

§ 200.76

programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State’s challenging academic achievement standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State’s challenging student academic achievement standards; and

(iv) Uses the State’s assessment system under §200.2 to review the effectiveness of the program; or

(2)(i) Serves only students who are failing, or most at risk of failing, to meet the State’s challenging student academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the students who are participating in the program to support their achievement toward meeting the State’s student academic achievement standards; and

(iii) Uses the State’s assessment system under §200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the ESEA.

(Authority: 20 U.S.C. 6321(b)-(d))

[67 FR 71736, Dec. 2, 2002. Redesignated at 81 86242, Nov. 29, 2016]

34 CFR Ch. II (7-1-17 Edition)

§ 200.76 [Reserved]

§ 200.79 [Reserved]

Subpart B—Even Start Family Literacy Program

§ 200.80 Migrant Education Even Start Program definition.

Eligible participants under the Migrant Education Even Start Program (MEES) must meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in §200.81.

(Authority: 20 U.S.C. 6381a and 20 U.S.C. 6399)

[67 FR 71736, Dec. 2, 2002]

Subpart C—Migrant Education Program

SOURCE: 67 FR 71736, Dec. 2, 2002, unless otherwise noted.

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *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.

(b) *Consolidated Student Record* means the MDEs for a migratory child that have been submitted by one or more SEAs and consolidated into a single, uniquely identified record available through MSIX.

(c) *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.

(d) *In order to obtain*, 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.

(e) *Migrant Student Information Exchange (MSIX)* means the nationwide system administered by the Department for linking and exchanging specified educational and health information for all migratory children.

(f) *Migratory agricultural worker* 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 agricultural work, including dairy work.

(g) *Migratory child* means a child—

(1) Who is a migratory agricultural worker or a migratory fisher; or

(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—

(i) Has moved from one school district to another;

(ii) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(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.

(h) *Migratory fisher* 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 an-

other 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.

(i) *Minimum Data Elements (MDEs)* means the educational and health information for migratory children that the Secretary requires each SEA that receives a grant of MEP funds to collect, maintain, and submit to MSIX, and use under this part. MDEs may include—

(1) Immunization records and other health information;

(2) Academic history (including partial credit), credit accrual, and results from State assessments required under the ESEA;

(3) Other academic information essential to ensuring that migratory children achieve to high academic standards; and

(4) Information regarding eligibility for services under the Individuals with Disabilities Education Act.

(j) *Move* or *Moved* means a change from one residence to another residence that occurs due to economic necessity.

(k) *MSIX Interconnection Agreement* means the agreement between the Department and an SEA that governs the interconnection of the State migrant student records system(s) and MSIX, including the terms under which the agency will abide by the agreement based upon its review of all relevant technical, security, and administrative issues.

(l) *MSIX Interconnection Security Agreement* means the agreement between the Department and an SEA that specifies the technical and security requirements for establishing, maintaining, and operating the interconnection between the State migrant student records system and MSIX. The MSIX Interconnection Security Agreement supports the MSIX Interconnection

§ 200.82

Agreement and documents the requirements for connecting the two information technology systems, describes the security controls to be used to protect the systems and data, and contains a topological drawing of the interconnection.

(m) *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.

(n) *Qualifying work* means temporary employment or seasonal employment in agricultural work or fishing work.

(o) *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.

(p) *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.

(Authority: 20 U.S.C. 6391-6399, 6571)

[73 FR 44123, July 29, 2008, as amended at 81 FR 28970, May 10, 2016]

§ 200.82 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program (MEP) to carry out other admin-

34 CFR Ch. II (7-1-17 Edition)

istrative activities, beyond those allowable under § 200.100(b)(4), that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies;

(d) Collecting and using information for accurate distribution of subgrant funds;

(e) Development of a statewide needs assessment and a comprehensive State plan for MEP service delivery;

(f) Supervision of instructional and support staff;

(g) Establishment and implementation of a State parent advisory council; and

(h) Conducting an evaluation of the effectiveness of the State MEP.

