STATE APPLICATION AND FUNDING

Q. I am interested in receiving information on the bypass process or the possibilities of serving migratory students in a neighboring State when the neighboring State is not able to serve the students due to lack of resources.

There are a few possibilities for serving migratory children who reside in other States. Currently, States may serve a migratory child who resides in a neighboring State. Two specific examples we have heard from States over the past few years: 1) The child resides right across the State border from one of a State's Migrant Education Program (MEP) projects and there is no MEP project available in that child's home region or district; or 2) A State offers a special summer leadership program that is regularly under capacity, so a few spaces are made available to migratory children in neighboring States where no comparable service exists. Additionally, there are possibilities for distance learning. The Office of Migrant Education (OME) reminds States that they still need to make their own determination to ensure the child meets the definition of a "migratory child", and we encourage States to coordinate efforts with the other State as much as possible.

If you are interested in serving migratory children in other States on a larger scale, there are options in the statute: 1) A consortium arrangement—in which case a State or group of States would submit a proposal to the Department; and 2) A bypass arrangement—in which case the Department would select an appropriate entity. It partly depends on whether the States involved are willing and able to share responsibilities for operating the MEP or aspects of the program; or if the arrangement would involve States that are <u>not</u> willing and able to operate a MEP. We have initiated conversations with our program attorneys to explore these possibilities, and if you have a specific idea or proposal, please don't hesitate to contact OME to discuss in more detail.

CHILD ELIGIBILITY

Q. How is a child's eligibility for the Migrant Education Program (MEP) impacted if he or she is displaced due to a hurricane or other natural disaster?

The Office of Migrant Education (OME) does not have a unique policy regarding natural disasters. In all circumstances, a child is eligible if the child:

1. Meets the definition of "migratory child" in section 1309(3) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and is an eligible child as the term is used in section 1115(c)(1)(A) of the ESEA and 34 CFR 200.103; and
2. Has the basis for the State's determination that the child is a "migratory child" properly recorded on the national Certificate of Eligibility (COE).

Similarly, the requirements for a qualifying move do not change in instances of a natural disaster. Under section 1309(5) of the ESEA, a qualifying move is:

1. Made due to economic necessity; and
2. From one residence to another; and
3. From one school district to another school district.

Eligibility determinations for children displaced by a hurricane or other natural disaster should be assessed on a case-by-case basis. OME offers the following possible considerations in determining whether there has been a change in residence due to economic necessity: whether the family's previous home has been destroyed or otherwise made inhabitable by the disaster, whether the child or his or her parent/guardian or spouse lost employment due to the disaster, and how long the child or family is displaced. Please see the MEP Non-Regulatory Guidance, Chapter II, Questions D2-D3, for more information on change of residence and economic necessity.

Q. Can a move due to a hurricane or other natural disaster be used to establish (or re-establish) an individual's status as a migratory agricultural worker?

The criteria used to determine whether an individual is a migratory agricultural worker does not differ based on the reason for the move (in this case, a hurricane or natural disaster). For example, a migratory agricultural worker moves with his children to a new residence in another school district because he lost his job due to flooding caused by a hurricane. This move would not extend the parent's status as a migratory agricultural worker unless if, after the move, the parent engaged in new temporary or seasonal employment in agriculture, or actively sought such new employment and has recent history of moves for temporary or seasonal agricultural employment. Please see the MEP Non-Regulatory Guidance, Chapter II, Section C, for more information on migratory workers and qualifying work.

Q. A child who is currently eligible for the Migrant Education Program (MEP) in one district moved in with family in another district in the same State to avoid a hurricane. They plan to return to their home as soon as it is safe for them to do so. Can they receive MEP services in their temporary location?

Yes. Children who have been displaced and are currently eligible for the MEP continue to be eligible for MEP services in the same State, regardless of whether the move is a "qualifying move" (as defined in section 1309(5) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended). Please note that if the child moves to another State, that State must make its own determination as to whether the child is eligible for the MEP and complete a Certificate of Eligibility (COE) for the child based on the circumstances at the time the COE is completed and reviewed.

Q. Does the Department consider the 16 territories of the United States a move within the US? If the migratory agricultural worker performed qualifying work in Guam, would that be considered within the United States? The United States currently administers 16 territories as insular areas: American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands.

For purposes of Migrant Education Program (MEP) eligibility, the Department considers qualifying moves to be moves to or within the United States. Similarly, we consider qualifying work to be within the United States. In accordance with the definition of "State" in the general provisions in section 8101 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, this includes each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the outlying areas: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands.

Q. If a migratory agricultural worker has a contract with a company to work in qualifying work, does that count as being engaged?

