



CHIEF FINANCIAL OFFICER  
89 Washington Ave., Room 128, EB  
Albany, New York 12234

January 5, 2022

TO: BOCES District Superintendents  
School District Superintendents  
School District Business Officers  
Charter School Leaders

FROM: Phyllis D. Morris, Chief Financial Officer

RE: **Frequently Asked Questions on Federal American Rescue Plan (ARP) Act Maintenance of Equity (MOEquity) Requirements and Process for Local Educational Agencies (LEAs) to Request MOEquity Exceptions**

As a follow-up to my [April 5, 2021](#) and [June 9, 2021](#) memoranda on the LEA MOEquity requirements in the federal ARP Act, attached please find answers to frequently asked questions on these requirements, including information on the process for LEAs to request an exception from the ARP MOEquity requirements.

### **LEA MOEquity Requirements**

Section 2004 of the ARP Act requires that an LEA shall not, in fiscal year 2022 (school year 2021-22) or 2023 (school year 2022-23):

- reduce per-pupil funding (from combined State and local funding) for any high-poverty school<sup>1</sup> served by such LEA by an amount that exceeds the total reduction in LEA funding (from combined State and local funding) for all schools served by the LEA in such fiscal year (if any); or
- reduce per-pupil, full-time equivalent staff in any high-poverty school by an amount that exceeds the total reduction in full-time equivalent staff in all schools served by such LEA in such fiscal year (if any).

### **LEAs Not Required to Maintain Equity**

Under section 2004(c)(2) of the ARP Act, an LEA is not required to maintain equity if the LEA:

- has a total enrollment of less than 1,000 students;
- operates a single school; and/or
- serves all students within each grade span with a single school.

**If your LEA meets one or more of the above criteria for the 2021-22 and 2022-23 school years, no further action is needed.**

<sup>1</sup> The Act defines the term "high-poverty school" as, with respect to a school served by an LEA, a school that is in the highest quartile of schools served by such LEA based on the percentage economically disadvantaged students served, as determined by the State. In making such determination, a State shall select a measure of poverty established by the Secretary of Education and apply such measure consistently to all schools in the State.

## Identification of Each LEA's High-Poverty Schools

U.S. Department of Education (USDE) guidance allows for two approaches for identifying high poverty schools—either on a districtwide basis or by grade span. USDE required the New York State Education Department (NYSED) to provide baseline and initial MOEquity data for the 2021-22 school year by July 30, 2021. [NYSED's submission may be found here](#). In submitting these data, NYSED made an initial identification of high-poverty schools in each LEA both on a districtwide basis and by grade span. Each LEA may determine which approach to use or make their own determination of high poverty schools pursuant to the [guidance](#) issued by USDE. Should your LEA wish to identify a different set of high-poverty schools than the ones NYSED submitted to USDE, please contact NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) by February 11, 2022.

## LEA Requests for Exceptions from MOEquity Requirements

Under section 2004(c)(2) of the ARP Act, a MOEquity exception for LEAs that would otherwise be required to maintain equity may be granted by the U.S. Secretary of Education if the LEA demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency.

### Exception for LEAs that are not experiencing overall budget reductions in school years 2021-2022 and 2022-23

USDE has issued [guidance](#) on LEA MOEquity requirements and on the process to be followed for an LEA to certify that it meets the requirements for an exemption from MOEquity requirements for the 2021-22 and 2022-23 school years. In its guidance, USDE states that certain one-time implementation challenges due to the enactment of the ARP Act in March 2021 and the impact of the pandemic with respect to budget and enrollment uncertainty are examples of “exceptional or uncontrollable circumstances” that justify a limited exception to the LEA MOEquity requirements for the 2021-22 and 2022-23 school years. An LEA experiencing these circumstances may demonstrate that it is excepted from the MOEquity requirements for the 2021-22 and/or 2022-23 school year(s) by certifying to NYSED that it did not and will not implement an aggregate reduction in combined State and local per-pupil funding in 2021-22 and/or 2022-23.

LEAs that meet the criteria for this exception must complete the template certification at the end of the attached FAQ document and submit it to NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) by February 11, 2022<sup>2</sup>. LEAs do not need to submit supporting documentation with the certification but should maintain such documentation in case it is requested during an audit or monitoring review.

