



# 2023 ELIGIBILITY REFRESHER



**MAKE SURE TO  
USE THE  
GUIDANCE AND  
THE  
REGULATIONS**

**GUIDANCE**

**Education of Migratory Children under Title I, Part C of the  
Elementary and Secondary Education Act of 1965**



**SELECTED CHAPTERS REVISED  
March 2017**

# 3 MAIN FOCUS AREAS WE USE WHEN THINKING ABOUT ELIGIBILITY

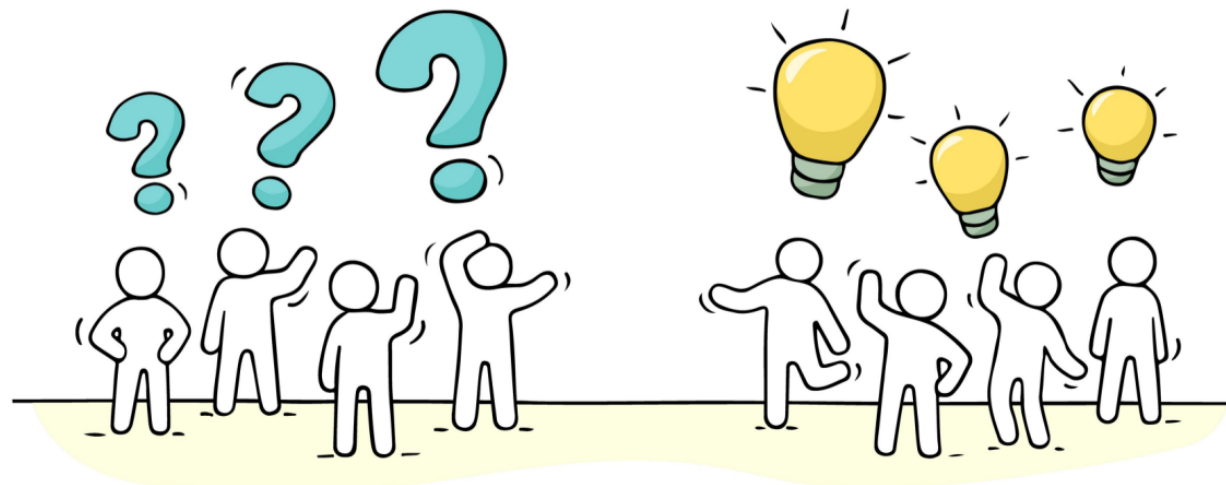
Is there a  
Migratory  
Worker?



Are there  
children eligible  
for the program?



What is the  
QAD?



# MIGRATORY AGRICULTURAL WORKER (MAW)



Qualifying move for MAW is due to 3 factors- due to **economic necessity**, from **one residence to another residence**, and **one school district to another**.

Temporary jobs need to last less than 12 months.

Did they make a qualifying move in the last 36 months?

Did they “engage” in new qualifying work within 60 days of the move?

Was the work in temporary or seasonal agriculture or fishing work?

They need to start the work not just apply.

# MIGRATORY AGRICULTURAL WORKER (MAW)



If they say no, I did not get the work...

Did they make a  
qualifying move in the  
last 36 months?

Did they “engage” in  
new qualifying work  
within 60 days of the  
move?

Was the work in  
temporary or seasonal  
agriculture or fishing  
work?

