

**Migrant Education**  
**Recommendations**  
**By**  
**The Interstate Migrant Education Council (IMEC)**  
  
**For Amendments To**  
**The Education of Migratory Children**  
**Title I, Part C**  
**The Elementary and Secondary Education Act**  
  
**As Amended By**  
**The No Child Left Behind Act (NCLB)**

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**IMEC's mission is:**  
*To advocate policies that ensure the highest  
quality education and other needed services  
for the nation's migrant children.*

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## Introduction

The purpose of this report is to share with interested persons the recommendations of the Interstate Migrant Education Council (IMEC) on the reauthorization of the Education of Migratory Children, which is Part C of Title I of No Child Left Behind (NCLB). We believe these recommendations will provide valuable insight and information to educators and policy makers interested in fulfilling the goals of NCLB for migratory children.

These recommendations have four overarching goals.

1. To clarify the statute in sections that have had conflicting interpretations.
2. To reduce administrative expenditures on identification and recruitment.
3. To focus resources on improving the academic achievement of migrant students.
4. To enhance services to all eligible migrant students.

The Interstate Migrant Education Council (IMEC) is an independent organization whose members are appointed by the chief school officer of their state. IMEC volunteers are prominent individuals who contribute time and expertise to enhance educational opportunities for migrant students. The members examine policy issues concerning the challenges faced by migrant students and develop recommendations for all levels of government. IMEC members include a state chief school officer, state legislators, state board of education members, state education agency personnel, local school district representatives, state directors of migrant education and migrant parents.

In 2004, IMEC started to examine the effects of NCLB implementation with respect to services for migratory children. The examination included a review of the new provisions of NCLB, regulations and the non-regulatory guidance.

During this process IMEC has heard testimony from migrant students and parents, state and local migrant education program personnel, state education agency officials, the U.S. Office of Migrant Education, the U.S. Office of the Secretary of Education, the Center on Education Policy, the American Association of School Administrators and three national organizations involved in advocating high school reform.

The IMEC membership has reviewed each provision of NCLB that applies to migratory children in relationship to the testimony of the presenters. Through a detailed consensus process, (See Note on Consensus Process) the recommendations included in this report have been developed.

## **Note on the Consensus Process of IMEC**

IMEC uses a consensus process in developing recommendations. The process works as follows:

1. In an open meeting or through writing, each representative has the opportunity to identify issues, make recommendations and justify recommendations.
2. Each issue is presented to all representatives for a full discussion.
3. If there are no objections to a recommendation it is approved for final consideration.
4. If there are objections, questions or a need for more information, the issue is referred to a work group for discussion and recommendations.
5. If there are no objections to a recommendation from a work group the recommendation is approved for final consideration.
6. This process continues until all issues are either unanimously approved or set aside as there is not a consensus.
7. For final consideration the recommendations are written in either general legislative language or as a specific amendment to the law.
8. Each of the statutory recommendations approved for final consideration must receive a unanimous vote by the IMEC membership to be identified as an IMEC consensus recommendation.

## PART I

### Noteworthy Sections of Current Statute That Benefit Migrant Students

There are five provisions of No Child Left Behind (NCLB) of such great importance to migrant students that we wish to note that they should remain unchanged.

The sections of Title 1, Part A, that are critically important to migrant children and youth, include the following:

1. **Periodic academic assessments – section 1111 (b) 3.**
2. **Disaggregation and reporting by the State, Section 1111, (h) (I) (C) (i) and LEAs, Section 1111 (h) (2) (A).**
3. **Reporting of students that are not tested by categories including migrants, Section 1111, (h) (C), (iii)**
4. **Not less than 95% of each group be assessed, Section 1111 (b) (2) (I) (ii).**

**Comment:** These four sections are important to migrant students, even though migrant students are not a subgroup of adequate yearly progress. They ensure that migrant students are assessed and their assessment results disaggregated as a group. This process enables LEAs, students and parents to know the academic progress of migrant students and provide a framework for improving their academic performance.

The fifth section which should remain unchanged is in Title I, Part C:

5. **State Education Agency (SEA) operated programs.  
Section 1302.**

**Comment:** The SEA has the ability to determine where in the state, on a year-to-year basis, there is a need for services and the types of services to be provided. Through SEA administration, maximum flexibility is provided for adequate services to ensure that funding follows students to where they are residing. Therefore, the program should remain a state education agency operated program.

