extensive crop damage caused by the flooding, work was not available."

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

[3]Interviewers should use particular care in documenting temporary work that was sought -- but not obtained -- in the comment section of the COE. It is extremely difficult to demonstrate that work that is not actually obtained is temporary (See page 55 of the *MEP Policy Manual* for a description of the four tests that can be used to determine if work is temporary).

II. QUALIFYING EMPLOYMENT

Miscellaneous Qualifying Activities.

Q: Are the activities listed below qualifying?

A: The regulation 34 CFR 201.3(b)(1) defines an agricultural activity as:

> "Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence."

A number of the activities identified in the handbook do not appear to be qualifying employment. Some activities are too far removed to be considered "directly related" to production or processing. Other activities generally occur after the point of initial commercial sale.[4] After careful consideration, we have determined that a child whose parent or guardian performs activities listed on the following pages would *not* be eligible for Migrant Education Program (MEP) services. For brevity, we have tried to combine similar jobs into broad job categories.

I. NON-QUALIFYING ACTIVITIES/POSITIONS

A. Rationale: These activities generally occur after the initial commercial sale of the agricultural product

ACTIVITY	EXPLANATORY COMMENTS
• Grocery Store Worker	This job category includes meat cutters and wrappers, produce handlers, delicatessen workers, bakery workers, etc.

[4]Initial commercial sale is defined on page 58 of the *Migrant Education Policy Manual* as occurring "at the conclusion of the processing activity(ies), [or] when the product or processed product is sold: (1) for refining to the next stage processor; (2) to the wholesaler; (3) to the retailer; or (4) directly to the consumer."

II. QUALIFYING in SELECT CIRCUMSTANCES

ACTIVITY	EXPLANATORY COMMENTS
• Truck Driver, Hauler	Transporting livestock or agricultural products from a farm, ranch, orchard, etc. to a processing plant *may* be considered qualifying work. (See OME's June 14, 1993 letter to Mr. Jay Drake, New York's Identification and Recruitment Coordinator). Other types of hauling or trucking -- including hauling trees -- would *not* be considered qualifying work.[5] When recording the qualifying activity on the COE, the interviewer should specify the commodity being transported, the origination point and the destination (e.g., hauling corn from the field to the grain elevator).
• Production at a Milk Plant	Qualifying activities (those directly related to milk processing) include transporting milk from the farm to the processing plant; pasteurizing; heating; cooling; bottling; and inspecting for purity and/or bacteria. (See OME's June 14, 1993 letter to Mr. Jay Drake, New York's Identification and Recruitment Coordinator).
• Greenhouse	Qualifies if the worker is involved in the production of a crop (or plant) for initial commercial sale.

[5]According to the regulation 34 CFR 201.3(b)(2), "any activity directly related to the cultivation or harvesting of trees" is an agricultural activity. Page 57 of the *Migrant Education Program Policy Manual* goes on to say:

> "Cultivation or harvesting" includes soil preparation, planting, tending, pruning and felling, Christmas tree cutting and bundling and planting of tree seedlings for restoration of forests. Normally, once the trees are ready to be transported from a harvesting site to a processor (sawmill), there is no longer a sufficiently direct involvement in cultivation or harvesting of trees. Therefore, the transporting of trees would not qualify as an "agricultural activity" (as per program regulations). Moreover, the processing of trees (at the sawmill) cannot be considered as an "agricultural activity" within the meaning of the Chapter 1 regulations. (See Senate Report No. 95-561, 95th Congress, 2nd Session at 34 (1978).) Consequently, any activity directly related to the processing of trees would similarly not be an agricultural activity.
>
> One exception to this rule concerns persons who transport the trees to the processor and who are employed by the same person or firm engaged in the cultivation or harvesting activities. This exception is a matter of convenience since in these situations it may be very difficult to differentiate among employees performing different kinds of work.