### Exception for LEAs experiencing an “exceptional or uncontrollable” circumstance

LEAs may be eligible for an exception from USDE if they can demonstrate an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in financial resources. For example, if after calculating fiscal equity and/or staffing equity an LEA fails to maintain equity in one or more schools for an exceptional or uncontrollable reason, then the LEA can apply to USDE for an exception.

---

<sup>2</sup> If more time is needed for school year 2022-23, please inform NYSED by February 11, 2022 via email to [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

LEAs must apply directly to USDE for this exception by emailing [NewYork.oese@ed.gov](mailto:NewYork.oese@ed.gov). Please also copy NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov). USDE advises the request “should provide detailed information on the exceptional or uncontrollable circumstance and how it prevents the LEA from maintaining equity.” NYSED strongly urges LEAs to contact us at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) prior to emailing USDE. USDE has not established a deadline for this application.

Please note that the request to USDE for a MOEquity exception is specific to the 2021-22 school year and the LEA will need to submit a separate request, if necessary, for the 2022-23 school year. Please note that each claim of exception will require a case-by-case review by USDE.

Please direct ARP ESSER LEA Maintenance of Equity questions to:  
[ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

#### Attachment

cc: Commissioner Betty A. Rosa  
Sharon Cates-Williams  
Jim Baldwin  
Kim Wilkins  
Jason Harmon  
Sean Giambattista  
Ed Lenart  
Erica Meaker

# GUIDANCE

## Local-Level American Rescue Plan Maintenance of Equity Requirements



New York State Education Department

January 2022

**Frequently Asked Questions**  
**Local-Level American Rescue Plan (ARP) Maintenance of Equity Requirements**  
January 5, 2022

Table of Contents

<b>Key Terms and Acronyms</b> .....	2
<b>Key Takeaways and Action Steps for Maintenance of Equity (MOEquity)</b> .....	3
<b>Overview of MOEquity</b> .....	5
1. <b>What is MOEquity?</b> .....	5
2. <b>Which LEAs must meet MOEquity requirements?</b> .....	5
3. <b>If an LEA is not automatically excepted from MOEquity requirements are any other exceptions available?</b> .....	6
<b>Determining “High Poverty Schools” under the Maintenance of Equity Requirements</b> .....	7
4. <b>How does an LEA determine which schools are “high-poverty schools” under the MOEquity requirements?</b> .....	7
<b>Calculating and Complying with MOEquity’s Fiscal Equity Requirement</b> .....	8
5. <b>How does an LEA calculate and comply with MOEquity’s fiscal equity requirement?</b> .....	8
Calculating Fiscal Equity on a Districtwide Basis .....	9
Calculating Fiscal Equity on a Grade Span Basis .....	10
6. <b>What are “state and local funds” for fiscal equity purposes?</b> .....	11
7. <b>What enrollment data should an LEA use when calculating fiscal equity?</b> .....	12
<b>Calculating and Complying with MOEquity’s Staffing Equity Requirement</b> .....	13
8. <b>How does an LEA calculate and comply with MOEquity’s staffing equity requirement?</b> .....	13
Calculating Staffing Equity on a Districtwide Basis.....	13
Calculating Staffing Equity on a Grade Span Basis .....	14
9. <b>What is an FTE for staffing equity purposes?</b> .....	16
<b>Attachment: LEA Certification of Exception from Local Maintenance of Equity Requirements</b> .....	17