Parts II – IX contain the thirteen Interstate Migrant Education Council's (IMEC) ` recommendations. Justifications and the statute with recommended changes are included.

## Part II

### Simplify Eligibility Definition

**Background Information:** The eligibility for services under Part C is determined annually by interviews with workers. If the interviewer (a migrant education recruiter) is satisfied the worker meets the criteria for eligibility, the worker's children or a worker under age 22, without a high school diploma or GED, are deemed eligible for services.

The Office of Migrant Education (OME) issued 30 pages of Non-Regulatory Guidance on October 23, 2003, to implement the one paragraph of the definition of a migrant child. Much of this guidance is different from previous guidance issued by OME and therefore from the practices of State migrant education programs that followed the previous guidance.

There was no indication during the reauthorization process leading up to No Child Left Behind that these changes were desirable or necessary. No one, including the U.S. Office of Migrant Education (OME), testified that States were not acting properly. We believe OME's guidance is denying services to students that Congress desired to be served.

Our recommendations on eligibility have the purpose of simplifying the eligibility procedure and permitting services to the children and youth that Congress intended to be served.

There are three recommended changes in defining eligibility. Recommendations 2, 3, and 4 are all included under Statute in the new definition.

1. ELIMINATE DETERMINING THE "INTENT" OF WORKERS IN ELIGIBLE OCCUPATIONS

**Recommendation:** When a worker is employed in qualifying work and has fulfilled the other criteria of eligibility, the worker will be eligible. If a worker intended to be employed in qualifying work and has fulfilled the other criteria for eligibility, but has been unable to find qualifying work, the worker will also be eligible.

**Justification:** The Draft Non-Regulatory Guidance of October 23, 2003 requires states to determine a worker's intent even if the worker is employed in qualifying work. As a consequence, many workers are deemed ineligible even though they fit all circumstances that Congress desired for eligibility. This change in statute will permit a return to the practices by states and the Office of Migrant Education in determining eligibility prior to the issuance of the current non-regulatory guidance.

2. INCLUDE FOOD PROCESSING AS AN ELIGIBLE OCCUPATION

**Recommendation:** Specifically include food processing as qualifying work.

**Justification:** Working in food processing up to the point of initial commercial sale has been considered qualifying work if it can be demonstrated that at an employment site the

work is temporary. Determining whether or not the work at a site is temporary is difficult because it requires turnover rate documentation. Some argue no food processing is temporary because the employer considers the jobs permanent. The reality is that even if both the worker and the employer say the work is permanent, due to the nature of the work, workers often leave as soon as they can find other work. In addition, migrant education programs have cited the following common circumstances that cause this work to be impermanent: temporary plant closings or slow downs; permanent plant closings; new plant openings which lure employees from existing jobs; company mergers; lack of raw product availability.

Specifically listing food processing in the statute will eliminate the burden of making judgments based on sketchy evidence. It will save time and resources the state programs currently use to document and justify the judgments they have made.

### 3. DEFINE “TEMPORARY” IN THE DEFINITION

**Recommendation:** Temporary employment should be defined as 18 months, without any references to co-workers.

**Justification:** During the last 20 years there has been a significant increase of migratory labor in food processing (meat, poultry and fish) and dairy farming. Title I, Part C, The Education of Migratory Children, recognizes these occupations as qualifying employment; therefore the law should also recognize that work in these occupations is not exactly the same as traditional migrant agriculture crop work, whose work may be of shorter duration because of the agricultural cycles such as cultivating and harvesting.

Frequently, migrant food processing workers and migrant dairy farm workers are employed for somewhat longer than 12 months, but their lifestyle is virtually identical to shorter-term migrant workers. The educational disparities that are associated with children of migratory workers who work up to 18 months have practically no difference compared to children of those who work shorter periods.

There have been regulations promulgated by USED that say that even a short-term worker (12 months or less) is not in temporary employment unless “virtually no workers remain employed by the same employer more than 12 months.

There is no justification to deny services to dependents of temporary workers who have co-workers who work for longer periods of time.

