Chapter 7. Determining Eligibility

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| Chapter 7 Learning Objectives |
| The recruiter will learn |
| how to use the Child Eligibility Checklist, |
| whom to contact to resolve difficult eligibility cases, |
| his or her role in quality control, |
| the consequences of bending the rules in making eligibility determinations, |
| how to prepare to make his or her first preliminary eligibility determination, and |
| what to do if he or she suspects fraud or falsification of COEs. |

The Importance of Accurate Determinations

It takes time and effort for the recruiter to complete the initial training, create an individual ID&R action plan, build a recruitment network, and learn the nuances of interviewing. However, all of this is critical preparation for one of the most important parts of the recruiter’s job: making accurate preliminary eligibility determinations.

One of the primary responsibilities for a state in administering and operating the MEP is to identify those children who are eligible for the MEP so that they can receive the services they need. States are also required to provide to ED an annual count of the number of eligible migratory children who reside in the state. The state’s ability to report this number accurately depends almost entirely on how adequately and accurately recruiters make eligibility determinations.

Eligible migratory children are deprived of services they need if the state serves ineligible children with MEP funds. Furthermore, the state may have to repay to ED MEP funds spent on ineligible children. Thus, accurate eligibility determinations are critical in order for a state to have an effective, compliant MEP. The cycle of ensuring responsible eligibility decisions begins with the MEP recruiter.

The Recruiter’s Role

Although the recruiter’s role in making preliminary eligibility determinations is critical, he or she should not feel overwhelmed by this responsibility. If the recruiter works hard to learn the eligibility requirements, applies that knowledge consistently, and seeks help from supervisors whenever he or she has an eligibility question, the recruiter will be able to identify and recruit migratory children who are truly eligible for the MEP.

If the recruiter has used The Sample Interview Script supplemental interview form to gather all of the information needed to make an eligibility determination, a simple review of the MEP eligibility criteria should usually lead the recruiter to conclude, “yes, this child is eligible” or “no, this child is not eligible.” This process is meant to be straightforward. Questions occasionally arise when the information the recruiter receives on a particular factor or set of factors is unique or unclear. For example, a worker may have moved to perform an unusual agricultural activity that the state has not previously encountered.

Migratory families may have elaborate histories that pose challenges for a recruiter to make an eligibility determination. To ensure that all eligible children are identified and able to enroll in the MEP program, a recruiter must analyze a family’s history even if it does not, at first on the surface, fit eligibility criteria or because all the facts are not immediately apparent. Any time the recruiter has a question regarding whether a child or youth is eligible for the program, he or she should ask the supervisor for help. Every program has someone at either the local or state level, or both, who is responsible for resolving eligibility questions. It is important for every recruiter to know his or her point of contact and to feel comfortable contacting that person when questions arise. There will be more discussion on how to determine eligibility in difficult cases later in this chapter.

Primary Resources to Help Determine Eligibility

There are several documents that lay out the eligibility requirements for the MEP. The three sources listed below contain the basic eligibility definitions and criteria that recruiters are required to use to determine if a child or youth is eligible for the MEP. They include the relevant sections of the following:

1. federal statute (see below)
2. federal regulations (see below)
3. state requirements, if any

In addition, there are a number of resources that have been developed to help recruiters determine a child or youth’s eligibility for the MEP. These resources include the following:

* OME Non-Regulatory Guidance
* Child Eligibility Checklist (introduced later in this chapter)
* Sample Interview Script (Appendix VIII)
* National COE (Chapter 8)
* New Recruiter Self-Check (Appendix IX)
* state manuals and/or recruitment tools

The relationship between these documents and the interpretation of them by MEP personnel is key to properly determining child eligibility.

Who is a Migratory Child? A child is a “migratory child” and is eligible for MEP services if all of the following conditions are met:

1. The child is not older than 21 years of age; and
2. a. The child is entitled to a free public education (through grade 12) under State law, or

b. The child is not yet at a grade level at which the LEA provides a free public education; and

1. The child made a qualifying move in the preceding 36 months as a migratory agricultural worker or a migratory fisher, or did so with, or to join, a parent/guardian or spouse who is a migratory agricultural worker or a migratory fisher; and
2. With regard to the qualifying move identified in paragraph 3, above, the child moved due to economic necessity from one residence to another residence, and –
   1. From one school district to another; or
   2. In a state that is comprised of a single school district, has moved from one administrative area to another within such district; or
   3. 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.