## Key Terms and Acronyms

- **ARP:** American Rescue Plan, a bill signed into law on March 11, 2021 that includes funding for state and local educational agencies and includes a new requirement known as Maintenance of Equity.
- **ESSER:** Elementary and Secondary School Emergency Relief Fund, a federal grant program for state and local educational agencies to support efforts to prevent, prepare for, and respond to COVID-19. ESSER was first authorized through the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020. A second round of ESSER funding was authorized through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act in December 2020. A third round of ESSER funding was authorized under the ARP in March 2021.
- **Fiscal equity:** One of two tests LEAs must meet in order to satisfy ARP's new Maintenance of Equity requirements. In general, the fiscal equity test looks at the reduction of per-pupil state and local funding in certain schools compared to all schools in an LEA.
- **FY 2022:** Fiscal Year 2022, which is the fiscal year that corresponds to the 2021-2022 school year.
- **FY 2023:** Fiscal Year 2023, which is the fiscal year that corresponds to the 2022-2023 school year.
- **High-poverty schools:** The highest quartile of schools served by an LEA based on the percentage of economically-disadvantaged students served. In other words, an LEA's poorest 25% of schools.
- **MOEquity:** Maintenance of Equity, a new fiscal test under ARP that limits funding and staffing cuts in certain schools in FYs 2022 and 2023.
- **Staffing equity:** One of two tests LEAs must meet in order to satisfy ARP's new Maintenance of Equity requirements. In general, the staffing equity test looks at the reduction of per-pupil full-time equivalent positions in certain schools compared to all schools in an LEA.
- **USDE:** U.S. Department of Education.

## Key Takeaways and Action Steps for Maintenance of Equity (MOEquity)

- **MOEquity is a new fiscal rule that applies to local educational agencies (LEAs) that received Elementary and Secondary School Emergency Relief (ESSER) funds under the American Rescue Plan (ARP) with some exceptions.** It limits state and local funding cuts (“fiscal equity”) and staffing cuts (“staffing equity”) to an LEA’s lowest-income quartile of schools in fiscal year (FY) 2022 (school year 2021-2022) and FY 2023 (school year 2022-2023).

**Action required:** LEAs that are not excepted from MOEquity requirements (see bullets below) must calculate fiscal equity and staffing equity as described in Questions 5-9 and maintain documentation of compliance.

- **Automatic exception for some LEAs.** LEAs that meet any one of the following criteria are automatically excepted from the MOEquity requirements:
  - Total enrollment of less than 1,000 students, or
  - Operates a single school, or
  - Has only one school per grade span.<sup>1</sup>

**Action required:** LEAs that meet any of the above criteria are automatically excepted from MOEquity requirements. Such LEAs are not required to calculate fiscal equity or staffing equity, nor must they submit documentation to the state or the U.S. Department of Education (USDE) to claim the exception.<sup>2</sup> USDE advises, however, that automatically excepted LEAs maintain documentation supporting their exception in case it is requested during an audit or monitoring review.<sup>3</sup>

- **Exception for LEAs that are not experiencing overall budget reductions in school years 2021-2022 and 2022-23.** USDE is offering a limited exception to MOEquity for the 2021-2022 and 2022-23 school years if an LEA certifies “that it did not and will not implement an aggregate reduction in combined State and local per-pupil funding in FY 2022 [school year 2021-2022] and/or FY 2023 [school year 2022-23] (i.e., is not facing overall budget reductions).”<sup>4</sup> This exception covers both the fiscal equity and staffing equity requirements.

**Action required:** LEAs that meet the criteria for this exception must complete the template certification at the end of this document and submit it to NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) by February 11, 2022<sup>5</sup>. LEAs do not need to submit supporting documentation with the certification but should maintain such documentation in case it is requested during an audit or monitoring review.<sup>6</sup>

- **Exception for LEAs experiencing an “exceptional or uncontrollable” circumstance.** LEAs may be eligible for an exception from USDE if they can demonstrate an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in financial resources.<sup>7</sup> For example, if after calculating fiscal

<sup>1</sup> ARP, Section 2004(c)(2)(A)-(C).

<sup>2</sup> U.S. Department of Education, [Local Educational Agency \(LEA\) Local Maintenance of Equity Exception Process](#), October 2021. This document will be referred to as *USDE October 2021 LEA Exemption Process* for the rest of this document.

<sup>3</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. A.

<sup>4</sup> U.S. Department of Education, [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#), December 2021, Q&A 32 and Appendix B. This guidance will be referred to as *USDE December 2021 MOEquity FAQs* for the rest of this document.

<sup>5</sup> If more time is needed for school year 2022-23, please inform NYSED by February 11, 2022 via email to [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

<sup>6</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. B.