No. The Office of Migrant Education (OME) believes a signed contract for qualifying work does not automatically indicate that a worker is engaged in qualifying work. The worker is engaged when he or she has started performing the qualifying work.

Q. If a migratory agricultural worker is going through orientation with a company in order to work in qualifying work, does that count as being engaged?

The Office of Migrant Education (OME) considers an individual that is participating in orientation for qualifying work to be engaged in qualifying work, as employee orientation indicates the individual is an active employee, and thus, the individual has begun the first step in his or her work with that employer.

Q. Chapter II, C5 of the Migrant Education Program (MEP) Non-Regulatory Guidance explains that the Department recommends that "soon after the move" be within 60 days of the worker's move. It also states that, "While States may interpret the wording 'soon after' to mean more or less than 60 days, each State should establish a written standard that all recruiters are to apply, and which the State can rely upon in the event of an audit or investigation questioning the reasonableness of the State's policy." Do the instructions provided on page 9 of the National Certificate of Eligibility (COE) Instructions suffice as the State MEP's written standard for "soon after the move"?

The instructions provided on page 9 of the National COE Instructions do not serve as a State's written standard, or policy, for "soon after the move". It is the State's responsibility to set a standard for "soon after the move" and to communicate that standard to its recruiters clearly, so that recruiters are able to make clear eligibility determinations as they relate to "soon after the move". For example, a State may choose to communicate its standard/policy in its Identification and Recruitment (ID&R) manual and/or other guidance and training materials.

Whether the State chooses to adopt the Department's interpretation of "soon after the move", as outlined in Chapter II, C5 of the MEP Non-Regulatory Guidance (NRG), or another reasonable standard, it is the State's responsibility to clearly communicate the State's policy to its recruiters. If the State chooses to interpret "soon after the move" as more than 60 days—as a general policy or in specific extenuating circumstances to be evaluated on a case-by-case basis—we recommend that the State maintain, for audit and monitoring purposes, adequate documentation and reasonable justification for such a policy.

Q. A migratory agricultural worker moved with his child to District A with the intent of engaging in temporary employment for less than 12 months. After the migratory agricultural worker and child make an intrastate move to District B, the recruiter in District B finds out the "temporary" employment in District A really lasted two years. Would the parent still be considered a migratory agricultural worker if the work wasn't really "temporary"? Would the child's eligibility continue for the full 36 months from the original qualifying arrival date (QAD) in District A?

The answers to these questions depend on when the family is identified by the MEP, and the information available at that time. If the MEP identified the family after they made a qualifying move to District A, and, soon after that move, the child's parent engaged in employment he described as temporary (and at the time, he had been employed for less than 12 months), the recruiter may consider the parent to be engaged in temporary employment based on the information available at that time. Assuming all other MEP eligibility criteria are met, the recruiter may establish a qualifying arrival date (QAD) for the child based on that move. Even if the MEP later learns that the parent remained employed for longer than 12 months, as long as the information on which the original eligibility determination was based was valid and reliable (i.e., the MEP has no reason to believe that the parent purposely provided misleading or inaccurate information), the child may retain MEP eligibility for the full 36 months from his or her last QAD.

If the family made a subsequent qualifying move to District B, the MEP may only complete a new COE for the child with a new QAD for the move to District B if, at the time, the recruiter is able to determine that the child made that move with a parent who <u>is</u> a migratory agricultural worker. If the recruiter has reliable information (e.g., information provided by the worker or employer) that the parent remained employed in his previously qualifying work for more than 12 months, then the parent does not meet the definition of a "migratory agricultural worker" based on his employment in District A, and a new COE cannot be completed for the child for the move

to District B. Again, this would not impact the previously established QAD for the move to District A, because that COE was based on the facts available at the time.

Q. Are the following activities considered qualifying work for purposes of the Migrant Education Program (MEP): hunting wild animals for personal subsistence and gathering wild plants, such as roots and tubers, for personal subsistence?

"Qualifying work" means temporary employment or seasonal employment or personal subsistence in agriculture or fishing. "Agricultural work", according to section 1309(2) of the Elementary and Secondary Education Act, as amended, and 34 CFR § 200.81(a), is the production or initial processing of raw agricultural products, such as crops, poultry, or livestock; dairy work; as well as the cultivation or harvesting of trees, that is performed for wages or personal subsistence.

The Department does not consider the term "livestock" to include animals hunted or captured in the wild (see MEP Non-Regulatory Guidance (NRG), Chapter II, F6). Therefore, we would not consider hunting wild animals to be qualifying work. The Department considers a crop to be a plant that is harvested for use by people or by livestock. And, the production of crops involves work such as gathering (see MEP NRG, Chapter II, F3 and F4). Therefore, the gathering of wild plants such as roots and tubers for personal subsistence may be considered qualifying work.