This definition appears in ED’s NRG (Ch. II, A1). It derives from the statutory and regulatory definitions of a “migratory child” but restates the definitions in an easier to read format. The NRG is intended to be the place where state and local MEP personnel can go to learn about the MEP statute and regulations in a format applicable to everyday situations. For this reason, the National ID&R Manual will refer frequently to the NRG definition of “migratory child” instead of the statutory and regulatory definitions. While some terms, such as “qualifying work,” are also defined in the regulations (see below), this manual will focus on the discussion of these terms as they appear in the NRG.

A brief description of the statute, regulations, NRG, their relation to one another, and the eligibility definitions they include is provided below for reference.

The MEP Statute. The ESEA is the statute authorizing the MEP, as well as other educational programs at the federal level. It was first enacted by the U.S. Congress in 1965. The ESEA provides basic provisions for how SEAs and LOAs are to operate the MEP, including the definitions of the basic terms. It has been amended (or “reauthorized”) several times since 1965. The most recent amendment to the ESEA was made by the Every Student Succeeds Act (ESSA).Congress can change the ESEA only by enactment of another law or amendment.

MIGRATORY CHILD – The term “migratory child” means a child or youth who made a qualifying move in the preceding 36 months —

1. as a migratory agricultural worker or a migratory fisher; or
2. with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. [Section 1309(3)]

MIGRATORY AGRICULTURAL WORKER – The term ‘migratory agricultural worker’ means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in new temporary or seasonal employment or personal subsistence in agriculture, which may be dairy work or the initial processing of raw agricultural products. If an individual did not engage in such new employment soon after a qualifying move, such individual may be considered a migratory agricultural worker if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal agricultural employment. [Section 1309(2)]

MIGRATORY FISHER – The term ‘migratory fisher’ means an individual who made a qualifying move in the preceding 36 months and, after doing so, engaged in a new temporary or seasonal employment or personal subsistence in fishing. If the individual did not engage in such new employment soon after the move, the individual may be considered a migratory fisher if the individual actively sought such new employment and has a recent history of moves for temporary or seasonal fishing employment. [Section 1309(4)]

QUALIFYING MOVE – The term ‘qualifying move’ means a move due to economic necessity —

1. From one residence to another residence; and
2. From one school district to another school district, except —
3. In the case of a state that is comprised of a single school district, wherein a qualifying move is from one administrative area to another within such district; or
4. In the case of a school district of more than 15,000 square miles, wherein a qualifying move is a distance of 20 miles or more to a temporary residence. [Section 1309(5)]

MEP Regulations. Federal regulations are rules developed by the executive branch of the federal government and other governmental departments and agencies. Regulations interpret and fill in gaps in terms, phrases, practices, and language contained in statute and can be found in the Code of Federal Regulations (CFR).

For the three terms defined in both the statute and program regulations (“migratory child,” “migratory agricultural worker,” and “migratory fisher”), the statutory definitions in the ESEA, as amended by the ESSA, take precedence. In addition, the term “in order to obtain,” as defined in 34 CFR § 200.81(d), is no longer applicable because the term was part of the definition of “migratory child” in the previous version of the statute (ESEA, as amended by the No Child Left Behind Act of 2001), but has been removed from the program definitions in the current statute (ESEA, as amended by the ESSA).

The following definitions in 34 CFR § 200.81 remain unchanged; therefore, SEAs and their recruiters must continue to use them:

* 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 or the raising or harvesting of fish or shellfish at fish farms. It consists of work performed for wages or personal subsistence.

The statute uses the phrase “employment in… agriculture” or “agricultural employment” and “employment in… fishing” or “fishing employment.” For the most part, those terms are the same as the terms defined in regulations as “agricultural work” and “fishing work.”