<sup>7</sup> ARP, Section 2004(c)(2)(D).

equity and/or staffing equity an LEA fails to maintain equity in one or more schools for an exceptional or uncontrollable reason,<sup>8</sup> then the LEA can apply to USDE for an exception.

**Action required:** LEAs must apply directly to USDE for this exception by emailing [NewYork.oese@ed.gov](mailto:NewYork.oese@ed.gov). Please also copy NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).<sup>9</sup> USDE advises the request “should provide detailed information on the exceptional or uncontrollable circumstance and how it prevents the LEA from maintaining equity.”<sup>10</sup> NYSED strongly urges LEAs to contact us at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) prior to emailing USDE. USDE has not established a deadline for this application.

---

<sup>8</sup> According to USDE, such reasons might include increased one-time expenditures in the baseline year due to the pandemic, the effects of a very small school on MOEquity calculations, or a significant change in a school’s expenses because it no longer services a student with high-cost needs. [USDE December 2021 MOEquity FAQs](#), Q&A 32.

<sup>9</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. C.

<sup>10</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. C.



## Overview of MOEquity

### 1. What is MOEquity?

MOEquity is a new fiscal rule under ARP.<sup>11</sup> ARP contains both state<sup>12</sup> and local MOEquity requirements.<sup>13</sup> This document only addresses the local requirements.

MOEquity applies to all LEAs that received ARP ESSER funds except for LEAs with a total enrollment of less than 1,000 students, LEAs that operate a single school, LEAs that have only one school per grade span, or LEAs that can demonstrate an exceptional or uncontrollable circumstance (see Questions 2 and 3).

MOEquity limits LEAs from making disproportionate per-pupil funding and staffing cuts in its “high-poverty” schools in FY 2022 (school year 2021-2022) and FY 2023 (school year 2022-2023). Under the ARP law, high-poverty schools are the top quartile of an LEA’s schools based on the percentage of low-income students. In other words, for MOEquity purposes, high-poverty schools are an LEA’s poorest 25% of schools (see Question 4).

MOEquity involves two tests: (1) a fiscal equity test that looks at school-level per-pupil state and local funding, and (2) a staffing equity test that looks at school-level per-pupil full time equivalents (FTEs). An LEA must comply with both tests. Specifically, in 2021-2022 and 2022-2023 an LEA must:

- **Not reduce per-pupil state and local funding** in any of its high-poverty schools by an amount that exceeds the total reduction, if any, in LEA per-pupil funding for all schools served by the LEA (see Question 5-7); AND
- **Not reduce the number of FTE staff per-pupil** in any of its high-poverty schools by an amount that exceeds the total reduction, if any, in FTE staff per-pupil in all schools served by the LEA (see Questions 8-9).

MOEquity is different from another similarly named fiscal rule, Maintenance of Effort (MOE). MOEquity and MOE test different things and require different kinds of calculations.

### 2. Which LEAs must meet MOEquity requirements?

All LEAs that received ARP ESSER funds must meet MOEquity requirements except LEAs:

- With a total enrollment of less than 1,000 students, or
- That operate a single school, or
- That have only one school per grade span.<sup>14</sup>

An LEA that meets any of the above criteria is automatically excepted from MOEquity requirements, meaning the LEA is not required to calculate fiscal equity or staffing equity, nor submit documentation

---

<sup>11</sup> For more information about MOEquity, please see [USDE December 2021 MOEquity FAQs](#).

<sup>12</sup> [USDE December 2021 MOEquity FAQs](#), Q&As 9 – 21(a).

<sup>13</sup> [USDE December 2021 MOEquity FAQs](#), Q&As 22 – 32.