PROVISION OF SERVICES

Q. What does the Department believe States should do that have a combination of year-round schools and traditional schools for summer programs? Right now our State just uses summer and not intersession, but we are looking at the possibilities of including intersession for our year-round schools. We have summer as part of our funding formula, so would we just use intersession and summer interchangeably, depending upon the type of school system each district has? Does it matter how this is documented? What are other States doing with multiple school structures?

For purposes of reporting to the Department in the annual Consolidated State Performance Report (CSPR), States should include in the Category II child count those eligible children ages 3-21 that were served by the Migrant Education Program (MEP) in either the summer or intersession terms. That accounts for districts that operate on a traditional/regular year calendar, as well as year-round schools. Because Category II child counts directly impact each State's annual allocation, we would encourage you to document both summer and intersession services for purposes of CSPR reporting. It is up to the State to determine the best methods to document this, and what types of record-keeping and reporting you require at the local level, as long as you are able to report unduplicated Statewide counts in your CSPR.

Q. Is it possible to have the Office of Migrant Education (OME) review their expectations for summer programming given the new funding formula? I see a lot of people that want to offer one day services instead of long term, intensive programs.

Currently, for purposes of reporting summer services in the Consolidated State Performance Report (CSPR) under the Category II child count, States may include children who were served for *one or more days* in one of the State's summer or intersession programs. And, we have a definition of "services" in our Non-Regulatory Guidance and the CSPR.

The Department has not set more specific criteria for MEP-funded summer services in terms of the number of hours of instruction, duration of the program, or the types of services that are provided. We will certainly consider this issue, especially given that Category II child counts have a direct impact on each States' annual allocation. Even if the Department does not establish more specific criteria for summer programs, States have the discretion to set those types of criteria for their own subgrantees, and incorporate such criteria in the State's subgrant applications or agreements.

Q. Is it allowable to consolidate Migrant Education Program (MEP) funds in schoolwide programs?

Before a school chooses to consolidate MEP funds in its schoolwide program, section 1306(b)(4) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and sections 200.29(c)(1) and 200.86 of the Code of Federal Regulations (CFR) require a school to first use the MEP funds, in consultation with migratory parents, to meet the unique educational needs of migratory children that result from the effects of their migratory lifestyle, and those other needs that are necessary to permit these students to participate effectively in school, as identified by the State educational agency's (SEA's) Statewide comprehensive needs assessment. The school also must document that these needs have been met before it may combine MEP funds in a schoolwide program. The SEA provides guidance to schools regarding when it is appropriate to combine funds in a schoolwide program. The school determines whether it may combine MEP funds in a schoolwide program, subject to the aforementioned requirements and guidance from the SEA.

COORDINATION

Q. How is the Department enforcing the regulation that States must have Certificates of Eligibility (COEs) into the Migrant Student Information Exchange (MSIX) in 10 days? Is

there some leeway if COEs are sent back for questions or should we remove signatures to ensure COEs are completed within the 10 days?

This question pertains to the requirement that States submit new or updated Minimum Data Elements (MDEs) to MSIX within 10 working days of the State approving a new COE for a migratory child. The Department has not established specific time limits for how long a State may take to approve a COE. We encourage States to make the COE approval process as efficient as possible, while still implementing necessary quality control measures. So, if a COE is subject to questions or there is some reason for delaying approval of a COE, this does not impact a State's timeline for submission to MSIX. The 10 working days begin when the State has approved the COE.

In terms of enforcing this requirement, the Office of Migrant Education (OME) is focusing its Fiscal Year (FY) 2018 monitoring on records transfer and MSIX. In terms of the 10 day requirement specifically, we will be looking at the State's written guidance/procedures to make sure the regulatory timelines are being clearly communicated to all MSIX users in the State, and we will be requesting a sample of COEs to help ensure that MDEs for those children were submitted or updated in accordance with the timelines specified in the regulations. States may choose to take a similar approach in monitoring their subgrantees.

FISCAL REQUIREMENTS

Q. Is it allowable for the Migrant Education Program (MEP) to lend old, but usable laptop computers to the College Assistance Migrant Program (CAMP) indefinitely, to use in student computer laboratories? The laptop computers have exceeded their lifespan, are no longer needed by MEP regional staff, and have been replaced with updated models. If transferred from the MEP to CAMP, CAMP would manage their usage by students.

