

Texas Migrant Education Program
Guidance Related to New Regulations

Governing the

Title I, Part C Migrant Education Program

Under 34 CFR 200

Effective August 28, 2008



Texas Migrant Education Program

Guidance Related to New Regulations Governing the Title I, Part C – Migrant Education Program Under 34 CFR 200 Effective August 28, 2008

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Texas Migrant Education Program

Guidance Related to New Regulations Governing the Title I, Part C – Migrant Education Program Under 34 CFR 200 Effective August 28, 2008

New Definitions for Terms Related to Child Eligibility Under 34 CFR 200.81

The following table provides a side-by-side comparison of the child eligibility definitions in place under 34 CFR 200.81 prior to August 28, 2008, and the new definitions that now are in place beginning August 28, 2008. The new definitions will result in changes to the way in which child eligibility is determined in Texas.

Child Eligibility Definitions Prior to August 28, 2008	Child Eligibility Definitions Effective August 28, 2008
<i>Agricultural activity</i> – any activity directly related to: (1) The production or processing of agricultural products for initial commercial sale or personal subsistence; (2) the cultivation or harvesting of trees; or (3) fish farms.	(a) <i>Agricultural work</i> 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.
<i>Fishing activity</i> – any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or personal subsistence.	(b) <i>Fishing work</i> 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.
<i>"In order to obtain"</i> – not defined	(c) <i>In order to obtain</i> , 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 (c), 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.
<i>Migratory agricultural worker</i> – a person who, in the preceding 36 months, has moved from one school district to another in order to obtain temporary or seasonal employment in agricultural or fishing activities as a principal means of livelihood. The term "principal means of livelihood" is defined as the activity plays an important part in providing	(d) <i>Migratory agricultural worker</i> means a person who, in the preceding 36 months, has moved, as defined in paragraph (g), 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

Child Eligibility Definitions Prior to August 28, 2008	Child Eligibility Definitions Effective August 28, 2008
a living for the worker and his or her family.	<p>agricultural work, including dairy work. [<i>Migratory fisher</i> is defined in section (f)]</p> <p><u>Note:</u> The definition has been revised to remove the reference to “principal means of livelihood” and clarify that, in order to establish MEP eligibility, a move as defined in Section 200.81 (g) made by a migratory agricultural worker or migratory fisher must occur due “to economic necessity.”</p>
<p><i>Migratory child</i> – a child whose parent is a migratory agricultural worker or a migratory fisher, and who, in the preceding 36 months, has moved from one school district to another because the parent has moved in order to obtain temporary or seasonal employment in agricultural or fishing work. In addition, the current definition notes that a migratory child may move on his or her own as the migratory agricultural worker or migratory fisher (or with a spouse or guardian who is a migratory agricultural worker or migratory fisher), and provides special circumstances for moves within (1) a single-school-district-State and (2) school districts of more than 15,000 square miles.</p>	<p>(e) <i>Migratory child</i> means a child–</p> <p>(1) Who is a migratory agricultural worker or a migratory fisher; or</p> <p>(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–</p> <p>(i) Has moved from one school district to another;</p> <p>(ii) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or</p> <p>(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.</p>
<p><i>Migratory fisher</i> – a person who, in the preceding 36 months, has moved from one school district to another in order to obtain temporary or seasonal employment in agricultural or fishing activities as a principal means of livelihood. The term “principal means of livelihood” is defined as the activity plays an important part in providing a living for the worker and his or her family.</p>	<p>f) <i>Migratory fisher</i> means a person who, in the preceding 36 months, has moved, as defined in paragraph (g), 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.</p> <p><u>Note:</u> The definition has been revised to remove the reference to “principal means of livelihood” and clarify that, in order to establish MEP eligibility, a move as defined in Section 200.81 (g), made by a migratory agricultural worker or migratory fisher must occur due “to economic necessity.”</p>
<p><i>Move or Moved</i> – not defined</p>	<p>(g) <i>Move or Moved</i> means a change from one residence to another residence that occurs due to economic necessity.</p>
<p><i>Personal subsistence</i> – not defined</p>	<p>(h) <i>Personal subsistence</i> 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.</p> <p><u>Note:</u> The Texas MEP does not qualify work under “personal subsistence.”</p>
<p><i>Qualifying work</i> – not defined</p>	<p>(i) <i>Qualifying work</i> means temporary employment or seasonal employment in agricultural work or fishing work.</p>
<p><i>Seasonal employment</i> – not defined</p>	<p>(j) <i>Seasonal employment</i> means employment that occurs</p>

Child Eligibility Definitions Prior to August 28, 2008	Child Eligibility Definitions Effective August 28, 2008
	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.
<i>Temporary employment</i> – not defined	(k) <i>Temporary employment</i> 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.