<sup>14</sup> ARP, Section 2004(c).

to the state or USDE to claim the exception.<sup>15</sup> USDE advises, however, that an automatically excepted LEA maintain documentation supporting the exception in case it is requested during an audit or monitoring review.<sup>16</sup>

**3. If an LEA is not automatically excepted from MOEquity requirements are any other exceptions available?**

Yes, there are two other potential exceptions to MOEquity:

- **Exception for LEAs not experiencing overall state and local budget cuts for the 2021-2022 and 2022-23 school years.** USDE is offering a limited exception to MOEquity for the 2021-2022 and 2022-23 school years if an LEA certifies “that it did not and will not implement an aggregate reduction in combined State and local per-pupil funding in FY 2022 and/or FY 2023 (i.e., is not facing overall budget reductions).” LEAs that meet the criteria for this exception must complete the USDE-developed template certification at the end of this document and, by February 11, 2022, submit it to NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov). LEAs do not need to submit supporting documentation with the certification but should maintain such documentation in case it is requested during an audit or monitoring review.<sup>17</sup>
- **Exception due to an “exceptional or uncontrollable circumstance.”** LEAs may be eligible for an exception from USDE if they can demonstrate an exceptional or uncontrollable circumstance.<sup>18</sup> For example, if after calculating fiscal equity and/or staffing equity an LEA fails to maintain equity in one or more schools for an exceptional or uncontrollable reason such as those listed below, then the LEA can apply to USDE for an exception. Exceptional or uncontrollable circumstances might include:
  - Increased one-time expenditures in the baseline year due to the pandemic,
  - The effects of very small schools on MOEquity calculations, or
  - A significant change in spending because a school no longer serves a student with high-cost needs.

LEAs must apply directly to USDE for this exception by emailing [NewYork.oese@ed.gov](mailto:NewYork.oese@ed.gov). Please also copy NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).<sup>19</sup> USDE advises that exception requests “should provide detailed information on the exceptional or uncontrollable circumstance and how it prevents the LEA from maintaining equity.”<sup>20</sup> USDE will review exception requests on a case-by-case basis. NYSED strongly urges LEAs to contact us at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) prior to emailing USDE.

More information about exceptions is available in Question 32 of USDE’s [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#) and USDE’s [Local Educational Agency \(LEA\) Local Maintenance of Equity Exception Process](#).

---

<sup>15</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. A.

<sup>16</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. A.

<sup>17</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. B.

<sup>18</sup> ARP, Section 2004(c)(2)(D).

<sup>19</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. C.

<sup>20</sup> [USDE October 2021 LEA Exemption Process](#), p. 1 para. C.

## Determining “High Poverty Schools” under the Maintenance of Equity Requirements

### 4. How does an LEA determine which schools are “high-poverty schools” under the MOEquity requirements?

MOEquity limits cuts in schools identified as high-poverty schools. Under ARP’s MOEquity provisions, high-poverty schools are an LEA’s poorest 25% of schools,<sup>21</sup> which can be calculated on a districtwide or grade-span basis as described below.<sup>22</sup> Please note there is no specific poverty rate that qualifies a school as a “high-poverty” school. Instead, identification as a high-poverty school for MOEquity purposes depends on a school’s relative poverty compared to other schools in the LEA.

First, LEAs must determine the number of schools to identify. This is done by dividing the LEA’s total number of schools by 4 and then rounding up to the nearest whole number. For example, if an LEA has 9 schools it must identify 3 schools as high-poverty schools ( $9 \div 4 = 2.25$ , which rounds up to 3).

Next, LEAs must rank their schools by percentage of economically disadvantaged students based on one or more of the following measures: (1) the number of children aged 5 through 17 in poverty as identified by the Census Bureau, (2) the number of children eligible for free and reduced price lunches, (3) the number of children in families receiving assistance under the Temporary Assistance for Needy Families (TANF) program, (4) the number of children eligible to receive medical assistance under the Medicaid program, and/or (5) a composite of the above measures.

Last, LEAs must choose whether to identify high-poverty schools on a districtwide basis or by each grade-span. Using the example above of an LEA that must identify 3 schools as high-poverty schools, the LEA may either:

- Identify its poorest 3 schools overall, or
- Identify its poorest elementary, middle, and high schools as illustrated by the following charts:<sup>23</sup>

Example of Districtwide Identification			Example of Grade Span Identification		
School	Economic Disadvantage	Grade Span	School	Economic Disadvantage	Grade Span
School 1	80%	Elem	School 1	80%	Elem
School 2	75%	Elem	School 2	75%	Elem
School 3	65%	Elem	School 3	65%	Elem
School 4	60%	Middle	School 4	60%	Middle
School 5	40%	High	School 5	40%	High
School 6	35%	Elem	School 6	35%	Elem
School 7	25%	Elem	School 7	25%	Elem
School 8	25%	Middle	School 8	25%	Middle
School 9	15%	High	School 9	15%	High

<sup>21</sup> ARP, Sec. 2004(d)(4).

