



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

Fact Sheet: **Addressing the Risk of COVID-19 While Serving Migratory Children** May 11, 2020

The U.S. Department of Education (Department) understands that, during this COVID-19 national emergency, State educational agencies (SEAs) and local operating agencies (LOAs) may be experiencing challenges in conducting Title I, Part C - Migrant Education Program (MEP) activities in the same manner they are typically conducted. The following information is provided to assist SEAs and LOAs in determining how to continue to identify eligible migratory children and provide services to address their needs, while taking into consideration the health, safety, and well-being of staff and migratory families. This document is intended to provide useful information regarding the interpretation by the Department of the applicable statutory and regulatory requirements in the context of the specific facts presented here and is not intended to establish new requirements or new rights. For additional information and guidance related to the COVID-19 pandemic, please see: <https://www.ed.gov/coronavirus>.

Identification and Recruitment (ID&R)

The Department recommends that MEP recruiters and other MEP staff that are involved in ID&R follow the guidance issued by their SEA and local school district(s) and State and local public health officials regarding the health, safety, and well-being of staff, students, and migratory families. For example, during periods of public and private school closures when staff are working remotely and social distancing measures are in place, it would be acceptable for the State to allow MEP staff to conduct interviews with migratory families by telephone, video conferencing, or other electronic means to obtain the information necessary to complete the Certificate of Eligibility (COE). MEP staff should keep and maintain for review, monitoring, or auditing contemporaneous records of such interviews.

If all the required information is collected on the COE except for the interviewee signature, the Department recommends that the MEP proceed with its eligibility determination and COE approval process. We further recommend that a note be added to the Comments section of the COE to explain the circumstances that prevented the recruiter/interviewer from obtaining the interviewee's signature. After normal activities resume, if MEP staff are able to contact the interviewee in-person, we recommend that the individual's signature be added to the COE and the Comments section be updated. Note: this limited exception only applies to the interviewee signature on the COE. The SEA must continue to ensure that the recruiter/interviewer and SEA-designated reviewer sign and date the COE to certify the eligibility determination.

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COE signatures (from the interviewee, interviewer, and/or SEA-designated reviewer) may also be obtained by mail and methods of electronic signature. Each State should have its own procedures for ensuring that electronic signatures are valid and authentic, consistent with established State procedures. The Department would consider an electronic signature captured via stylus or PIN code to be equally acceptable for accountability and audit purposes and would hold a State accountable for any failure to implement its own procedures.

The regulations regarding re-interviewing under 34 C.F.R. § 200.89(b)(2) remain in place. An SEA that receives MEP funds must continue to annually validate child eligibility determinations from the current performance reporting period (September 1 to August 31) through re-interviews for a randomly selected sample of children identified as migratory during the same performance reporting period as required in 34 C.F.R. § 200.89(b)(2). These regulatory requirements for annual prospective re-interviews provide flexibility for States to use alternative methods such as telephone re-interviewing, when circumstances make face-to-face re-interviews impractical (34 C.F.R. § 200.89(b)(2)(iii)). This applies to all prospective re-interviews, including the independent re-interviews that must occur at least once every three years until September 1, 2020 (34 C.F.R. § 200.89(b)(2)(i)(A)). The current COVID-19 pandemic is a valid example of such circumstances, particularly if the SEA and local school district(s) have restricted in-person contact. If a State is unable to meet the requirement to use independent re-interviewers for the 2019-20 year (using face-to-face or alternative methods) and has not conducted independent re-interviews in the two prior years, the State should contact its assigned program officer in the Office of Migrant Education (OME) for further assistance and to discuss alternatives that might meet applicable requirements.

Provision of Services

We remind States that in general, MEP funds may only be used for services and activities to identify and address the needs of currently eligible migratory children. However, there are exceptions, such as continuation of services for formerly eligible migratory children. (*See* section 1304(e) of the Elementary and Secondary Education Act of 1965 (ESEA)). As SEAs consider modifications to services during these unprecedented circumstances, they may wish to consider exercising their current authority, in accordance with the statute, to continue to provide services to address critical needs of formerly eligible migratory children.

Certain precautionary or containment measures taken in response to the pandemic, such as school closures and social distancing, can compound the challenges already faced by migratory families, such as access to health care and food assistance, and social isolation. Recognizing the key role that MEP staff often play in outreach and advocacy for migratory families, the Department urges MEP staff to use telephone or video conferencing as an opportunity to assess the immediate needs of migratory children and their families, and work to address those needs either directly, or by connecting the families to other available resources.