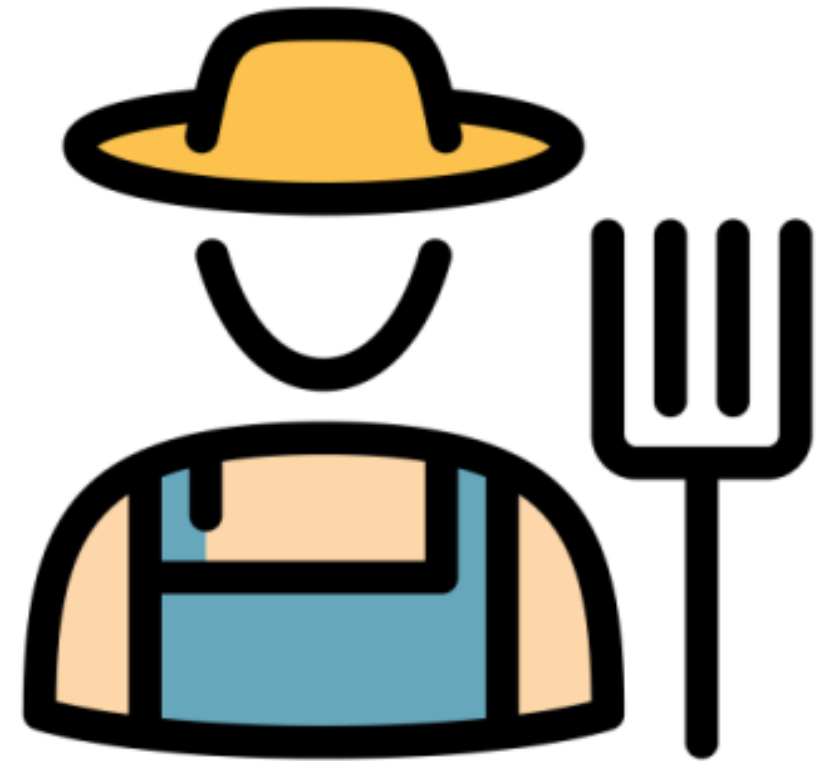


If they did not engage in the work, they need to have sought work in agriculture, and had at least 2 other moves in the last 36 months that resulted in new qualifying work after the move.



# ONCE YOU DETERMINE THERE IS A MIGRATORY AGRICULTURAL WORKER MAKE NOTE OF...

- The date they were established as a migratory worker. Then **remember they are the considered to be a migratory agriculture worker from that date forward for 36 months!**
- *Example January 9th, 2023, they made a move and got a job in agriculture. They would be considered a MAW until January 9th, 2026*



# ARE THERE ELIGIBLE CHILDREN?



Are they under the age of 22 and not yet graduated?

Have they **moved** as a **MAW** or with or to join/precede (within 12 months) a parent or spouse who is a **MAW**?

Was the move due to **economic necessity** and from one **district** to another across school district lines?

Always check back the full 36 months to determine their full history!

# HOW TO DETERMINE QUALIFYING ARRIVAL DATES

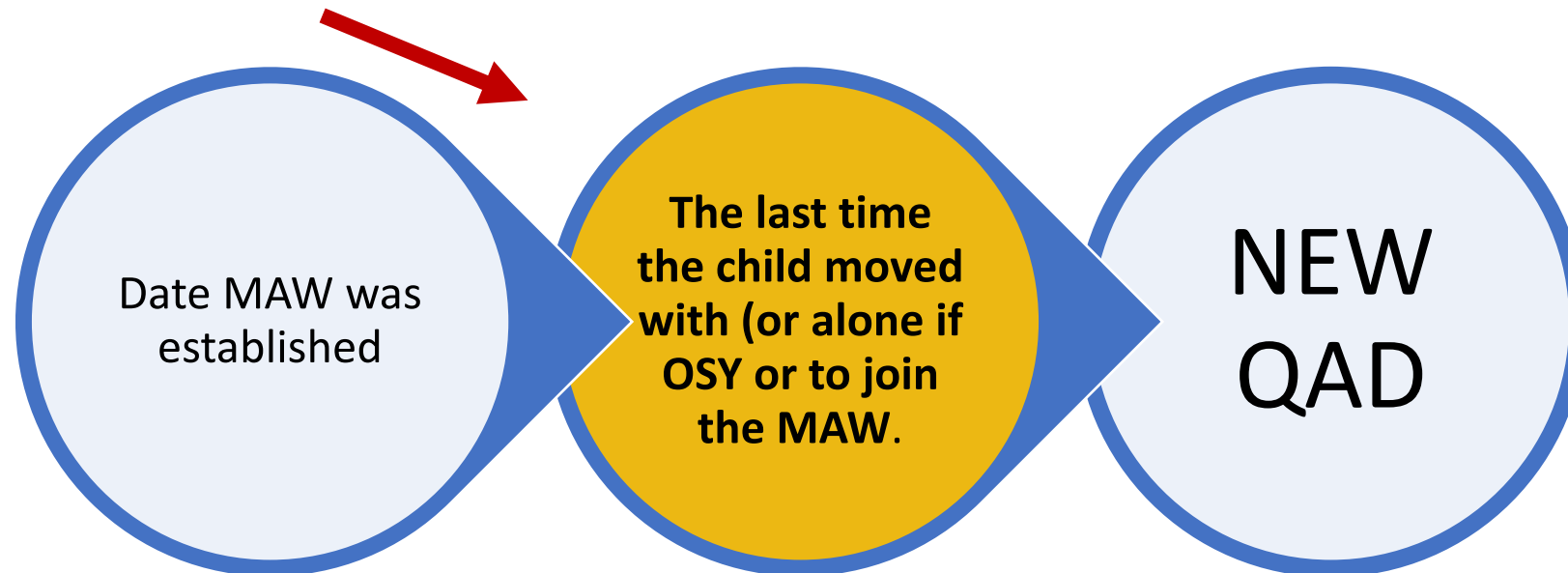
- Looking at the child or youth.... When did the worker (themselves or the one they are traveling with) become established as a Migratory Agricultural worker? **Was it within 36 months?**