(Authority: 20 U.S.C. 6392, 6571)

[67 FR 71736, Dec. 2, 2002; 68 FR 19152, Apr. 18, 2003]

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment that, at a minimum, has the following components:

(1) *Performance targets*. The plan must specify—

(i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and

Ofc. of Elem. & Secondary Ed., Education

§ 200.85

(ii) Any other performance targets that the State has identified for migratory children.

(2) *Needs assessment.* The plan must include an identification and assessment of—

(i) The unique educational needs of migratory children that result from the children's migratory lifestyle; and

(ii) Other needs of migratory students that must be met in order for migratory children to participate effectively in school.

(3) *Measurable program outcomes.* The plan must include the measurable program outcomes (i.e., objectives) that a State's migrant education program will produce to meet the identified unique needs of migratory children and help migratory children achieve the State's performance targets identified in paragraph (a)(1) of this section.

(4) *Service delivery.* The plan will describe the strategies that the SEA will pursue on a statewide basis to achieve the measurable program outcomes in paragraph (a)(3) of this section by addressing—

(i) The unique educational needs of migratory children consistent with paragraph (a)(2)(i) of this section; and

(ii) Other needs of migratory children consistent with paragraph (a)(2)(ii) of this section.

(5) *Evaluation.* The plan must describe how the State will evaluate the effectiveness of its program.

(b) The SEA must develop its comprehensive State plan in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children. This consultation must be in a format and language that the parents understand.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan.

(Approved by the Office of Management and Budget under control number 1810-0662)

(Authority: 20 U.S.C. 6396)

[67 FR 71736, Dec. 2, 2002, as amended at 68 FR 19152, Apr. 18, 2003; 73 FR 44124, July 29, 2008]

EFFECTIVE DATE NOTE: At 73 FR 44124, July 29, 2008, §200.83 was amended. This section

contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 200.84 Responsibilities for evaluating the effectiveness of the MEP and using evaluations to improve services to migratory children.

(a) Each SEA must determine the effectiveness of its MEP through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in §200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the ESEA.

(b) SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out by an SEA under paragraph (a) of this section to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

[81 FR 28970, May 10, 2016]

§ 200.85 Responsibilities of SEAs for the electronic exchange through MSIX of specified educational and health information of migratory children.

(a) *MSIX State record system and data exchange requirements.* In order to receive a grant of MEP funds, an SEA must collect, maintain, and submit to MSIX MDEs and otherwise exchange and use information on migratory children in accordance with the requirements of this section. Failure of an SEA to do so constitutes a failure under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement of law applicable to the funds made available under the MEP.

(b) *MSIX data submission requirements—(1) General.* (i) In order to satisfy the requirements of paragraphs (b)(2) and (3) of this section, an SEA that receives a grant of MEP funds must submit electronically to MSIX the MDEs applicable to the child's age and grade level. An SEA must collect and submit the MDEs applicable to the child's age and grade level, regardless of the type of school in which the child is enrolled (e.g., public, private, or

home school), or whether a child is enrolled in any school.

(ii) For migratory children who are or were enrolled in private schools, the SEA meets its responsibility under paragraph (b)(1)(i) of this section for collecting MDEs applicable to the child's age and grade level by advising the parent of the migratory child, or the migratory child if the child is emancipated, of the necessity of requesting the child's records from the private school, and by facilitating the parent or emancipated child's request to the private school that it provide all necessary information from the child's school records—

(A) Directly to the parent or emancipated child, in which case the SEA must follow up directly with the parent or child; or

(B) To the SEA, or a specific local operating agency, for forwarding to MSIX, in which case the SEA must follow up with the parent, emancipated child, or the private school to make sure that the records requested by the parent or emancipated child have been forwarded.