We encourage State and local MEP staff to think creatively about methods to deliver needed educational and related services that do not require regular face-to-face contact or congregating in group settings. Such methods may include, but are not limited to, instruction provided via distance learning platforms, contactless food delivery, and helping migratory children obtain necessary health services. The statute and regulations do not proscribe specific formats or methods for the delivery of MEP services. Even with the challenges posed by the coronavirus pandemic, it is important for States to maintain the minimum standards for what may be reported for purposes of the MEP as a “service,” as outlined in Chapter V, Section A of the MEP Non-Regulatory Guidance: <https://www2.ed.gov/programs/mep/mepnonregulatoryguidance317.docx>. The definition of “services” has a direct impact on State Title I, Part C allocations, which are based in part on the number of migratory children provided with MEP-funded services during the summer and intersession terms. (*See* ESEA section 1303(a)(1)). For example, we continue to believe the practice of handing out leaflets to migratory families on available programs is allowable but does not constitute a “service.” MEP staff may deliver virtual lessons to eligible migratory children during the day while schools are closed, depending on the extent of services provided by the school. If the child’s school is not providing instruction virtually, MEP staff may do so. If the child’s school is providing instruction virtually, MEP staff may provide services that supplement that instruction. For example, MEP staff may provide additional hours of instruction that do not conflict with the school’s instructional schedule, in the same or additional subject areas as those provided by the school, as long as the services are supplemental. MEP staff may also assist eligible migratory children and their families in accessing and understanding the school’s instructional content—e.g., by loaning the necessary equipment, providing instructions, and following up to support the child’s continued engagement. This will help ensure that migratory students are able to participate in any instruction or services provided by their school and that the MEP is supplementing those services.

SEAs must continue to ensure that eligible migratory children are provided services from other available Federal, State, and local programs for which they are eligible. (*See* ESEA section 1306(b)(2)). For example, food for eligible migratory children should generally be provided by other Federal and non-Federal programs (e.g., school meals programs administered by the United States Department of Agriculture (USDA) Food and Nutrition Service, and community food banks). USDA has implemented automatic flexibilities and expanded waivers specifically to address the pandemic— see <https://www.fns.usda.gov/disaster/pandemic/covid-19> for additional information. During this emergency, if food is not immediately available from other programs, the MEP may provide food to meet the identified needs of migratory children for a limited period, until other resources become available. During these extraordinary circumstances, States may take a similar approach to ensuring eligible migratory children are able to access other necessities when there is a delay or lack of availability from other sources. Such necessities may include, but are not limited to, cleaning supplies for disinfection/sanitation purposes, first aid supplies, personal hygiene supplies, eyeglasses, hearing aids and batteries, and loaned equipment to access online learning. The provision of food and other necessities must be consistent with the program purposes in ESEA

section 1301 (e.g., to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school.) We recommend that MEP staff document any efforts to obtain food and other necessities from other sources prior to using MEP funds. As with any use of MEP funds, the costs must comport with the principles outlined in the Uniform Guidance in 2 C.F.R. part 200 (e.g., the costs are necessary, reasonable, and allocable to the MEP). Grantees and subgrantees must also continue to adhere to the Uniform Guidance requirements for financial management (2 C.F.R. § 200.302) and retention of records (2 C.F.R. § 200.333).

Finally, we encourage SEAs to promote and facilitate the exchange of innovative ideas across programs—particularly for disadvantaged student populations that may be facing similar challenges. Because interstate coordination is an essential component of the MEP, we also encourage MEP staff to contact their colleagues in other States to share ideas and resources for modified programming.

Summer and Intersession Services and State MEP Allocations

We have received questions regarding the definitions and dates to be associated with “summer” and “intersession” terms in light of widespread school closures. SEAs and local educational agencies (LEAs) have the authority to determine the dates to be used for academic terms. Dates established for the MEP should be consistent with State and local determinations for all schools. As noted above, the application of these academic terms has a direct impact on State Title I, Part C allocations, which are based in part on the number of eligible migratory children provided MEP-funded services during summer and intersession terms. For purposes of the MEP, we consider summer and intersession terms to be mutually exclusive. The “summer” term applies to schools that operate under a traditional-calendar school year. The “intersession” term applies to schools that operate on a year-round calendar (see MEP Non-Regulatory Guidance, Chapter V, D2 and D3 and Chapter IX, B4 and B5). SEAs and LOAs may begin MEP summer projects before the end of the regular school year, depending on when migratory children arrive and what their needs are, and making sure that the instruction does not interfere with the regular school year instruction and that it supplements it. However, these children may not begin generating a summer child count for the State until the regular school year has ended (see MEP Non-Regulatory Guidance, Chapter IX, B30). The closure of school buildings does not necessarily mean that the regular school year has ended, and the summer or intersession term has begun. In providing guidance to the State’s MEP projects for reporting MEP-funded summer or intersession services, a key consideration is whether school operations are continuing virtually while the buildings are closed and whether the school considers its virtually provided instruction to be part of the 2019-20 spring term/regular school year.

We have also received questions asking if there is a potential the Department would use summer 2019 served numbers for funding purposes rather than summer 2020 served numbers. We recognize that changes to summer programming necessitated by this pandemic might result in fewer numbers of eligible migratory children that receive MEP-

funded services in summer 2020. Our focus currently is to support SEAs in their efforts to provide migratory children and families with the critical services they need to get through this difficult time. Please keep in mind that current 2019-20 migratory child counts would not impact MEP allocations to SEAs until the Fiscal Year (FY) 2021 awards are issued on July 1, 2021. The Department is taking this into consideration for those future allocations.

If you have additional questions or comments related to this Fact Sheet, please contact your OME program officer or send your questions to the following email address: COVID-19@ed.gov.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.