• Fishing	A "fishing activity" is defined in 34 CFR 201.3 as "any activity directly related to the catching or processing of fish or shell fish for initial commercial sale or as a principal means of personal subsistence...." Subsistence fishing eligibility must be based on a specific determination that the eligible persons have a significant economic dependency on the fishing activity in question and that it is necessary for their livelihood. Weekend sports fishing would not be a qualifying activity.

In each case, the activity must also be determined to be either temporary or seasonal and have involved a move across school district boundaries to seek or obtain qualifying employment. We strongly recommend that you advise your staff of activities/occupations that do not qualify under the Migrant Education Program. Furthermore, we strongly recommend that your agency carefully review its Certificates of Eligibility to ensure that all individuals identified as qualifying workers have performed appropriate qualifying work. If children whose parent or guardian is not engaged in qualifying work were mistakenly enrolled in the MEP, the SEA must take steps to de-enroll them immediately.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Dr. David Pimentel, Supervisor of the Colorado Migrant Education Program
Date: January 10, 1994

III. INDUSTRIAL SURVEYS

III. INDUSTRIAL SURVEYS

Mr. Ramon Ruiz, Acting Director, Office of Migrant Education to Mr. Thomas Fitzgerald, Chief of the New York Migrant Unit
Date: December 2, 1991

III. INDUSTRIAL SURVEYS

Turnover Rates.

Q: What should an SEA do if 18 month turnover rates are not available from area employers?

A: If 18 month turnover rates are not available from employers in your area, we recommend that you obtain the best available information on that particular industry and compare that data with the 18 month requirements.... For instance, if the industry keeps annual data, you may want to review turnover rates for 2 consecutive years and compare the average of that data with the...requirement for a 60 percent turnover rate within an 18 month period.

We also recommend that you check with other State and local organizations as possible sources of turnover rate data. Any credible source of data for the particular employer would suffice. Other organizations may include your State or local Chamber of Commerce, the State employment service, the employer or industry or other State employment and labor offices. Data from other organizations may be used as a primary source of information for an industrial survey or to corroborate the findings in an industrial survey conducted by your office.

Dr. Francis Corrigan, Director, Office of Migrant Education to Susan Rowe-Morison, Director of the New Hampshire Migrant Education Program
Date: November 30, 1990

IV. CERTIFICATE OF ELIGIBILITY (COE) ISSUES

IV. COE ISSUES

State Requirements.

Q: Is it necessary to designate on the COE that [several data requirements not clearly mandated by federal regulations, such as race, status, age, MSRTS student number and child(ren)'s grade level] are State-required options?"

A: Section 201.46(d) req · · that "the imposition of any State rule or policy relating to the administration and operation of the [program] ... must be identified as a State-imposed requirement." Therefore, the State is required to identify the additional data elements included on the State COE as State-imposed requirements. However, while including the additional data elements in a State Options section, such as that on the National COE, seems to be the most reasonable way to identify the additional data elements as State-imposed requirements, ED does not require that this identification be made on the COE itself. For example, the additional data elements could be identified as State-imposed requirements through other means, such as in a published regulatory or policy announcement, or in instructions that accompany the COE.

Dr. Ann Weinheimer for Ramon Ruiz, Acting Director, Office of Migrant Education to Ms. Beth Arnow, Coordinator of the Georgia Migrant/ESOL Programs
Date: October 10, 1991

IV. COE ISSUES

One Time Parental Concurrence.

Q: Does Item 20 (p.10) imply that a one-time parental concurrence for the child to be considered migratory is suitable for the entire period the child is formerly and that the concurrence does not have to be re-affirmed annually?

A: Yes. Use of a one-time parental concurrence is acceptable to permit the child to be considered formerly migratory for the entire period of eligibility. The State must insure, however, that the parent has been notified that permission can be withdrawn at any time. The State must also be aware of any moves made by the family that would make the child eligible as currently migratory and would require the completion of a new COE.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Beth Arnow, Coordinator of the Migrant/ESOL Programs
Date: March 9, 1992

IV. COE ISSUES

Federal eligibility requirements. There is no Federal requirement to fill out a COE annually. As long as the child has not moved and continues to reside in the State, it is not necessary to complete a COE each year.

Q: If Section IV on the COE signifies that the parents have been informed and agree to continuing their children's migratory status unless they want to withdraw permission, must an SEA remind the parents each year that they have that right to decide whether they want their children to be considered migratory?

A: Section IV contains both: 1) a statement that the school district may transfer the child's records, as required by the Family Educational Rights and Privacy Act (FERPA) and 2) the parental concurrence for the child's continuation as a formerly migrant child. Federal regulations require the State to notify parents of FERPA annually. While the State is not required to remind parents each year that they can withdraw their permission to declare their child formerly migratory, it may be helpful to the parents to discuss this issue with them when the FERPA notification requirements are met.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Nancee Allan, Director, Missouri's Special Federal Instructional Programs
Date: November 16, 1992

IV. COE ISSUES

Parent Signatures on the COE.

Q: Is it necessary to secure a parent signature on a Certificate of Eligibility (COE)?

A: The State education agency (SEA) and its operating agency(ies) may seek and obtain credible information from *any* source, including that of the migratory child and his or her parent or guardian (34 CFR 201.30). The recruiter indicates on the COE the source of the information provided....Neither the Chapter 1 statute nor the regulations requires the signature of the individual who is providing the information to the recruiter upon which eligibility to participate in the Migrant Education Program is based.

Similarly, with respect to seeking parental concurrence to consider a child as being a formerly migratory child for the entire potential five-year period following the year in which the child is currently migratory, a parental signature is not required as evidence of parental concurrence. Again, the State may wish to require the parent's signature as evidence that the parent has concurred that the child may be considered as a "formerly migratory" child for this period (and is aware that the concurrence may be withdrawn), but this too would be a State, not a Federal, requirement.

Finally, the State also may request, and States frequently do, a parent's signature as a means of acknowledging that the parent has been informed of rights under the Family Educational Rights and Privacy Act with regard to the release of the child's school records to another school district in which the child subsequently enrolls. Because there are other means of so informing parents, the decision to have such a certification in the COE would also constitute a State requirement, not a Federal requirement, and should be so noted.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Paula Errigo Stoop, Pennsylvania State Department of Education
Date: January 16, 1990

IV. COE ISSUES

Retention Period for COEs.

Q: How long must COEs be maintained?

A: The Migrant Education Program (MEP) is subject to the five-year record retention period identified in Section 80.42(b)(4) of EDGAR. Therefore, records for a given grant period must be retained, under Section 80.42(c) of EDGAR, for at least five years from the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that grant period. Section 80.41(b)(4) of EDGAR notes that final financial reports are due within 90 days after the end of the grant period.

This requirement for a five year record retention period makes for a complicated situation in terms of COEs. Since COEs are used as the basis for determining SEA funding in subsequent grant funding periods, a COE must be maintained, depending on circumstances, for as little as eight years and as long as thirteen years.

For example, if a child is identified and enrolled on 1/1/90 and then leaves the State on or prior to 12/31/90, his COE is used not only to record eligibility for services in 1990, but as the basis for SEA funding for the grant period 7/1/91 - 9/30/92. Therefore, the last "period in question" for this particular COE would be the grant period ending 9/30/92, and the COE should be retained for the five-year period following submission of the 1991-92 final financial report. In this way, this COE would have to be maintained for at least eight years, from 1/1/90 into the Fall of 1997.

However, if a child is identified and enrolled as a currently migratory child on 1/1/90 and remains in the State through all five years of eligibility as a formerly migratory child (through 12/31/95), his COE would continue to affect SEA funding as late as the grant period, 7/1/96 - 9/30/97. Therefore, the last "period in question" for this particular COE would have to be retained for the full five years following submission of the 1996-97 final financial report, which could not end until at least the Fall of 2002 (the thirteenth year following identification of the child).

V. MSRTS ISSUES

V. MSRTS ISSUES

With regard to how long MSRTS records must be maintained, Section 80.42(b)(4) and (c) of Education Department General and Administrative Regulations (EDGAR) requires records to generally be kept for five years after the date a grantee or operating agency submits its last expenditure report for the period in question. Therefore, those sections of the MSRTS record which do not relate to funding can be discarded five years after the end of the last grant period in which the child resided in the State.

However, records such as COEs, which generate subsequent year funding, must be maintained, depending on circumstances, for between eight and thirteen years. Similarly, any portions of the MSRTS record which relate to funding, such as the school history lines, should be maintained for at least five years after the last grant period for which they generated funding. That is to say, since an MSRTS record for a period of residency in calendar year 1993 would affect funding for the 1994-95 program year, it would have to be maintained for at least five years after the grant period ending September 30, 1995 -- from its creation in 1993 until September 30, 2000.

Dr. Ann Weinheimer for Dr. Francis V. Corrigan, Office of Migrant Education to Mr. Ronnie Glover, Director of the Louisiana Migrant Education Program
Date: July 20, 1993

V. MSRTS ISSUES

MSRTS Report "Resignature by Last Qualifying Move Month."

Q: Please clarify how [the MSRTS generated report "Resignature by Last Qualifying Move Month"] is to be used. Is it meant to meet the purpose of documentation that can substantiate, in the case of an audit, that parental concurrence and reinterviewing has been done, if a parent's signature is affixed to it?

A: As noted in the answers to the above questions, the interviewer's signature in Section IV of the COE is adequate to demonstrate that the Federal parental concurrence requirement has been met. The report "Resignature by Last Qualifying Move Month" is meant to be used as a management tool by state and local administrators to keep track of their migrant students and to meet State requirements. While Federal statutes do not require that parents be interviewed annually, some States do. We understand from MSRTS that this report is designed to help administrators keep an accurate record of where families were living at the time of the Qualifying Arrival Date and which families need to be visited to meet State resignature requirements and when. The report also shows which students will change from currently to formerly migratory status during the regular term, which students will become ineligible for services during the school year, and the month this will happen. These facts can help a State to plan when children will become formerly migratory, and so have a lesser priority for services, or become ineligible for MEP services. The report is not meant to meet any documentation requirements, but is a service developed by MSRTS in cooperation with the States to meet administrative needs.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Nancee Allan, Director, Missouri's Special Federal Instructional Programs
Date: November 16, 1992

VI. MISCELLANEOUS ISSUES

Similarly, a family that moves regularly between a home base in a non-contiguous country and the United States to seek qualifying work within the United States could qualify.

Additional clarification is required for individuals moving from non-contiguous countries because many persons who move to the United States from non-contiguous countries move permanently and do so for broader economic, personal, or political reasons. Permanent moves from other countries are generally considered relocations and, therefore, are not qualifying. If after locating in the United States, however, the worker makes another move to seek or obtain qualifying employment, the second move would be considered on the same basis as any other move within the United States.

- ***Multiple Intent.*** If the worker asserts more than one reason for his or her move to a particular school district, the interviewer can determine the worker to be migratory if, in the interviewer's judgment, obtaining qualifying work was a significant factor in the worker's decision to move. The interviewer must clearly document the basis (or bases) of this determination in the comment section of the COE.

Q: How would this reasoning be applied in the following examples?

Example 1: A worker and his family move to a new State specifically to seek work in the construction industry. No construction work is available, so the worker takes the only available work, seasonal agricultural employment. Would this be a qualifying move?

Example 2: A worker makes a temporary move across school district lines to find *any* available work, including qualifying farmwork. If the worker obtains qualifying work, would this be a qualifying move?

Example 3: A worker and her family move to the United States from a non-contiguous foreign country to seek political

subsequent to locating in the United States would be evaluated separately on their own merit and might be determined to be qualifying).

In the ***last example***, the interviewer needs to examine two factors: (1) was the move a permanent relocation, and, if not, (2) was the availability of qualifying work a significant factor in the worker's decision to move (e.g., would the worker have moved regardless of the availability of qualifying work?). The move could be viewed in three ways:

- If the move was for the purpose of permanently relocating, it would *not* be a qualifying move, regardless of whether seeking qualifying work was a significant factor in the worker's decision to move.

- Similarly, if the move met the first test (it was not a permanent relocation), but failed the second test (the availability of qualifying work was not a significant factor in the worker's decision to move), it would *not* qualify.

- Finally, if the move meets both tests (it was not for the purpose of relocating *and* the worker's decision to move was contingent on the likelihood of finding qualifying work), it *would* qualify.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

should document the basis (or bases) of a determination that the child is migratory.

Dr. John Staehle, Director, Office of Migrant Education to Dr. Thomas E. Anderson, Jr., Texas' Deputy Commissioner for Finance and Compliance
Date: August 2, 1988

- the worker or the worker's child moved to find qualifying work believed to be available, but upon arrival in the new location he or she found that it was not available and, consequently, either became unemployed or engaged in non-qualifying work; *and*

- the worker clearly did not move to the district for the purpose of relocating there on a permanent basis. (See Question 7, pages 42-43)

To ascertain if a move has been made that meets the criteria listed above, MEP recruiters must have knowledge of, among other things, school district boundaries, the type(s) of crops grown in a particular area, and the time(s) of year those crops would require the use of temporary or seasonal labor. Recruiters could not be reasonably expected to have credible information about moves that occurred within foreign countries, since information on other countries' school districting policies and agricultural trends may be difficult to obtain and maintain.

Further, the Department's Office of the Inspector General (OIG) lacks in foreign countries the legal authority it possesses in the United States to review MEP eligibility information. This would, for example, prevent the OIG from entering a foreign country to verify eligibility data contained on Certificates of Eligibility.

Dr. Francis V. Corrigan, Director of the Office of Migrant Education to Mr. Jay Drake, Identification and Recruitment Coordinator, New York Migrant Education Programs
Date: June 15, 1993

IV. MISCELLANEOUS ISSUES

Length of Time Between Move and Seeking Employment.

[NOTE: OME is reviewing this guidance to determine if further clarification is needed.]

Q: If a worker moves across school district lines in the winter and says the purpose of the move was to seek work picking cherries (ripe in July), but they moved in January to secure housing, would the move be a qualifying move?

A: In this situation, the recruiter must make a determination, based on such credible evidence as can be obtained, as to whether the move was in fact made in order to seek the qualifying temporary or seasonal work. The recruiter should use the Comment section of the Certificate of Eligibility to record the reasons for the eligibility determination.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Betty Brown, MSRTS Identification and Recruitment Specialist, Montcalm Area Intermediate School District, Michigan
Date: August 12, 1993

IV. MISCELLANEOUS ISSUES

Moving Home.

Q: If a worker moves back to his/her home base to seek qualifying employment and crosses school district boundaries enroute, would this be considered a qualifying move?

A: Yes, any move across school district boundaries for the purpose of seeking qualifying work that is not a permanent relocation is a qualifying move. However, in making this determination, the interviewer must establish that obtaining qualifying work was a significant factor in the worker's decision to move. Plainly, situations like returning from a vacation, visiting a sick relative, or other personal trip would not be a qualifying move.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to Ms. Betty Brown, Michigan's MSRTS Supervisor/Trainer, Montcalm Area Intermediate School District
Date: March 3, 1994

IV. MISCELLANEOUS ISSUES

Time Limits on Moves, Short-Distance Moves, Moving Home, International Moves.

Q: What factors may be relevant in evaluating the adequacy of a "move" across school district boundaries?

A: **Minimum Duration of a Move.** The OME has not established a rigid requirement that a move from one location to another and back again have any minimum duration. Program regulations do not establish a minimum period for a move. However, ...weekend moves are not qualifying. Existing guidance does not define a "weekend move."

In order to ensure that the Texas migrant education program only counts and serves children who are truly migratory, and thus deserve migrant education program assistance, the TEA might consider establishing its own State-level criteria for guiding recruiters in decisions on program eligibility in cases where individuals move infrequently and for very short periods of time "to enable the child, the child's guardian, or a member of the child's immediate family to obtain" qualifying work. In this regard, the TEA could establish its own policies for declining program eligibility in those situations where a recruiter is satisfied that the parent or guardian views his or her isolated and brief move (for example, over two or three days) for temporary or seasonal employment as merely incidental to regular day-to-day vocational activities.

Short-Distance Moves. The worker must move between locations in two school districts to enable him or herself to obtain temporary or seasonal employment in an agricultural or fishing activity. The...[nature] of that move determines eligibility. The distance over which the move occurs does not.

Move Back Home. A worker's return to his or her home may be qualifying if, like any other move, it was made "to enable [him or her] to obtain" qualifying employment.

International Moves. A child who has moved from Mexico to a school district in Texas may be considered as eligible on the same basis

IV. MISCELLANEOUS ISSUES

"To Join" Moves.

Q: What are the qualifying arrival and residency dates on a "to join" move when:

(1) the child's move precedes the qualifying worker's move, and
(2) the child's move follows the qualifying worker's move?

A: In the first scenario, both the qualifying arrival date and the residency date would be the date the *worker* moved. The reasoning behind this determination is that a move does not become a qualifying move until after the worker arrives in the school district and begins to seek qualifying work. Therefore, it is only at this point that the child meets the definition of a currently migratory child.

In the second scenario, both the qualifying arrival and residency dates would be the date the *child* moved. The reasoning, again, is that the child does not establish eligibility as a currently migratory child until he/she physically arrives in the receiving school district. Therefore, the child can only establish his/her currently migratory status and gain access to MEP services on that basis upon his/her physical arrival at the enrolling school district.

Dr. Francis V. Corrigan, Director, Office of Migrant Education to State Migrant Education Directors
Date: June 22, 1994

IV. MISCELLANEOUS ISSUES

Identifying Versus Serving Eligible Students.

Q: Must services be provided to all eligible students who are identified and recruited by the migrant education program?

A: No. It is incumbent upon States to identify and recruit all eligible migratory children, regardless of whether those children can be enrolled in a State migrant education program. Ideally, each migrant child should be served, but the legislation recognizes that because of geographic and other considerations, this may not be possible. Services should be provided to potential students on the basis of need alone, however, States must recognize that level of funding depends upon the State's efforts at identification and recruitment, and that Migrant Education program funds should be committed only after funding from other sources has been exhausted.

Mr. Ramon Ruiz, Acting Director, Office of Migrant Education to Mr. Lyle McIrvin, Coordinator of Wyoming's Chapter 1 program
Date: November 4, 1991

IV. MISCELLANEOUS ISSUES

Participation of Tuition-Paying, Non-Migratory Children in MEP Funded Summer Project.

Q. Is it allowable to let tuition-paying, non-migratory children to participate in a MEP funded summer project?

A. If MEP funds are not used to pay for services provided to non-migratory children, it is the SEA's decision as the MEP grantee as to whether to approve the participation of tuition-paying, non-migratory children in a local operating agency project. In making this decision, the SEA must determine and clearly document that the participation of non-migratory children in the project will not decrease the number of migratory children who would otherwise have been served, nor decrease the scope and quality of those services which the project would have otherwise provided to the migratory children in the absence of the non-migratory children's participation. Depending on how the tuition and MEP monies will be used, you also need to document that the MEP monies are being used solely for migratory children.

Mr. Ramon Ruiz for Dr. Francis V. Corrigan, Office of Migrant Education to Ms. Cecilia Santa Ana, Supervisor of the Michigan Migrant Program
Date: June 21, 1993