(iii) For migratory children who are or were enrolled in home schools, the SEA meets its responsibility under paragraph (b)(1)(i) of this section for collecting MDEs applicable to the child's age and grade level by requesting these records, either directly or through a local operating agency, directly from the parent or emancipated child.

(2) *Start-up data submissions.* No later than 90 calendar days after the effective date of these regulations, an SEA must collect and submit to MSIX each of the MDEs described in paragraph (b)(1)(i) of this section applicable to the child's age and grade level for every migratory child who is eligible to receive MEP services in the State on the effective date of these regulations, other than through continuation of services provided under section 1304(e) of the ESEA.

(3) *Subsequent data submissions.* An SEA must comply with the following timelines for subsequent data submissions throughout the entire calendar year whether or not local operating agencies or LEAs in the State are

closed for summer or intersession periods.

(i) *Migratory children for whom an SEA has approved a new Certificate of Eligibility.* For every migratory child for whom an SEA approves a new Certificate of Eligibility under § 200.89(c) after the effective date of these regulations—

(A) An SEA must collect and submit to MSIX the MDEs described in paragraph (b)(1)(i) of this section within 10 working days of approving a new Certificate of Eligibility for the migratory child. The SEA is not required to collect and submit MDEs in existence before its approval of a new Certificate of Eligibility for the child except as provided in paragraph (b)(3)(i)(B) of this section; and

(B) An SEA that approves a new Certificate of Eligibility for a secondary school-aged migratory child must also—

(1) Collect and submit to MSIX within 10 working days of approving a new Certificate of Eligibility for the child MDEs from the most recent secondary school in that State attended previously by the migratory child; and

(2) Notify MSIX within 30 calendar days if one of its local operating agencies obtains records from a secondary school attended previously in another State by the migratory child.

(ii) *End of term submissions.* (A) Within 30 calendar days of the end of an LEA's or local operating agency's fall, spring, summer, or intersession terms, an SEA must collect and submit to MSIX all MDE updates and newly available MDEs for migratory children who were eligible for the MEP during the term and for whom the SEA submitted data previously under paragraph (b)(2) or (b)(3)(i) of this section.

(B) When a migratory child's MEP eligibility expires before the end of a school year, an SEA must submit all MDE updates and newly available MDEs for the child through the end of the school year.

(iii) *Change of residence submissions.* (A) Within four working days of receiving notification from MSIX that a migratory child in its State has changed residence to a new local operating agency within the State or another SEA has approved a new Certificate of

Eligibility for a migratory child, an SEA must collect and submit to MSIX all new MDEs and MDE updates that have become available to the SEA or one of its local operating agencies since the SEA's last submission of MDEs to MSIX for the child.

(B) An SEA or local operating agency that does not yet have a new MDE or MDE update for a migratory child when it receives a change of residence notification from MSIX must submit the MDE to MSIX within four working days of the date that the SEA or one of its local operating agencies obtains the MDE.

(c) *Use of Consolidated Student Records.* In order to facilitate school enrollment, grade and course placement, accrual of high school credits, and participation in the MEP, each SEA that receives a grant of MEP funds must—

(1) Use, and require each of its local operating agencies to use, the Consolidated Student Record for all migratory children who have changed residence to a new school district within the State or in another State;

(2) Encourage LEAs that are not local operating agencies receiving MEP funds to use the Consolidated Student Record for all migratory children described in paragraph (c)(1) of this section; and

(3) Establish procedures, develop and disseminate guidance, and provide training in the use of Consolidated Student Records to SEA, local operating agency, and LEA personnel who have been designated by the SEA as authorized MSIX users under paragraph (f)(2) of this section.

(d) *MSIX data quality.* Each SEA that receives a grant of MEP funds must—

(1) Use, and require each of its local operating agencies to use, reasonable and appropriate methods to ensure that all data submitted to MSIX are accurate and complete; and

(2) Respond promptly, and ensure that each of its local operating agencies responds promptly, to any request by the Department for information needed to meet the Department's responsibility for the accuracy and completeness of data in MSIX in accordance with the Privacy Act of 1974, as

amended, 5 U.S.C. 552a(e)(6) and (g)(1)(C) or (D).