* The statutory definition of “migratory agricultural worker” mentions “dairy work” and “initial processing of raw agricultural products.” This generally means work activities that described in the regulatory definition of “agricultural work,”and work such as the initial processing of trees, which would now qualify because trees are a “raw agricultural product” (NRG, Chapter II, F15). 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. [34 CFR § 200.81(m)]
* Qualifying work means temporary employment or seasonal employment in agricultural work or fishing work. [34 CFR § 200.81(n)]
* 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. [34 CFR § 200.81(o)]
* 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. [34 CFR § 200.81(p)]

MEP Guidance. Chapter II: Child Eligibility in the OME’s Guidance (NRG), updated in 2017 to reflect the changes made by the ESSA, provides what the OME considers to be the best way to interpret and implement the MEP eligibility requirements. In addition to presenting MEP definitions and conditions in an easy-to-read question-and-answer format, the NRG also provides examples of how to comply with the law. It is intended to be the place where state and local MEP personnel can read about the MEP statute and regulations in a format that is applicable to everyday situations. Every recruiter should study Chapter II: Child Eligibility in the NRG. The recruiter should also follow the policies provided in the NRG unless they have clear written approval from State MEP officials stating otherwise.

State Requirements. States may provide their own interpretation of MEP eligibility requirements,provided that the State interpretations are reasonable and comport with the federal statutes and regulations. The recruiter should find out if the state has any specific MEP requirements.

Child Eligibility Checklist. The Child Eligibility Checklist (see Figure 4 of this chapter) is designed as a tool to guide the recruiter’s thinking through the child eligibility determination process. The checklist is organized by four factors, all of which must be satisfied in order to consider a child eligible for the MEP. Recruiters should consider these factors when reviewing a child’s and family’s situation.

The next several paragraphs describe the factors within the Child Eligibility Checklist (Fig 4). Recruiters are encouraged to review and understand this information before using the tool.

**Factor 1: Child’s Age** determines if the child is within the age range of eligibility (not yet 22 years of age at the time of the interview). Factor 1 is checked if the child is within the age range of eligibility.

**Factor 2: Child’s School Completion Status** determines if the child is entitled to a free public education (through grade 12) according to state law (i.e., has not graduated from high school or obtained a HSED) or the child is not yet at a grade level at which the school district provides a free public education. The recruiter should find out which children are entitled to a free public education in his or her state. If the recruiter’s state does not entitle students to a free public education beyond a particular age (e.g., over age 19), the recruiter should modify the checklist to reflect up to the age in which the child is entitled to a free public education. If a question arises (e.g., the child has a secondary school degree issued by another country or has received a certificate of completion in lieu of a diploma), the recruiter should find out from state officials whether the child is entitled to continue to pursue a high school diploma in that state. Factor 2 is checked if, after considering this information, the child is entitled to a free public education (through grade 12) according to state law or the child is not yet at a grade level at which the school district provides a free public education.

**Factor 3a: Child’s Qualifying Move** and **Factor 3b: Child’s Qualifying Move Relative to the Migratory Agricultural Worker or Migratory Fisher** focus on the qualifying move of the child. The child must meet the conditions in both 3a and 3b.

* **Factor 3a is checked if** the child has made a qualifying move in the 36 months preceding the date of the interview. If this is not the case, then the child would not qualify for MEP services even if the parent, guardian, or spouse is a migratory agricultural worker or migratory fisher.
* **Factor 3b is checked** if the child’s move was as a migratory agricultural worker or migratory fisher, or with, to join, or to precede a parent, guardian, or spouse who is a migratory agricultural worker or migratory fisher. This information is critical because the date that the child and the worker complete the move and are together establishes the QAD for when MEP eligibility begins.

**Factor 4a: Migratory Agricultural Worker’s or Migratory Fisher’s Qualifying Move** and **Factor 4b: Qualifying Work for the Migratory Agricultural Worker or Migratory Fisher** determine if the parent, guardian, spouse, or child (if the child is the worker) fits the definition of migratory agricultural worker or migratory fisher.

In order to establish an individual as a migratory agricultural worker or migratory fisher, the individual must meet the conditions in both 4a and 4b.

* **Factor 4a** is checked if the individual made a qualifying move within 36 months preceding the date of the interview.
* **Factor 4b** is checked if, within 36 months preceding the date of the interview, the individual engaged in new qualifying work soon after the qualifying move or, if he or she did not engage in new qualifying work soon after the move, he or she actively sought new qualifying work and has a recent history of moves for qualifying work. Factor 4b is checked if the work is seasonal, temporary, or for personal subsistence and if the work is agricultural or fishing.