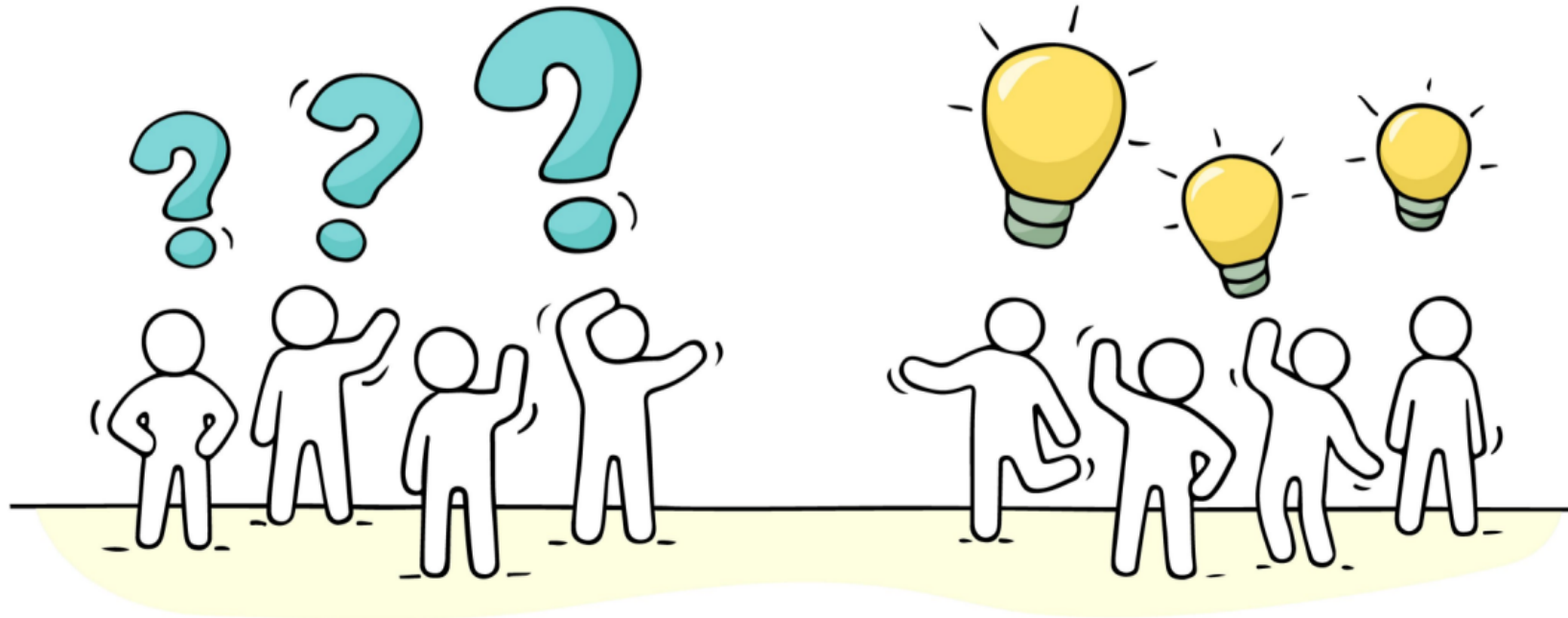
# SUBSEQUENT MOVES CAN COUNT

- Remember the child/or youth needs to move for economic necessity/across school district lines for an agriculture or non-ag job within 36 months of when the MAW is established with the MAW.



# HOW TO DETERMINE RESIDENCY DATE

- What was the last move in date into their current school district? That is their residency date.



# IDRC HAS A FLOW CHART YOU CAN USE IF YOU GET CONFUSED...



## DETERMINING IF THERE IS A MIGRATORY AGRICULTURAL WORKER/FISHER (MAW) FLOWCHART

**Reminder:** Always begin with the most recent **Qualifying Move** and work your way backwards 36 months. You are looking for the most recent date that makes them a Migratory Agricultural Worker. If the first move doesn't qualify, continue to ask for previous dates back 36 months.

Has anyone in the household made a qualifying move in the last 36 months?

**TIP:** Remember, a **qualifying move** is a move made due to economic necessity from one residence to another residence **and** from one school district to another school district.

**TIP:** Be aware that workers may perform more than one job at a farm or business. If one job is not a qualifying activity, check to see if they performed any other jobs while employed there.

yes → **Not eligible UNLESS**

no → **No MAW**

Did they engage in new qualifying work within 60 days of the move?

yes → **Not eligible UNLESS**

no → **No MAW**

Did they actively seek new qualifying work?

yes → **Not eligible UNLESS**

no → **No MAW**

Was the work in agriculture or fishing?

yes → **Not eligible UNLESS**

no → **No MAW**

Was the work temporary or seasonal?

yes → **Not eligible UNLESS**

no → **No MAW**

They made a previous qualifying move in the last 36 months. Make sure to ask about their history for the last 36 months.

**There is a Migratory Agricultural Worker (MAW)!**

Was the work in agriculture or fishing?