**The following is the proposed Section 1309. Definitions which included the recommendation to eliminate determining “intent” include food processing as an eligible occupation and define temporary as 18 months.**

**Statute:** Section 1309. Definitions

~~(2) MIGRATORY CHILD—The term migratory child means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain, temporary or seasonal employment in agricultural or fishing work—~~

*Section 1309. Definitions*

*(2) MIGRATORY CHILD AND YOUTH - The term migratory child or youth means a child or youth who, or whose parent, guardian or spouse, has made a qualifying move within the preceding 36 months and is employed or has sought temporary employment or seasonal employment in qualifying work in agriculture, dairy farming, food processing or fishing, and*

*(A) has moved from one school district to another;*

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

*(C) 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 to engage in a fishing activity.*

*(3) TEMPORARY EMPLOYMENT*

*Temporary employment means that an individual worker, regardless of the length of employment of co-workers at a particular work site, is deemed temporary if the worker is employed not longer than 18 months, or a longer period with justification by the State, in a qualifying work in agriculture, dairy, food processing or fishing.*

*(4) QUALIFYING WORK – The term qualifying work means any activity directly related to:*

*the production of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;*

*cultivation or harvesting of trees;*

*fish farms or fishing activity for initial commercial sale or personal subsistence;*

*working with raw agricultural or fishing products and processing them into a more refined product for initial commercial sale.*

4. ALLOW A 5% ERROR RATE

**Recommendation:** A 5% error rate should be permitted in audits of eligible students.

**Justification:** Identification of eligible students is based on interviews with workers who often do not speak English and come from a different culture. Often the interview is about topics that are personal and motives that are nebulous. Correct identification can often be interpreted differently by different persons. In second interviews information given is often different from the first interview. Since identification is an imperfect process, an error rate should be allowed. Prior to 1994, a 5% error rate was in the law. This provision should be restored.

**Statute:** Section 1303. State Allocations (e) Determining Number of Eligible Migrant Children

(e) DETERMINING NUMBERS OF ELIGIBLE CHILDREN – In order to determine the estimated number of migratory children residing in each State for purposes of this section, the Secretary shall –

(1) use such information as the Secretary finds most accurately reflects the actual number of migratory children. *In submitting the information required to make such determination, the State may not exceed a standard error rate of 5 percent.*

## PART III

### Expand Preschool Services

5. EXPAND AGE FOR FUNDING TO INCLUDE BIRTH THROUGH AGE 21.

**Recommendation:** In Section 1303. State Allocations. The age range for identified eligible migratory children should be changed from aged 3 through 21 to birth through 21.

**Justification:** In a policy statement published in October 2009, the Council of Chief State School Officers, in support of early childhood programs from birth to age 5, cited studies showing disparities between disadvantaged children and their peers as early as nine months of age. They said that by the time children from low income families enter kindergarten they are typically 12-14 months below national norms. We can assume that these studies would apply to virtually all migrant pre-school children.

The current statute provides funding for migrant pre-school children age 3 through age 5. State migrant education programs are also allowed to serve toddlers birth to age 3, but they do not receive funding for these children, as stated in guidance issued by the Office of Migrant Education (OME).

Funding for migrant children birth to age 3 will encourage all states to increase their services to this population with the probable results of reducing the achievement gap.

**Statute:** Section 1303. State Allocations (B) Allocation of Additional Amount

(i) the sum of

(I) the number of identified eligible migrant children, ~~aged 3~~ *birth* through *age 21*, residing in the State during the previous year; and

(II) the number of identified eligible migrant children, ~~aged 3~~ *birth* through *age 21*, who received services under this part in summer or intersession programs provided by the State during such year;

## PART IV

### Support Summer Program

#### 6. CONTINUE THE CURRENT LAW WHICH PROVIDES ADDITIONAL FUNDING FOR SUMMER PROGRAMS

**Recommendation:** The current statute which allocates funding to states based on one count for eligible students residing in a state during the previous year and an additional count for eligible students served during summer or intersession programs should be continued in the reauthorized statute.

**Justification:** The current formula provides additional funds for states providing services to students in summer school programs. If states were to receive only funding for one count of students who reside in the state during the year, the effect would be to take funds away from states now providing summer programs and give more funds to states not providing summer programs.

The current statute provides an incentive for summer programs and helps defray their extra cost.

#### **Lack of Summer Programs by Local Education Agencies (LEAs)**

Many LEAs do not offer summer programs. When LEAs do offer summer programs their enrollment period may be over before migrant families arrive, they often charge for the programs which migrant parents cannot afford, many LEAs do not allow non-residents to

attend or their programs and LEA programs seldom meet the unique needs of migrant students.