If the individual does not meet the conditions in both Factors 4a and 4b, then they do not meet the definition of a migratory agricultural worker or migratory fisher.

However, if the recruiter is unclear about whether the child or worker has met one or more of the criteria, the recruiter must resolve the issue by (1) collecting any additional information that is needed to make a determination, and (2) following the State’s procedure for resolving eligibility questions (e.g., consulting with a supervisor or asking the SEA to make a determination) before the child can be considered eligible for the program.

The Sample Interview Script (discussed in Chapter 6 and provided in Appendix VIII) and the Child Eligibility Checklist will assist recruiters in making adequate and accurate eligibility determinations.

When the recruiter has (1) learned the eligibility criteria contained in the MEP statute, regulations, and NRG; (2) learned all applicable state laws, regulations and policies; and (3) practiced making eligibility determinations under supervision and/or with others in a team approach, the recruiter should be ready to make most preliminary eligibility determinations without help. As discussed previously, the recruiter is encouraged to talk with the supervisor any time he or she is uncertain whether a particular child or youth qualifies for the MEP.

Figure 4. Child Eligibility Checklist

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| CHILD ELIGIBILITY CHECKLIST FOR THE MIGRANT EDUCATION PROGRAM  This checklist is intended to be a tool to determine if a child meets the basic eligibility factors of the MEP. It does not take into account all information necessary to complete a COE and document eligibility for the MEP. | |
| **FACTOR 1: CHILD’S AGE** | |
| 🞎 The child is younger than 22 years old on the date of the interview. | |
| **FACTOR 2: CHILD’S SCHOOL COMPLETION STATUS** | |
| 🞎 The child is entitled to a free public education through grade 12 under state law\*, **OR**  🞎 The child is not yet at a grade level at which the school district provides a free public education. | |
| **FACTOR 3a: CHILD’S QUALIFYING MOVE** | **FACTOR 3b: CHILD’S QUALIFYING MOVE RELATIVE TO THE MIGRATORY AGRICULTURAL WORKER OR MIGRATORY FISHER** |
| The child moved within the 36 months preceding the date of the interview  🞎 due to economic necessity, **AND**  🞎 from one residence to another residence, **AND**  🞎 from one school district to another. † | 🞎 The child’s QUALIFYING MOVE in FACTOR 3a was as a migratory agricultural worker or migratory fisher, or was made with, to join or to precede a parent, guardian, or spouse who is a migratory agricultural worker or a migratory fisher (as determined in Factors 4a and 4b). |
| **FACTOR 4a: MIGRATORY AGRICULTURAL WORKER’S** **OR MIGRATORY FISHER’S QUALIFYING MOVE** | **FACTOR 4b: QUALIFYING WORK FOR THE MIGRATORY AGRICULTURAL WORKER OR MIGRATORY FISHER** |
| The parent/guardian/spouse or child (if the child is the worker) moved within the 36 months preceding the date of the interview  🞎 due to economic necessity, **AND**  🞎 from one residence to another residence, **AND**  🞎 from one school district to another.† | After the QUALIFYING MOVE in Factor 4a, the parent/guardian/spouse or child (if the child is the worker)  🞎 engaged in new QUALIFYING WORK (QW) soon after the move, **OR**  🞎 did NOT engage in new QW soon after the move, but he or she  🞎 actively sought new QW, **AND**  🞎 has a recent history of moves for QW.  **AND**  The work is  🞎 seasonal employment, **OR**  🞎 temporary employment, **OR**  🞎 for personal subsistence.  **AND**  The work is  🞎 agricultural **OR**  🞎 fishing. |
| \* The recruiter should find out which older children are entitled to a free public education (through grade 12) in his or her state. If a question arises (e.g., the child has a secondary school degree issued by another country or has received a certificate of completion in lieu of a diploma), the recruiter should find out from state officials whether the child is entitled to continue to pursue a high school diploma in that state. See the Migrant Education Program Non-Regulatory Guidance, Chapter II, Section A for additional information.  † In a state that is comprised of a single school district, the child moved from one administrative area to another within such district or 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. | |

Comprehensive Eligibility Training

The National ID&R Manual is a resource developed to assist SEAs with ID&R systems implementation, as well as, provide a thorough understanding of MEP statute and regulations. While components of this manual discuss the necessary criteria for determining MEP eligibility, this manual is not intended to train recruiters on the many nuances of eligibility decisions; for that purpose, OME has developed the National ID&R Curriculum. SEAs are responsible for providing all recruitment staff with comprehensive training. This can be accomplished by using the National ID&R Curriculum or a similar SEA developed curriculum.