(e) *Procedures for MSIX data correction by parents, guardians, and migratory children.* Each SEA that receives a grant of MEP funds must establish and implement written procedures that allow a parent or guardian of a migratory child, or a migratory child, to ask the SEA to correct or determine the correctness of MSIX data. An SEA's written procedures must meet the following minimum requirements:

(1) *Response to parents, guardians, and migratory children.* (i) Within 30 calendar days of receipt of a data correction request from a parent, guardian, or migratory child, an SEA must—

(A) Send a written or electronic acknowledgement to the requester;

(B) Investigate the request;

(C) Decide whether to revise the data as requested; and

(D) Send the requester a written or electronic notice of the SEA's decision.

(ii) If an SEA determines that data it submitted previously to MSIX should be corrected, the SEA must submit the revised data to MSIX within four working days of its decision to correct the data. An SEA is not required to notify MSIX if it decides not to revise the data as requested.

(iii)(A) If a parent, guardian, or migratory child requests that an SEA correct or determine the correctness of data that was submitted to MSIX by another SEA, within four working days of receipt of the request, the SEA must send the data correction request to the SEA that submitted the data to MSIX.

(B) An SEA that receives an MSIX data correction request from another SEA under this paragraph must respond as if it received the data correction request directly from the parent, guardian, or migratory child.

(2) *Response to SEAs.* An SEA or local operating agency that receives a request for information from an SEA that is responding to a parent's, guardian's, or migratory child's data correction request under paragraph (e)(1) of this section must respond in writing within ten working days of receipt of the request.

(3) *Response to the Department.* An SEA must respond in writing within ten working days to a request from the

§ 200.86

Department for information needed by the Department to respond to an individual's request to correct or amend a Consolidated Student Record under the Privacy Act of 1974, as amended, 5 U.S.C. 552a(d)(2) and 34 CFR 5b.7.

(f) *MSIX data protection.* Each SEA that receives a grant of MEP funds must—

(1) Enter into and carry out its responsibilities in accordance with an MSIX Interconnection Agreement, an MSIX Interconnection Security Agreement, and other information technology agreements required by the Secretary in accordance with applicable Federal requirements;

(2) Establish and implement written procedures to protect the integrity, security, and confidentiality of Consolidated Student Records, whether in electronic or print format, through appropriate administrative, technical, and physical safeguards established in accordance with the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement. An SEA's written procedures must include, at a minimum, reasonable methods to ensure that—

(i) The SEA permits access to MSIX only by authorized users at the SEA, its local operating agencies, and LEAs in the State that are not local operating agencies but where a migratory child has enrolled; and

(ii) The SEA's authorized users obtain access to and use MSIX records solely for authorized purposes as described in paragraph (c) of this section;

(3) Require all authorized users to complete the User Application Form approved by the Secretary before providing them access to MSIX. An SEA may also develop its own documentation for approving user access to MSIX provided that it contains the same information as the User Application Form approved by the Secretary; and

(4) Retain the documentation required for approving user access to MSIX for three years after the date the SEA terminates the user's access.

(Authority: 20 U.S.C. 6398).

[81 FR 28970, May 10, 2016]

EFFECTIVE DATE NOTE: At 81 FR 28970, May 10, 2016, § 200.85 was revised. This section contains information collection and record-

34 CFR Ch. II (7–1–17 Edition)

keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 200.86 Use of MEP funds in schoolwide projects.

Funds available under part C of Title I of the ESEA may be used in a schoolwide program subject to the requirements of § 200.29(c)(1).

(Authority: 20 U.S.C. 6396)

[67 FR 71736, Dec. 2, 2002; 68 FR 19152, Apr. 18, 2003]

§ 200.87 Responsibilities for participation of children in private schools.