yes → **Not eligible UNLESS**

no → **No MAW**

Was the work temporary or seasonal?

yes → **Not eligible UNLESS**

no → **No MAW**

Have they made at least 2 moves in the last 36 months and engaged in new qualifying work after the move? **Reminder- these moves do not have to cross district lines.**

yes → **Not eligible UNLESS**

no → **No MAW**

**There is a Migratory Agricultural Worker (MAW)!**

**TIP:** You could just qualify them on a previous qualifying move if they have one and not have to find two additional moves.

## DETERMINING IF THERE ARE CHILDREN ELIGIBLE FOR THE MIGRANT EDUCATION PROGRAM

**Reminder:** Always begin with the most recent move and work your way backwards 36 months. You are looking for the most recent date that makes the children eligible. If the first move doesn't qualify, continue to ask for previous dates back 36 months.

Is the child under the age of 22?

yes → **Not eligible**

no → **Not eligible**

Has the child finished high school or completed an equivalent program such as GED or HSED?

NO → **Not eligible**

YES → **Not eligible**

Has the child moved in the last 36 months as a migratory worker, or with or to join or precede a parent/spouse or guardian who is a Migratory Agricultural Worker (MAW)?

yes → **Not eligible**

no → **Not eligible**

If it was to join or precede a MAW, was it within 12 months?

yes → **Not eligible**

no → **Not eligible**

Was the move due to economic necessity from one residence to another across school district lines?

yes → **Not eligible**

no → **Not eligible**

**If you said yes to all these questions, then this child is eligible for the Migrant Education Program.**

**Remember before you fully determine a child is not eligible for MEP, make sure to check any other previous moves in the past 36 months. Always ask thorough questions to review their last 3 years of moves and family work history.**