Making Eligibility Decisions

In order to make adequate and accurate decisions regarding eligibility, the recruiter must gather as much relevant information as possible. Additional information or documentation the recruiter may wish to collect and/or review to support the determination includes

* notes from the eligibility interview, including the family’s work history;
* school data (e.g., names and enrollment records from schools attended in the past);
* employment data (e.g., employment records, pay stubs, job applications, names of past employers);
* crop data (e.g., approximate dates of temporary or seasonal crop activities, qualifying local production, and processing activities);
* migratory child database records, such as the MSIX or an independent state database;
* family documents (e.g., birth certificates, health immunization records);
* names of other families with whom the family has worked or traveled;
* information from the recruitment network that helped the recruiter to identify the worker or family (e.g., written and verbal referrals from community agencies, school personnel, employers);
* recruiter observations, including whether what the recruiter observes is consistent with the information the interviewee provides; and
* other relevant documentation.

The recruiter should remember that records from other states, including copies of COEs, may help inform eligibility determinations. However, each State must make its own eligibility decisions because each State is responsible for ensuring the eligibility of each child included in its annual child count.

The recruiter should use his or her analytical skills and all available resources (both material and people) to make a preliminary determination as to whether each child meets the definition of a migratory child. To make that decision the recruiter should review the information gathered at the interview, along with any other sources of information. The recruiter should also consider contradictory information from other sources or from observations that lead the recruiter to doubt or question the interviewee’s responses, such as school records that do not match interview information. For example, there may be a case where school records show the child in attendance every day in September, but the parent says they moved out of state for two weeks in September to pick apples. The school records might indicate that the child did not move with the parents.

Timing of moves for both the child and the worker is a critical consideration. The child and the worker must have made a qualifying move within the preceding 36 months of the interview. However, the child and the worker do not necessarily need to have made qualifying moves at the same time for the child to be eligible for the MEP. While in the majority of cases, the child moves with the worker (if the child is not the worker), in cases where the child and worker move at separate times, developing a timeline will assist in determining that both the child and the worker have made qualifying moves within 36 months of the interview and in identifying the QAD for the child. In addition, the recruiter should record the date on the timeline when the worker was last engaged in qualifying work or when the worker engaged in new qualifying work in order to determine if the worker meets the definition of migratory agricultural worker or migratory fisher.

Following are key dates to consider for eligibility:

* making a qualifying move in the 36 months preceding the date of the interview (NRG, Ch. II, A1.)
* engaging in work “soon after the move” (60 days) (NRG, Ch. II, C10)
* recent history of moves (no longer than 36 months preceding the date of the interview) (NRG, Ch. II, C16)
* the period of time that separates the worker’s qualifying move from a child’s qualifying move to join a worker or vice versa (12 months) (NRG, Ch. II, E4)
* the time period for when employment is considered “seasonal” or “temporary” (12 months) (NRG, Ch. II, G3 and G5)
* the date the State approves the COE in relation to the date the Migratory Agricultural Worker/ Fisher status expires

Determining Eligibility in Difficult Cases

At times, the recruiter may face situations that are beyond his or her knowledge or level of authority. In this situation, it is imperative for the recruiter to take detailed notes during the interview because this will allow the recruiter to effectively research any lingering questions at a later time. The recruiter should check to see if the question has been answered in the state’s ID&R materials (e.g., the State ID&R Manual or state policy letters) or in the NRG. If the recruiter cannot find the answer in any of the written materials, the recruiter should talk with knowledgeable peers in his or her state to see if any of them have encountered a similar situation, and if so, how it was resolved (eligibility policies may differ from state to state, so the recruiter should either ask other recruiters within his or her own state or confirm responses from other states with the state ID&R coordinator). Finally, the recruiter will also want to consult with a supervisor. To help the supervisor understand the scenario, the recruiter should clearly present all of the relevant facts. As a general rule, the individual who asks an eligibility question should provide as much applicable background information as possible, including information on each eligibility factor found in the Child Eligibility Checklist. The recruiter should also tell the supervisor whether he or she thinks the child or youth is eligible and explain the rationale.