### **Extra Cost of Summer Programs**

During the regular school year migrant education supplements the LEA school program and the Title I, Part A program. During the summer if there is not a program to supplement, all the costs of the building, transportation, certified teachers, fringe benefits and other materials must be paid by the migrant education program.

### **Unique Migrant Student Characteristics**

The influx of migrant students can vary considerably from year to year. Migrant families may arrive before or after a traditional LEA program. Secondary students usually need credit recovery programs that migrant education programs are experienced in providing. Parents coming into an area are usually not familiar with the LEA and need the support of the migrant education program.

The migrant education programs can serve pre-school and out-of-school youth who are usually not served by LEAs, especially during the summer.

### **Academic Benefits of Summer Programs**

The most important reason to continue the summer count in the formula is for the academic benefits to migrant students. There is abundant research that supports the need for high-quality summer programs in order to prevent regression (summer slide) in content areas and English language acquisition. Summer programs also offer the opportunity to sustain and increase learning between the regular school year.

Programs are now being offered in the summer by migrant education in leadership, credit recovery, gender-based development and English immersion. Many of these programs are for secondary students and held on college campuses to provide for the development of post-secondary education goals.

### **Statute:**

Continue in the reauthorized ESEA the same language that is in the current statute in Section 1303. State Allocations (a) State Allocations (2) (B) Subsequent Years, Allocation of Additional Amount, which is:

- (i) the sum of —
  - (I) the number of identified eligible migratory children, aged 3 through 21, residing in the State during the previous year; and
  - (II) the number of identified eligible migratory children, aged 3 through 21, who received services under this part in summer or intersession programs provided by the State during such year; multiplied by

## PART V

### Revise Priority For Services

7. REMOVE THE “INTERRUPTION OF EDUCATION DURING THE REGULAR SCHOOL YEAR” FROM THE DEFINITION OF PRIORITY FOR SERVICES

**Recommendation:** The language in Priority For Services, “and whose education has been interrupted during the regular school year” should be deleted.

**Justification:** The major thrust of No Child Left Behind is to provide for the needs of students to ensure they meet a State’s challenging student academic achievement standards. This should be the prime objective for migrant children and youth, notwithstanding how recently their education has been interrupted.

**Statute:**

Section 1304. (d) PRIORITY FOR SERVICES – In providing services with funds received under this part, each recipient of funds shall give priority to migrant children *and youth* who are failing, or most at risk of failing, to meet the state’s challenging State academic standards ~~and challenging State student academic achievement standards, and whose education has been interrupted during the regular school year.~~

8. PROVIDE PERMISSION IN PRIORITY FOR SERVICES FOR STATES TO INCLUDE PRE-SCHOOL AND OUT-OF-SCHOOL MIGRATORY YOUTH.

**Recommendation:** At the conclusion of the definition of priority for services add the phrase “Which may include pre-school children and out-of-school migratory youth.”

**Justification:** In 2003, the guidance from the Office of Migrant Education excluded pre-school and out-of-school youth because there was not an established method of determining academic achievement. It is obvious that out-of-school youth are failing, therefore states should be able to include them as a priority for services by definition. Pre-school children could be included by states deciding that a certain number of risk factors (language, mobility, etc.) put them at risk of failure.

**Statute:**

Section 1304 (d) The last sentence should read, “*Which may include pre-school children and out-of-school migratory youth.*”

## PART VI

### Increase Graduation Rates

#### 9. INCLUDE HIGH SCHOOL COMPLETION

**Recommendation:** The goal of increasing high school completions should be put in the law under Program Purposes.

**Justification:** The goal of high school completion should be the goal for every student under the jurisdiction of a school. This goal has been the prime goal of OME for several years. It should be explicitly stated in the law.

**Statute:** Section 1301, Program Purposes, add a new purpose.

1. *the prime purpose of the program is to have all migrant students receive a high school diploma;*

## PART VII

### Attention to Out-of-School Youth

#### 10. INCLUDE OUT-OF-SCHOOL MIGRANT YOUTH

**Recommendation:** Services to out-of-school migrant youth should be put in the law in Program Purposes, Program Information and Assurances.

**Justification:** The statute provides for funding for ages 3 through 21 providing the youth has not received a high school diploma or GED. Many of the older eligible youth are out-of-school youth, but there is no provision in the statute that specifically identifies that services should be provided to this population.