# TEMPORARY WORK

- **G5. What is temporary employment?**
- According to 34 C.F.R. § 200.81(p), temporary employment means “employment that lasts for a limited period of time, usually a few months, but no longer than 12 months.”
- **G6. How may an SEA determine that a worker’s job is “temporary employment”?**
- 34 C.F.R. § 200.81(p) identifies three ways in which an SEA may determine that employment is temporary:
  - a. Employer Statement - The employer states that the worker was hired for a limited time frame, not to exceed 12 months;
  - b. Worker Statement - The worker states that he or she does not intend to remain in that employment indefinitely (*i.e.*, the worker’s employment will not last longer than 12 months);
  - c. State Determination - The SEA has determined on some other reasonable basis that the employment will not last longer than 12 months.

# YOUR THOUGHTS?

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- If an employer says the work is year-round but he always lays workers off for 2-3 weeks around the holidays for unpaid vacation or for several weeks in the summer when there is less work could this be considered temporary work?



# SCENARIO ONE-



- Isbelia Reyes (age 32) moves alone from Dexter, New Mexico to Roswell, New Mexico on 2/10/2021 and works at a dairy farm as a milker for 7 months. She then moves to Clovis, New Mexico on 9/21/21 to work at a different dairy. She continues there until 9/10/22 when she leaves the farm and travels back to Guatemala to bring her 8-year-old son. She comes back to the dairy in Clovis with her son **Ciro Reyes** on 11/25/22 and begins work again. You are the recruiter and find her on 1/1/2023 still employed at the dairy. Is her son eligible? Why or why not? If so, what is the QAD and RES date?



# SCENARIO 1- MIGRATORY AGRICULTURAL WORKER

**Yes-** Two previous moves to work at dairies

Did they make a qualifying move in the last 36 months?

Did they “engage” in new qualifying work within 60 days of the move?

Was the work in temporary or seasonal agriculture or fishing work?

**Yes-** temporary- did not stay at either dairy longer than 12 months.

**Yes-** She got the work soon after the move on both moves. (2-10-21, 9-21-21)

**Mom is a MAW until Sept 9, 2024**

# SCENARIO 1: ELIGIBLE CHILDREN?



Are they under the age of 22 and not yet graduated?

**YES! Age 8**

Have they **moved** as a **MAW** or with or to join/precede (within 12 months) a parent or spouse who is a **MAW**?

**YES!**

Was the move due to **economic necessity** and from one district to another across school district lines?

**YES!**

Always check back the full 36 months to determine their full history!



# SCENARIO 1- QAD



- The mom and son moved across school district lines and due to economic necessity.



Residency date would be when they moved together back to Clovis 11-25-22.

# SCENARIO TWO



- Jose Gonzalez moved to your state to work at a cheese factory 3 months ago (November 12, 2022) from Georgia. He works adding rennet to milk and then helping pack blocks of cheese that are ready to be packed. He is planning on staying at the factory a few months until he finds another job. He is only 18 and has not yet graduated.
- **Is he eligible for MEP? Why or why not and what is his QAD if he is eligible.**

# INITIAL PROCESSING?

**F20. What does “initial processing” mean?**

- The Department considers “initial processing” to be work that (1) is beyond the production stage of agricultural work and (2) precedes the transformation of the raw product into something more refined. It means working with a raw agricultural or fishing product.

**• WOULD HIS JOB AT THE PROCESSING CHEESE PLANT BE ELIGIBLE?**

# INITIAL PROCESSING?

- **F21. What are examples of “initial processing” work in the poultry and livestock industries?**
  - For the purposes of the MEP, examples of “initial processing” work in the poultry and livestock industries include, but are not limited to: stunning; slaughtering; skinning; eviscerating; splitting carcasses; hanging; cutting; trimming; deboning; and enclosing the raw product in a container.
- **F22. What are examples of “initial processing” work in the crop industry?**
  - For the purposes of the MEP, examples of “initial processing” work in the crop industry include, but are not limited to: cleaning; weighing; cutting; grading; peeling; sorting; freezing, and enclosing the raw product in a container.
- **F23. What are examples of “initial processing” work in the fishing industry?**
  - For the purposes of the MEP, examples of “initial processing” work in the fishing industry include, but are not limited to: scaling; cutting; freezing; dressing; and enclosing the raw product in a container.