The recruiter’s supervisor, who will try to answer the eligibility question, should make sure he or she understands all of the relevant facts, asking for additional information when needed. Once the supervisor has a clear understanding of the issue, the supervisor should

1. check to see if the question is answered in the State ID&R materials (e.g., the State’s ID&R Manual, state policy letters) or in the NRG, and
2. determine if there is a precedent (by contacting the next person in the established process for resolving eligibility questions).

If there is a clear answer, the supervisor should provide that answer to the recruiter. If not, the supervisor should move the question through the state’s official process for resolving eligibility questions. Figure 5 shows how a question from a recruiter moves through the chain of command within the MEP and how the answer moves back to the recruiter. If the supervisor does not know the answer to a question, the question would be referred to the next person in line, generally the state ID&R Coordinator, who will perform the same analysis that the local supervisor conducted.

Figure 5. Eligibility Question Chain of Command

Immediate

Supervisor

Immediate

Supervisor

Recruiter

Recruiter

State ID&R Coordinator

State ID&R Coordinator

OME

Office of

State

Director

State

Director

Question

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Answer

Answer

Answer Issued to All ID&R Staff at Once

Answer Issued to All ID&R Staff at Once

If the state ID&R Coordinator cannot answer the question and the outcome will affect the eligibility of a significant number of children within the state, the MEP State Director should send the question to the assigned OME program officer (<https://www.ed.gov/about/offices/list/oese/ome/aboutus.html#contact>).

Any question that is sent to the OME should include the following information:

* the question
* all of the facts that are relevant to the question
* the approximate number of children whose eligibility will be affected by the determination
* the State’s analysis of the question
* why the State believes the question does not have a clear answer
* the response (i.e., ruling) that the state believes is appropriate based on its analysis

In cases where the outcome will affect the eligibility of only a few children, the state is encouraged to make a decision on its own that is consistent with the statute and regulations. In cases where the eligibility of a large number of children will be affected, states are encouraged to refer their questions to OME. Regardless of who provides the answer, the recruiter should know there is support for answering difficult eligibility questions. The recruiter is encouraged to ask questions any time he or she is unsure whether a particular child qualifies for the MEP. As questions are answered, the state’s process for resolving eligibility questions must allow for the response to be disseminated to all LOAs across the state. Not only is this required by regulation, it is a good professional development opportunity, and it is likely that if one recruiter encounters this question, others will   
as well.

The specific process for answering eligibility questions will vary somewhat from state to state depending on the size of the program and the recruitment model that the state uses. For example, the “immediate supervisor” and the “state ID&R Coordinator” may be the same person in states that employ “statewide recruiters.” Also, larger state and local programs may refer eligibility questions to experienced recruiters or to regional ID&R Coordinators prior to referring them to the state ID&R Coordinator. In some small states the state MEP Director may also serve as the state ID&R Coordinator. In every case, all MEP personnel share the responsibility of ensuring that only eligible children are enrolled in the MEP.

The Recruiter’s Instinct

Some experienced recruiters have said, “It only takes me about two minutes into the interview to tell if a child is eligible for the MEP!” Can a recruiter truly develop an instinct or intuition for who is eligible and who is not? Over time, most workers develop a sense about their jobs, and the recruiter is no different. Thus, there are specific situations and places in which the new recruiter may begin to make educated guesses. For example, in many regions of receiving states, migratory families tend to live in particular housing units within the community (e.g., apartments in farming communities that offer short-term leases). Also, certain farms are more likely to employ highly mobile labor. The recruiter can gather clues about eligibility from the way people answer questions or from visual clues.

