

# MIGRANT EDUCATION ELIGIBILITY CRITERIA

1115(b) and (c). 1304(c)(2) and 309 (ESSA)

## MIGRATORY WORKER

- ✓ Made a *qualifying move* within the preceding 36 months.
- ✓ Engaged in new *qualifying work* soon after move.

### OR

Did not engage in qualifying work soon after move however:

- Actively sought qualifying work soon after move; **AND**
- Has recent history of moves (two or more) in which,
  - a. the move was from one residence to another residence; **AND**
  - b. the move was due to economic necessity; **AND**
  - c. resulted in qualifying agricultural or fishing employment.

## MIGRATORY CHILD

- ✓ The child is younger than age 22.
- ✓ The child is eligible for a free public education under State law.
- ✓ Made a *qualifying move* with or to join a *migratory worker* within the past 36 months.

### OR

- ✓ Made a *qualifying move* on own as a *migratory worker*.

## QUALIFYING MOVE

- ✓ Move is due to economic necessity.
- ✓ Move is from one school district to another school district.
- ✓ Move is from one residence to another residence.

## QUALIFYING WORK

- ✓ Work is Temporary or Seasonal.
- ✓ Work is in the Agricultural or Fishing industries.

## MIGRATORY CHILD

The term 'migratory child' means a child or youth who made a qualifying move in the preceding 36 months—

(A) as a migratory agricultural worker or a migratory fisher; or

(B) with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

## QUALIFYING MOVE

The term 'qualifying move' means a move due to economic necessity—

(A) from one residence to another residence; and

(B) from one school district to another school district, except—

(i) 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

(ii) 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.

## 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.

## 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.

## 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 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.

## 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.

## 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.