# INITIAL PROCESSING?

- **F24. When does “initial processing” end?**
  - The Department considers a product no longer to be in the stage of “initial processing” once the transformation of the raw product into something more refined begins. The Department believes that work up to, but not including, the start of the transformation process is agricultural or fishing work for purposes of the MEP. However, work such as placing raw chicken breasts into the oven for cooking, **adding starter cultures to milk to make cheese**, or applying necessary ingredients to a raw pork belly to begin the curing process is the beginning of the transformation process and therefore is not agricultural or fishing work for purposes of the MEP.



# SCENARIO 2- MIGRATORY AGRICULTURAL WORKER

**Yes-** Across school district lines, for economic necessity, and from one school district to another.

**Yes-**

Did they make a qualifying move in the last 36 months?

Did they “engage” in new qualifying work within 60 days of the move?

Was the work in temporary or seasonal agriculture or fishing work?

**NO-** He is working at the cheese factory.

**He is not yet established as a MAW.**

# SCENARIO THREE

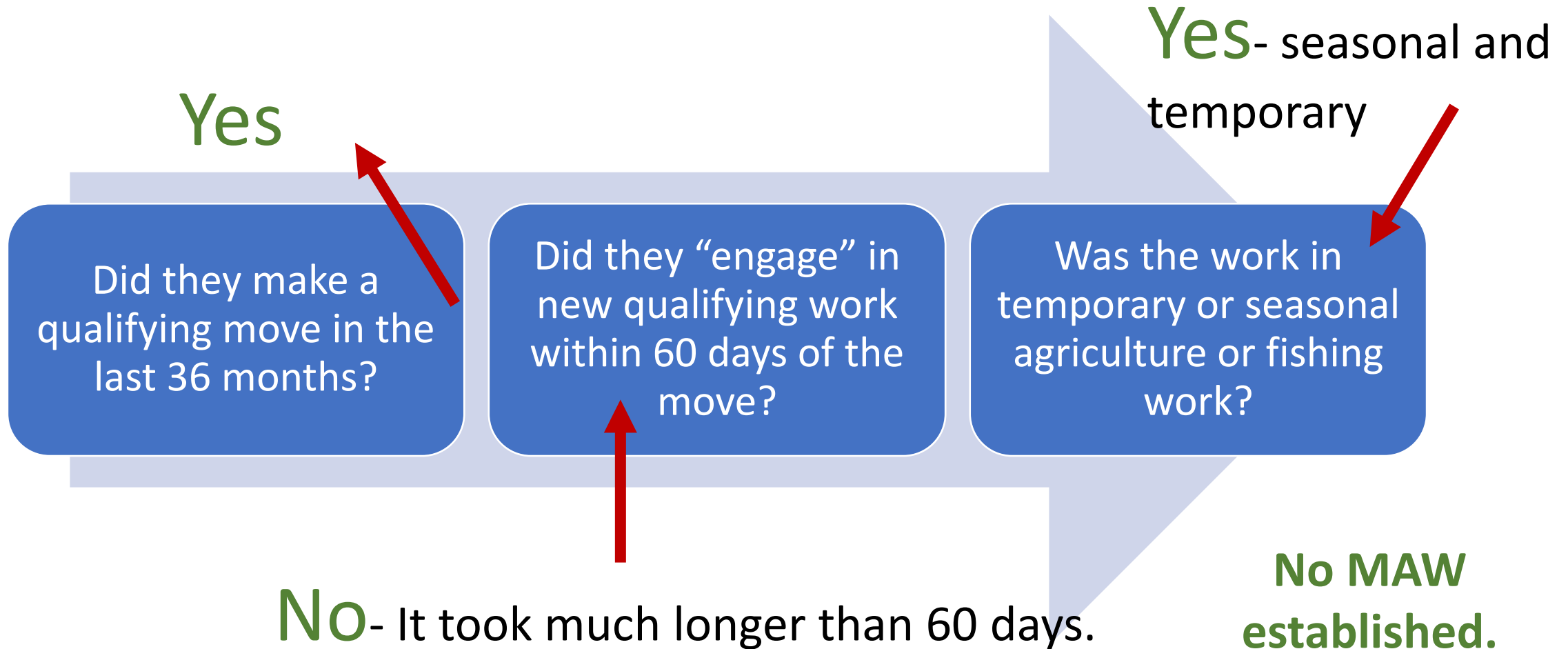
- Carolina Ferrera and her daughter Cecilia Chavez (DOB: 7/9/2008) moved to Immokalee FL from Charleston SC on March 3, 2021. Carolina found a job sorting vegetables on November 20, 2021. They moved back to Immokalee FL and Carolina found a job hosting tables at a restaurant.