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the ESEA.

(Authority: 20 U.S.C. 6394)

§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the ESEA, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the ESEA.

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the ESEA, and is evaluated in a manner consistent with those program targets.

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements.

(4) The grantee monitors program performance to ensure that these requirements are met.

(Approved by the Office of Management and Budget under control number 1810-0662)

(Authority 20 U.S.C. 6321(d))

[67 FR 71736, Dec. 2, 2002; 68 FR 19152, Apr. 18, 2003]

§ 200.89 MEP allocations; Re-interviewing; Eligibility documentation; and Quality control.

(a) *Allocation of funds under the MEP for fiscal year (FY) 2006 and subsequent years.* (1) For purposes of calculating the size of MEP allocations for each SEA for FY 2006 and subsequent years (as well as for supplemental MEP allocations for FY 2005), the Secretary determines each SEA's FY 2002 base allocation amount under section 1303(a)(2) and (b) of the Act by applying, to the counts of eligible migratory children that the SEA submitted for 2000–2001, the defect rate that the SEA reports to the Secretary and that the Secretary accepts based on a statewide retrospective re-interviewing process that the SEA has conducted.

(2)(i) The Secretary conditions an SEA's receipt of final FY 2007 and subsequent-year MEP awards on the SEA's completion of a thorough re-documentation of the eligibility of all children (and the removal of all ineligible children) included in the State's 2007–2008 MEP child counts.

(ii) To carry out this re-documentation, an SEA must examine its rolls of all currently identified migratory children and remove from the rolls all children it judges to be ineligible based on the types of problems identified in its statewide retrospective re-interviewing as causing defective eligibility determinations.

(b) *Responsibilities of SEAs for re-interviewing to ensure the eligibility of children under the MEP—(1) Retrospective re-interviewing.* (i) As a condition for the continued receipt of MEP funds in FY 2006 and subsequent years, an SEA that received such funds in FY 2005 but did not implement a statewide re-interviewing process prior to the enactment of this regulation, as well as an SEA with a defect rate that is not accepted by the Secretary under paragraph (a)(1) of this section, or an SEA under a corrective action issued by the Secretary under paragraph (b)(2)(vii) or (d)(7) of this section, must, within six months of the effective date of these regulations or as subsequently required by the Secretary,—

(A) Conduct a statewide re-interviewing process consistent with paragraph (b)(1)(ii) of this section; and

(B) Consistent with paragraph (b)(1)(iii) of this section, report to the Secretary on the procedures it has employed, its findings, its defect rate, and corrective actions it has taken or will take to avoid a recurrence of any problems found.

(ii) At a minimum, the re-interviewing process must include—

(A) Selection of a sample of identified migratory children (from the child counts of a particular year as directed by the Secretary) randomly selected on a statewide basis to allow the State to estimate the statewide proportion of eligible migratory children at a 95 percent confidence level with a confidence interval of plus or minus 5 percent.

(B) Use of independent re-interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements; and

(C) Calculation of a defect rate based on the number of sampled children determined ineligible as a percentage of those sampled children whose parent/guardian was actually re-interviewed.

(iii) At a minimum, the report must include—

(A) An explanation of the sample and procedures used in the SEA's re-interviewing process;

(B) The findings of the re-interviewing process, including the determined defect rate;

(C) An acknowledgement that, consistent with § 200.89(a), the Secretary may adjust the child counts for 2000–2001 and subsequent years downward

§ 200.89

34 CFR Ch. II (7-1-17 Edition)

based on the defect rate that the Secretary accepts;

(D) A summary of the types of defective eligibility determinations that the SEA identified through the re-interviewing process;

(E) A summary of the reasons why each type of defective eligibility determination occurred; and

(F) A summary of the corrective actions the SEA will take to address the identified problems.