<sup>22</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 25.

<sup>23</sup> These charts are adapted from Tables 4 and 5 of [USDE December 2021 MOEquity FAQs](#), Q&A 25.

It is important to note that schools identified as high-poverty schools for MOEquity purposes are not necessarily the same as the schools eligible for, or participating in, Title I. Although MOEquity and Title I use the same measures to calculate the poverty levels of schools, and both involve a process of ranking schools by poverty, they are not the same. It is possible a school that does not receive Title I funds could be identified as a high-poverty school for MOEquity purposes or vice versa (that is, a school that receives Title I funds might not be identified as a high-poverty school for MOEquity purposes).

USDE required NYSED to provide baseline and initial MOEquity data for the 2021-22 school year by July 30, 2021. NYSED's submission may be found [here](#). In submitting these data, NYSED made an initial identification of high-poverty schools in each LEA both on a districtwide basis and by grade span based on the proportion of economically disadvantaged students within each school, as collected by the Student Information Repository System (SIRS). Each LEA may determine which approach to use or make their own determination of high poverty schools pursuant to the [guidance](#) issued by USDE. Should your LEA wish to identify a different set of high-poverty schools than the ones NYSED submitted to USDE, please contact NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

For more information about identifying high-poverty schools please see Question 25 of USDE's [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#).

### Calculating and Complying with MOEquity's Fiscal Equity Requirement

#### 5. How does an LEA calculate and comply with MOEquity's fiscal equity requirement?

**Important note:** LEAs that meet certain criteria are automatically exempted from MOEquity requirements (see Question 2). LEAs that certify (by submitting the USDE-developed template certification to NYSED) they are not experiencing overall budget reductions for school year 2021-2022 and/or 2022-23 are exempted from MOEquity for the year (see Question 3). These exceptions cover both the fiscal equity and staffing equity requirements.

To satisfy the fiscal equity requirement, an LEA may not reduce per-pupil state and local funding for any high-poverty school by an amount that exceeds the total reduction in per-pupil state and local funding for all schools.<sup>24</sup>

In general, calculating fiscal equity is a two-step process where an LEA first compares last year's per-pupil state and local funding for all schools to this year's per-pupil state and local funding for all schools to determine if there has been a decrease. That calculation then guides whether, and by how much, the LEA can decrease per-pupil state and local funding in any of its high-poverty schools.

LEAs have the option to calculate fiscal equity on a districtwide or grade-span basis as follows.

---

<sup>24</sup> ARP, Sec. 2004(c)(1)(A).

Calculating Fiscal Equity on a Districtwide Basis

To calculate fiscal equity on a districtwide basis for 2021-2022, an LEA:

- Divides the total amount of state and local funds (see Question 6) provided to all schools in 2020-2021 by the LEA’s total enrollment (see Question 7) in 2020-2021,
- Divides the total amount of state and local funds provided to all schools in 2021-2022 by the LEA’s total enrollment in 2021-2022, and then
- Compares the results to determine the overall decrease in per-pupil state and local funds for all schools.

<b>2020-2021</b>		<b>2021-2022</b>
Total amount of state and local funds provided to all schools in 2020-2021 <hr style="width: 20%; margin: 0 auto;"/> Total enrollment in 2020-2021	Compared to	Total amount of state and local funds provided to all schools in 2021-2022 <hr style="width: 20%; margin: 0 auto;"/> Total enrollment in 2021-2022

Complying with Fiscal Equity on a Districtwide Basis When There Has Been a Decrease in Per-Pupil Funding for All Schools

If there is an overall *decrease* in per-pupil state and local funds for all schools, then the LEA cannot reduce per-pupil state and local funds for any high-poverty school by more than that amount.