However, while instinct or educated guesses based on experience can help the recruiter focus on the children who are the most likely to be eligible for the MEP, there is no substitute for asking the necessary questions to determine if a child meets the criteria in the Child Eligibility Checklist. The new recruiter could use intuition as a guide on the most productive places to recruit, as well as when to probe more deeply, look for more evidence, find another source, or ask a question a second time. However, when making a preliminary eligibility determination, the decision must be based on facts and evidence, not simply on “gut feelings,” because basing a decision on “gut feelings” may not result in making an adequate and accurate determination.

Lessons Learned: Eligibility

When making preliminary eligibility determinations, there are several areas where problems can arise. Recruiters should watch out for these problem areas.

Warning Signs. At the time of an interview, there may be certain warning signs or red flags to alert the recruiter that a child or youth may not be eligible for the MEP. The recruiter should note that the presence of these red flags would not automatically disqualify a child from being eligible for the MEP but instead indicate that the recruiter needs to ask additional questions, gather supporting documentation, and after concluding the interview, perhaps discuss the situation with others before making a preliminary eligibility decision. In these situations, the recruiter should not indicate to the family that they are eligible; rather, the recruiter should indicate that there is some information that needs to be checked before making a preliminary determination.

Listed below are a few examples of warning signs that should prompt the recruiter to dig deeper:

* first agricultural or fishing move (i.e., the family has not performed agricultural or fishing work before)
* households where some members are employed in occupations that are not related to agriculture or fishing
* non-entry-level occupations, especially for the non-qualifying work (i.e., the worker or other family members have positions that are not entry-level or positions that require training or higher education)
* new farm or industry with possibly new qualifying activities
* moves of short duration or short distance because these types of moves might not involve an actual change of residence
* travel associated with vacations, family events, holidays or other non-work reasons
* qualifying work occurring late in the season after agricultural or fishing jobs have ended

Quality Control. An SEA is required under MEP regulations to implement a system of quality control in order to promote adequate and accurate migratory child eligibility determinations. In the event that the recruiter misses warning signs or errs in some other way in making preliminary eligibility determinations, a quality control system must be in place for finding errors. The recruiter should know the basics of quality control and the federal and state requirements for ensuring the quality of child eligibility determinations. The recruiter should also be aware of his or her role in the state’s quality control plan and assist in developing state and local plans. Understanding the benefit of having an effective quality control system and the consequences of having an ineffective system are essential to the recruiter’s understanding of quality control.

34 CFR § 200.89(d) require an SEA to establish and implement a quality control system with the following minimum components:

* training to ensure that recruiters know the requirements for adequately and accurately determining and documenting child eligibility under the MEP
* training to ensure that all other staff involved in determining eligibility and in conducting quality control procedures know the requirements for adequately and accurately determining and documenting child eligibility under the MEP
* reviewing and evaluating an individual recruiter’s ID&R practices on an annual basis
* supervising recruiters
* implementing a process to resolve eligibility questions raised by recruiters and supervisors, and to communicateresponses to questions to all LOAs
* examining each COE to verify that the written documentation is sufficient and supports the recruiter’s preliminary determination that the child is eligible for MEP services
* confirming eligibility determinations were made properly by conducting annual prospective re-interviewing
* documenting that the quality control system was implemented and maintaining a record of actions taken to improve the system where periodic reviews and evaluations indicate a need to do so
* implementing a process for implementing corrective action if the SEA finds COEs that do not sufficiently document a child's eligibility for the MEP, or in response to internal state audit findings and recommendations, or monitoring or audit findings of the Secretary

An established plan for quality control is designed to help both the SEA and the recruiter learn from mistakes and improve child eligibility determinations. Quality control can also help identify falsification in determining eligibility.

Falsification. If the recruiter conducts thorough interviews and collects supporting documentation where needed, making preliminary eligibility determinations—including the process of resolving difficult cases—should be fairly straightforward. However, serious problems arise when the recruiter intentionally falsifies information on a COE. There are a number of reasons why the recruiter might falsify eligibility documentation, including the following:

* Even though the recruiter knows the child does not qualify for the MEP, the child or family really needs or deserves extra help.
* The recruiter does not believe that the government makes the best use of its funds; the recruiter believes it is better to spend this money helping children in need, regardless of their eligibility for the MEP.
* The recruiter gains status or importance in the migratory community by having the authority to decide which families are eligible and which are not.
* The recruiter feels that identifying more “eligible” migratory children makes his or her job more secure.