- **Eligible or Not?**



# SCENARIO 3- MIGRATORY AGRICULTURAL WORKER





# TRUE OR FALSE

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

True

False

QUESTIONANSWERS

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

TrueFalse

[https://results.ed.gov/legislation/policy\\_qas](https://results.ed.gov/legislation/policy_qas)

# TRUE OR FALSE 1

- If a worker who recently moved to the area was hired seasonally to be a mechanic at a local farm and also helps pick up pumpkins from the field at that same farm during the season be eligible for MEP if his family met all of the other eligibility criteria?

True

False

TrueFalse

- **F27. May a worker who performs both qualifying and non-qualifying work still be eligible for the MEP?**
- Yes. A worker is only required to meet the definition of a migratory agricultural worker or migratory fisher as defined in section 1309(2) and (4) of the ESEA. Provided that the move was a qualifying move under section 1304(5) of the ESEA, the fact that the worker performs non-qualifying work in addition to qualifying work has no bearing on his or her eligibility for the MEP.

# TRUE OR FALSE 2

- Q. Is turning chicken fat into oil considered qualifying agricultural work for purposes of the Migrant Education Program (MEP)? The worker puts the chicken fat into a machine that melts it, turning it into oil. He then sends the oil to be shipped elsewhere. The worker does not work directly with the chickens or extract the fat— his work begins with placing the fat into the machine.

True

False



- Based on the information provided, the Office of Migrant Education (OME) would not consider this work to be “agricultural work or employment” for purposes of the MEP because it is beyond the initial processing stage. That is, the raw agricultural product has begun the process of transformation into something more refined (see MEP Non-Regulatory Guidance Chapter II, F20, 24 and 25).

[https://results.ed.gov/legislation/policy\\_gas](https://results.ed.gov/legislation/policy_gas)

# TRUE OR FALSE 3

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

True

False

True

False

QUESTIONS  
ANSWERS

- “Qualifying work” means temporary employment or seasonal employment or personal subsistence in agriculture or fishing. “Agricultural work”, according to section 1309(2) of the Elementary and Secondary Education Act, as amended, and 34 CFR § 200.81(a), is the production or initial processing of raw agricultural products, such as crops, poultry, or livestock; dairy work; as well as the cultivation or harvesting of trees, that is performed for wages or personal subsistence.
- The Department does not consider the term “livestock” to include animals hunted or captured in the wild (see MEP Non-Regulatory Guidance (NRG), Chapter II, F6). Therefore, we would not consider hunting wild animals to be qualifying work. The Department considers a crop to be a plant that is harvested for use by people or by livestock. And, the production of crops involves work such as gathering (see MEP NRG, Chapter II, F3 and F4). Therefore, the gathering of wild plants such as roots and tubers for personal subsistence may be considered qualifying work.