**Statute:** Section: 1301 Program Purposes, add a new (6)

*“(6) Design programs that consider the unique needs of out-of-school youth with emphasis on having them enrolled in a program that will lead to a high school diploma or a program that will maximize their academic potential.”*

Section 1304. State Applications; Program Information, add a new (8).

*“(8) A description of services to out-of-school youth including means of enrollment and support in programs that lead to a high school diploma or a program that will maximize their academic potential.*

Section 1304. State Applications; Services, (C) Assurances in (4) in planning and carrying out such programs and projects, there has been, and will be, adequate provision for addressing the unmet education needs of preschool migratory children *and out-of-school youth*.

## PART VIII

### Equity for Migrant Parents

#### 11. GIVE MIGRANT PARENTS THE SAME RIGHTS AS TITLE I, PART A PARENTS

**Recommendation:** Migrant parents should have the same rights under the law as parents served by Part A, therefore the qualification in Part C in reference to applying Section 1118 to migrant parents “unless extraordinary circumstances make such provisions impractical,” should be deleted.

**Justification:** Parent involvement is an important component of academic success for students. All parents, just as all students, should have the same rights under the law.

Engaging migrant parents can be difficult due to scheduling difficulties caused by work and travel, cultural differences of the parents from resident parents and the lack of familiarity by migrant parents with LEAs in which they temporarily reside. The current law essentially provides an excuse for LEAs to not involve migrant parents by permitting the LEA to say, “It is impractical to serve migrant parents because they have the extraordinary circumstances of not always being present when activities occur, etc.”

**Statute:** Section 1304. State Application: Services (C) Assurances (3) (A)

(3) in planning and operation of programs at the State and local agency operating level, there is consultation with parent advisory councils for programs of 1 school year in duration, and that all such programs and projects are carried out –

(A) in a manner that provides for the same parental involvement as is required for programs and projects under section 1118, ~~and unless extraordinary circumstances make such provisions impractical; and~~

(B) in a format and language understandable to the parents;

## PART IX

### Technical Amendments

#### 12. CHANGE TITLE OF PROGRAM TO REFLECT THE POPULATION

**Recommendation:** The title of the program and references throughout Part C should be changed from “migratory children” to “migratory children and youth.”

**Justification:** Since the program was originally authorized, the age range for funding has changed from 5 through 17 to 3 through 21. Adding “youth” is a better description of those eligible to be served.

**Statute:** The title of Part C should be changed from “The Education of Migratory Children” to “The Education of Migratory Children and Youth.”

There are 40 references in Part C where this change should be made. See Appendix.

#### 13. SUBSTITUTE “IDENTIFIED EDUCATIONAL” FOR “SPECIAL EDUCATION” WHEN REFERRING TO THE NEEDS OF MIGRANT STUDENTS.

**Recommendation:** Substitute the word “identified” for “special” throughout Part C.

**Justification:** “Special education” needs of migrant students could imply needs relating to handicapping conditions. “Identified educational needs” is a more accurate description of migrant student needs.

**Statute:** Sections where the phrase “special educational needs” of migrant children is used are as follows:

Section 1301. (3)

Section 1304 (b) (1)

Section 1304 (a) (1)

Section 1304 (a) (1) (B) (i)

Section 1304 (b) (4)

## APPENDIX

Below are listed sections in Part C where the phrase “migratory children” is used and where it is recommended the phrase “and youth” be added.

Section 1301.	(1)	Section 1307	(1)
“	(2)	“	(3)
“	(3)		
“	(4)	Section 1308	(b) (1)
“	(5)	“	(2) (?) (iii)
“	(6)	“	(d)
Section 1302		Section 1309	(2)
Section 1303	(a) (1) (A)		
“	(1) (2) (A) (i) II		
“	(b) (1)		
“	(e)		
“	(e) (1)		
“	(e) (3)		
“	(e) (3) (6)		
“	(e) (4)		
Section 1304	(b) (1) (A)		
“	(B)		
“	(2)		
“	(3)		
“	(5)		
“	(7)		
“	(C) (6) (A)		
“	(7)		
“	(d)		
“	(c) (2)		
Section 1306	(a) (1)		
“	(a) (1) (B) (i)		
“	(ii)		
“	(?) (i) C		
Section 1306	(E)		
“	(b) (1)		
“	(2)		
“	(B)		
“	(4)		