Although the recruiter may try to justify falsifying a COE, **knowingly falsifying information on a COE is a crime that is punishable by fines and/or imprisonment**. If a recruiter falsifies a COE to make an ineligible child or youth appear eligible, the consequences can be dire for the state, local MEP, and recruiter. States are liable for money spent on ineligible children, local programs can lose MEP funding, and MEP staff (including recruiters) can face prosecution. Falsifying information undermines both the fiscal and programmatic integrity of the MEP.

However, mistakes are not crimes, so the honest recruiter need not worry. It is the job of everyone in the MEP to find and correct mistakes as soon as possible. For this reason, data entry specialists, supervisors, state ID&R staff, and/or independent auditors may check COEs regularly. States are encouraged to implement a rigorous quality control system. Annually, states must conduct prospective re-interviewing. This process requires individuals to re-interview or re-verify the eligibility of a random sample of child eligibility determinations. Usually, this process is carried out by someone who is employed by the MEP but not associated with the original eligibility determination. Every third year, states must have an independent re-interviewer (someone external to the local and state MEP) carry out this process. This ensures the quality of the recruitment system and of every recruiter’s work. This system helps the honest recruiter get better by finding, correcting, and learning from mistakes. Implementing quality control plans helps to ensure that the statewide recruitment system is consistently making valid eligibility determinations. (For more on falsification, see Chapter 5).

Report Fraud or Misconduct. The recruiter should follow his or her state’s policies to report fraud or misconduct. If the recruiter feels pressured by a supervisor or colleague to enroll a child who does not appear to be eligible for the MEP or to increase the program’s numbers of identified children, the recruiter should

* make it clear that the recruiter is not comfortable with what is being asked;
* write down what happened with as much detail as possible (if others witnessed what happened, have them write down what they observed as well); and
* report what happened to the appropriate person (if the supervisor is the person who is applying the pressure, the recruiter should report the problem to someone at a higher level within the MEP).

The recruiter should not do things that he or she believes are wrong and should follow up on any concerns until they have been properly addressed. Furthermore, if the recruiter suspects that another recruiter is enrolling children in the MEP who are not eligible, the recruiter is obligated to report that as well. It is everyone’s job to preserve the integrity of the MEP and to maintain public confidence in the program’s efforts to find and serve eligible migratory children. If the state MEP does not address the recruiter’s concern, the recruiter should report the problem to the program officer at OME. Current contact information for the OME is available on ED’s website.

Anyone suspecting fraud, waste, or abuse involving ED funds or programs is advised to call or write to the Office of the Inspector General's (OIG) Hotline. The OIG keeps these complaints confidential; it will not release the recruiter’s name, address, or any other identifying information. The OIG can be contacted using any of the following methods:

* Call the OIG Hotline’s toll free number 1-800-MIS-USED. The Hotline's operating hours are from 9:00 a.m. until 4:00 p.m. Eastern Time, Monday through Friday, except for holidays.
* Send an email message to [oig.hotline@ed.gov](mailto:oig.hotline@ed.gov).
* Complete and submit an electronic complaint form (<https://www2.ed.gov/about/offices/list/oig/hotline.html>).
* To ensure complete anonymity, download a hard copy of the complaint form (<https://www2.ed.gov/about/offices/list/ocr/complaintform.pdf>), complete, and mail to: Inspector General's Hotline; Office of Inspector General; U.S. Department of Education; 400 Maryland Avenue, SW; Washington, D.C. 20202-1510.

Fraud is a crime; intentional falsification should be taken seriously by everyone and should be reported immediately.

Conclusion

One of the most important parts of the recruitment system is making correct eligibility determinations. By gathering all of the information needed to make a determination and carefully applying the rules of eligibility, the recruiter should have everything needed to make an adequate and accurate preliminary determination. Every MEP success story begins with a recruiter who made an adequate and accurate preliminary eligibility determination. Every migratory child who improves in reading, every migratory mother who learns how to better prepare her child for kindergarten, and every migratory teenager who graduates from high school began with a recruiter who found and correctly identified him or her.

The next chapter will explain how to complete a COE.