(2) *Prospective re-interviewing.* As part of the system of quality controls identified in §200.89(d), an SEA that receives MEP funds must, on an annual basis, validate current-year child eligibility determinations through the re-interview of a randomly selected sample of children previously identified as migratory. In conducting these re-interviews, an SEA must—

(i) Use, at least once every three years, one or more independent interviewers (i.e., interviewers who are neither SEA or local operating agency staff members working to administer or operate the State MEP nor any other persons who worked on the initial eligibility determinations being tested) trained to conduct personal interviews and to understand and apply program eligibility requirements;

(ii) Select a random sample of identified migratory children so that a sufficient number of eligibility determinations in the current year are tested on a statewide basis or within categories associated with identified risk factors (e.g., experience of recruiters, size or growth in local migratory child population, effectiveness of local quality control procedures) in order to help identify possible problems with the State's child eligibility determinations;

(iii) Conduct re-interviews with the parents or guardians of the children in the sample. States must use a face-to-face approach to conduct these re-interviews unless circumstances make face-to-face re-interviews impractical and necessitate the use of an alternative method such as telephone re-interviewing;

(iv) Determine and document in writing whether the child eligibility determination and the information on which

the determination was based were true and correct;

(v) Stop serving any children found not to be eligible and remove them from the data base used to compile counts of eligible children;

(vi) Certify and report to the Department the results of re-interviewing in the SEA's annual report of the number of migratory children in the State required by the Secretary; and

(vii) Implement corrective actions or improvements to address the problems identified by the State (including the identification and removal of other ineligible children in the total population), and any corrective actions, including retrospective re-interviewing, required by the Secretary.

(c) *Responsibilities of SEAs to document the eligibility of migratory children.* (1) An SEA and its operating agencies must use the Certificate of Eligibility (COE) form established by the Secretary to document the State's determination of the eligibility of migratory children.

(2) In addition to the form required under paragraph (a) of this section, the SEA and its operating agencies must maintain any additional documentation the SEA requires to confirm that each child found eligible for this program meets all of the eligibility definitions in §200.81.

(3) An SEA is responsible for the accuracy of all the determinations of the eligibility of migratory children identified in the State.

(d) *Responsibilities of an SEA to establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children.* An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children on a statewide basis. At a minimum, this system of quality controls must include the following components:

(1) Training to ensure that recruiters and all other staff involved in determining eligibility and in conducting quality control procedures know the requirements for accurately determining and documenting child eligibility under the MEP.

(2) Supervision and annual review and evaluation of the identification

and recruitment practices of individual recruiters.

(3) A formal process for resolving eligibility questions raised by recruiters and their supervisors and for ensuring that this information is communicated to all local operating agencies.

(4) An examination by qualified individuals at the SEA or local operating agency level of each COE to verify that the written documentation is sufficient and that, based on the recorded data, the child is eligible for MEP services.

(5) A process for the SEA to validate that eligibility determinations were properly made, including conducting prospective re-interviewing as described in paragraph (b)(2).

(6) Documentation that supports the SEA's implementation of this quality-control system and of a record of actions taken to improve the system where periodic reviews and evaluations indicate a need to do so.

(7) 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.

AUTHORITY: 20 U.S.C. 6391-6399, 6571, 7844(d); 18 U.S.C. 1001.

[73 FR 44124, July 29, 2008]

EFFECTIVE DATE NOTE: At 73 FR 44124, July 29, 2008, §200.89 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out

SOURCE: 67 FR 71736, Dec. 2, 2002, unless otherwise noted.

§ 200.90 Program definitions.

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the ESEA:

Children and youth means the same as "children" as that term is defined in §200.103(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of Title I of the ESEA:

Immigrant children and youth and limited English proficiency have the same meanings as the term "immigrant children" is defined in section 3301 of the ESEA and the term "limited English proficient" is defined in section 9101 of the ESEA, except that the terms "individual" and "children and youth" used in those definitions mean "children and youth" as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons