

BASIC MIGRANT CHILD ELIGIBILITY FACTORS

AGE

- The child is younger than age 22. ESEA § 1115(b)(1)(A); 34 CFR § 200.103(a).

SCHOOL COMPLETION

- The child is eligible for a free public education under State law.
ESEA § 1115(b)(1)(A); 34 CFR § 200.103(a).

MOVE

- The child moved on his or her own as a migratory agricultural worker/migratory fisher OR the child moved with or to join/precede a parent, spouse, or guardian who is a migratory agricultural worker/migratory fisher, AND
- The move was from one school district to another, AND
- The move was a change from one residence to another residence, AND
- The move was due to economic necessity, AND
- The move occurred within the past 36 months.
ESEA § 1309(2); 34 CFR § 200.81(d), (e), (f), and (g).

PURPOSE OF THE MOVE

- One purpose of the worker's move was to seek or obtain qualifying work:
 - The worker moved to obtain qualifying work and obtained it, OR
 - The worker moved to obtain any work and obtained qualifying work soon after the move, OR
 - The worker moved for qualifying work specifically, but did not obtain the work, AND
 - o The worker has a prior history of moves to obtain qualifying work, OR
 - o There is other credible evidence that the worker actively sought qualifying work soon after the move.
ESEA § 1309(2); 34 CFR § 200.81(c), (g), and (i).

QUALIFYING WORK

- The employment is seasonal or temporary, AND
- The work is agricultural or fishing.
ESEA § 1309(2); 34 CFR § 200.81(a), (b), (j), and (k).

Reference List

Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Pub. L. 107-110, 20 U.S.C. §§ 6301 et seq. 34 Code of Federal Regulations (CFR) §§ 200.81-200.103 2010.

Note: Important terms such as "agricultural work," "fishing work," "seasonal employment," and "temporary employment," are further defined in 34 CFR § 200.81, which you may access at <http://www.ed.gov/legislation/FedRegister/finrule/2008-3/072908a.html> and <http://www.gpoaccess.gov/nara/index.html>.

CODE OF FEDERAL REGULATIONS

34 CFR Part 200
Improving the Academic Achievement of the Disadvantaged; Migrant Education Program

34 CFR § 200.81 – 200.89

MIGRATORY CHILD

Means a child:

1. Who is a migratory agricultural worker or a migratory fisher; or
2. Who, in the preceding 36 months, in order to accompany or join a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher:
 - i. Has moved from one school district to another.
 - ii. In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
 - iii. As the child of a migratory fisher, 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.

MIGRATORY AGRICULTURAL WORKER

Means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in fishing work. This 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, as defined in paragraph (g), a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work.

MIGRATORY FISHER

Means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary employment or seasonal employment in fishing work. This 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, as defined in paragraph (g), a distance of 20 miles or more to a temporary residence in order to obtain temporary employment or seasonal employment in fishing work.

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.

1. If a worker states that a purpose of the move was to seek any type of employment, i.e., the worker moved with no specific intent to find work in a particular job, the worker is deemed to have moved with a purpose of obtaining qualifying work if the worker obtains qualifying work soon after the move.
2. Notwithstanding the introductory text of this paragraph, a worker who did not obtain qualifying work soon after a move may be considered to have moved in order to obtain qualifying work only if the worker states that at least one purpose of the move was specifically to seek the qualifying work, and:
 - i. The worker is found to have a prior history of moves to obtain qualifying work; or
 - ii. 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.

MOVE OR MOVED

Means a change from one residence to another residence that occurs due to economic necessity.

SEASONAL EMPLOYMENT

Means 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.

TEMPORARY EMPLOYMENT

Means employment that lasts for a limited period of time, usually a few months, but no longer than 12 months. It typically includes employment where the employer states that the worker was hired for a limited time frame; the worker states that the worker does not intend to remain in that employment indefinitely; or the SEA has determined on some other reasonable basis that the employment is temporary. The definition includes employment that is constant and available year-round only if, within 18 months after the effective date of this regulation and at least once every three years thereafter, the SEA documents that, given the nature of the work, of those workers whose children were previously determined to be eligible based on the State's prior determination of the temporary nature of such employment (or the children themselves if they are the workers), virtually no workers remained employed by the same employer more than 12 months.

AGRICULTURAL WORK

Means the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. It consists of work performed for wages or personal subsistence.

FISHING WORK

Means the catching or initial processing of fish or shellfish or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed for wages or personal subsistence.

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.

QUALIFYING WORK

Means temporary employment or seasonal employment in agricultural work or fishing work.