# SCENARIO FOUR



- Lola Martinez moved alone from Puerto Vallarta, Mexico to San Antonio Texas on 11/1/2021. She soon found a job caring for pigs at a farm. Her husband Mario Martinez and child Joana Martinez (6 yrs old) joined her the following year on 2/10/22. Lola worked at the farm for 6 months. On 5/5/2022, the family moved to Orlando FL where she got a job caring for pigs again at another farm. She has a contract for three years at this farm. They moved again to another home in Orlando on 9/11/2022.
- **Is Joana eligible for MEP? Why or why not and what is her QAD/RES date if she is eligible.**



# SCENARIO 4- MIGRATORY AGRICULTURAL WORKER

Yes- 11/1/21 & 5/5/22

Yes- temporary

Did they make a qualifying move in the last 36 months?

Did they “engage” in new qualifying work within 60 days of the move?

Was the work in temporary or seasonal agriculture or fishing work?

Yes-both times she obtained the work.

MAW las established date was 5/5/22

# SCENARIO 4: ELIGIBLE CHILDREN?



Are they under the age of 22 and not yet graduated?

YES! Age 6

Have they **moved** as a **MAW** or with or to join/precede (within 12 months) a parent or spouse who is a **MAW**?

YES!

Was the move due to **economic necessity** and from one district to another across school district lines?

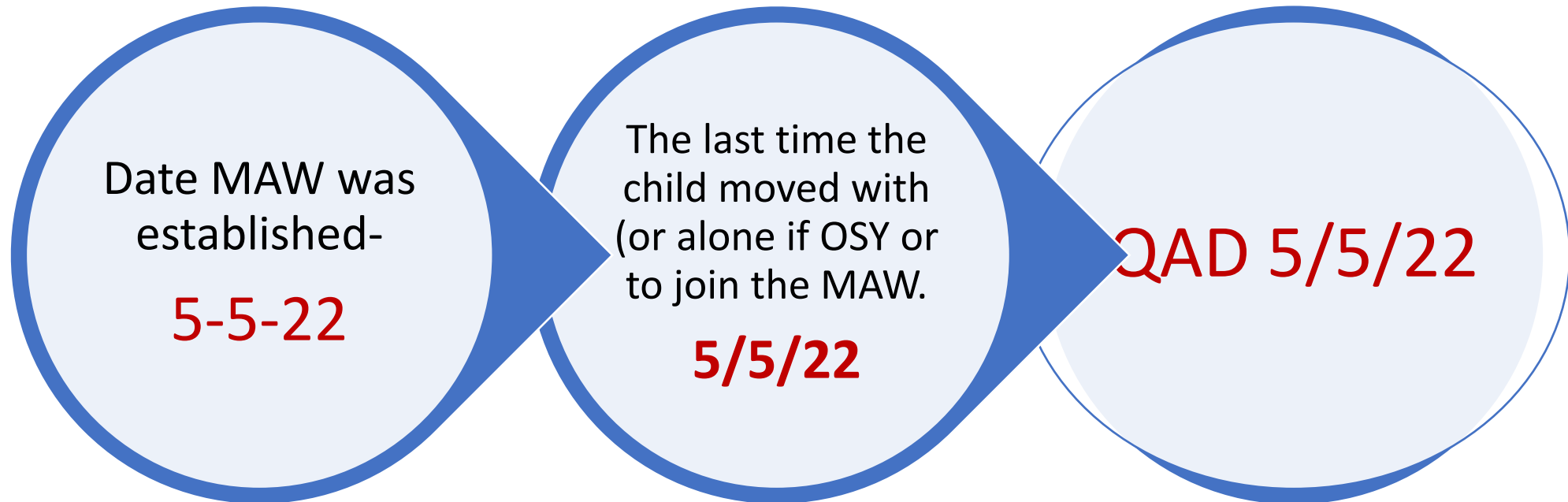
YES!

Always check back the full 36 months to determine their full history!

# SCENARIO 4- QAD



- The family moved across school district lines and due to economic necessity.



Residency date would be when they moved to Orlando, FL on 5-5-22.



# EVALUATION- WE VALUE YOUR THOUGHTS!

- <https://www.surveymonkey.com/r/IDRCTrainingEval22-23>



# CONTACT INFORMATION

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