Assuming that the per unit purchase price for the computers was less than $5,000 (therefore classifying them as supplies rather than equipment), and that they were purchased with MEP funds, the answer to your question about transferring the computers to CAMP, is either (1) or (2) below, depending on the current aggregate value of the computers.

(1) If the current total aggregate value of the computers is less than $5,000, then:

The non-Federal entity may retain, sell, or otherwise dispose of them without any further obligation to the Federal awarding agency (U.S. Department of Education).

(2) If the current total aggregate value exceeds $5,000 and the supplies are not needed for any other Federal award, then:

The Uniform Guidance requires that the non-Federal entity must either retain the computers for use in other activities or sell them (see 2 CFR 200.314). In either case, the non-Federal entity must compensate the Federal awarding agency (U.S. Department of Education) for its share. This

is calculated the same way that it is calculated for equipment under 2 CFR 200.313(e)(2). The Federal agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal agency's percentage of participation in the cost of the original purchase. If the computers are sold, the Federal agency may allow the non-Federal entity to deduct and retain either $500 or 10% of the proceeds, whichever is less, for selling and handling expenses.

In other words, if the total aggregate value of the computers is now less than $5,000, you are allowed to transfer them to CAMP, where the program would manage their usage by students. If not, you must either retain them or sell them, following the procedure outlined above.

Q. A company called *Instructional Access* is actively marketing its computer-based training program to various Migrant Education Programs (MEPs). Is it an allowable use of MEP funds to pay for this program?

Based on the information contained in marketing emails and the company website for the specific program provided by *Instructional Access*, the Office of Migrant Education (OME) does not believe the costs of such a program are an allowable use of MEP funds. It is our understanding that the costs of the 1 – 3 day computer-based training program being marketed to the MEP start at $1459 per student, and include a laptop computer for each participating student to keep for personal use.

In accordance with the cost principles that guide Title I, Part C grants to State educational agencies (SEAs), in order to be considered allowable, costs must be allocable or chargeable to the MEP, relative to the benefit received (see 2 CFR 200.405). In addition, the Uniform Guidance requires grantees to have financial management systems that provide for effective control over, and accountability for, all funds, property, and other assets; and adequately safeguard all assets and assure that they are used solely for authorized purposes (see 2 CFR 200.302). If the MEP were to purchase laptops for students to keep, it would be extremely difficult to determine the purposes for which they were being used. The burden of proof would be on the MEP to demonstrate that the laptops were being used to achieve the program's intended outcomes, as outlined in the State MEP's Service Delivery Plan (SDP). Moreover, the SEA would have no control over the laptops when the students' MEP eligibility ends.

The aforementioned cost principles also require that in order to be considered allowable, costs must be necessary and reasonable for performance of the Federal award (see 2 CFR 200.403 – 200.404). Given the strong possibility that more cost-effective alternatives might be available, it would be difficult for the MEP to justify the purchase of laptops for students as "necessary and reasonable". Such alternatives might include:

a. The MEP may negotiate a lower fee with the company for providing the training on computers loaned by the company for the duration of the training; or the MEP may keep the computers post-training, and negotiate a lower fee with the company for providing the

same training the following year (because the program will have retained the laptops and provided them to the next group of students for use).

b. The MEP may purchase the computers or mobile devices (e.g., laptops or iPads) for the program, which may then be used to provide the necessary training to migratory students.

c. The MEP may also share the cost of computer purchases with another program, assuming that each program utilizes the computers for a period of time relative to each program's share of the cost.

d. A loan system may be implemented for MEP-owned mobile devices (e.g., laptops or iPads), which would allow students to check out the technology to use at home. The MEP should establish basic procedures for checking in with students about their uses of the devices and for returning the devices at the end of the project or term.

The aforementioned options might allow the resources to benefit more students, while still maintaining ownership and oversight by the MEP.

STATE ADMINISTRATION

Q. Does a State educational agency (SEA) have the latitude to change their Title I, Part C subgranting formula, which was approved as part of the State's Consolidated State Application under the No Child Left Behind Act of 2001(NCLB)?

The Title I, Part C subgranting requirements have not changed under the Every Student Succeeds Act of 2015 (ESSA), but SEAs are not required to describe their subgranting process in the current Consolidated State Plans. The SEA's subgranting process would likely be subject to review during program monitoring. The SEA may decide to make changes to its subgranting formula as long as the following factors are taken into consideration, as described in section 1304(b)(5) of the statute:

1. The numbers of migratory children;

2. The needs of migratory children;

3. The statutory requirement to give priority for services to migratory children who have made a qualifying move within the previous 1-year period and who are failing, or most at risk of failing, to meet the challenging State academic standards, or have dropped out of school; and

4. The availability of funds from other Federal, State, and local programs.