For example, if an LEA provided, on average, \$15,000 of state and local funds per-pupil to its schools in 2020-2021 and plans to provide \$14,000 of state and local funds per-pupil to its schools in 2021-2022, then there has been a \$1,000 decrease in state and local funds per-pupil overall. In 2021-2022 the LEA may not reduce per-pupil state and local funds in any high-poverty school by more than \$1,000. If, for instance, a high-poverty school received \$17,000 of state and local funds per-pupil in 2020-2021, then it must receive at least \$16,000 of state and local funds per-pupil in 2021-2022 to satisfy the fiscal equity test.

LEAs should plan to repeat the steps described above for 2022-2023 comparing 2021-2022 to 2022-2023. If there is an overall decrease in per-pupil state and local funds for all schools in 2022-2023 compared to 2021-2022, the LEA would not be permitted to reduce per-pupil state and local funds in any high-poverty school in 2022-2023 by more than that amount.

Complying with Fiscal Equity on a Districtwide Basis When There Has Not Been a Decrease in Per-Pupil Funding for All Schools

USDE’s MOEquity guidance provides that if there is *no decrease* in per-pupil state and local funds for all schools, then the LEA cannot reduce per-pupil state and local funds in any high-poverty school at all.<sup>25</sup>

<sup>25</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 27, Table 6.

**USDE has, however, offered an exception to this requirement for the 2021-2022 and 2022-23 school years.<sup>26</sup> (See Question 3).**

Calculating Fiscal Equity on a Grade Span Basis

To calculate fiscal equity on a grade-span basis for 2021-2022, an LEA:

- Divides the total amount of state and local funds provided to all schools in each grade span in 2020-2021 by the LEA’s total enrollment in each grade span in 2020-2021,
- Divides the total amount of state and local funds provided to all schools in each grade span in 2021-2022 by the LEA’s total enrollment in each grade span in 2021-2022, and then
- Compares the results to determine the overall decrease in per-pupil state and local funds for each grade span.

<b>2020-2021</b>		<b>2021-2022</b>
Total amount of state and local funds provided to all elementary schools in 2020-2021 _____ Total elementary school enrollment in 2020-2021	Compared to	Total amount of state and local funds provided to all elementary schools in 2021-2022 _____ Total elementary school enrollment in 2021-2022
Total amount of state and local funds provided to all middle schools in 2020-2021 _____ Total middle school enrollment in 2020-2021	Compared to	Total amount of state and local funds provided to all middle schools in 2021-2022 _____ Total middle school enrollment in 2021-2022
Total amount of state and local funds provided to all high schools in 2020-2021 _____ Total high school enrollment in 2020-2021	Compared to	Total amount of state and local funds provided to all high schools in 2021-2022 _____ Total high school enrollment in 2021-2022

Complying with Fiscal Equity on a Grade Span Basis When There Has Been a Decrease in Per-Pupil Funding for All Schools in a Grade Span

If there is an overall *decrease* in per-pupil state and local funds for a grade span, then the LEA cannot reduce per-pupil state and local funds for any high-poverty school in that grade span by more than that amount.

<sup>26</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 32.

For example, if an LEA provided, on average, \$15,000 of state and local funds per-pupil to its elementary schools in 2020-2021 and plans to provide \$14,000 of state and local funds per-pupil to its elementary schools in 2021-2022, then there has been a \$1,000 decrease in state and local funds per-pupil overall for elementary schools. In 2021-2022 the LEA may not reduce per-pupil state and local funds to any high-poverty elementary school by more than \$1,000. If, for instance, a high-poverty elementary school received \$17,000 of state and local funds per-pupil in 2020-2021, then it must receive at least \$16,000 of state and local funds per-pupil in 2021-2022 to satisfy the fiscal equity test.

LEAs should plan to repeat the steps described above for 2022-2023 comparing 2021-2022 to 2022-2023. If there is an overall decrease in per-pupil state and local funds for all schools in a grade span 2022-2023 compared to 2021-2022, the LEA would not be permitted to reduce per-pupil state and local funds in any high-poverty school in that grade span in 2022-2023 by more than that amount.

#### Complying with Fiscal Equity on a Grade Span Basis When There Has Not Been a Decrease in Per-Pupil Funding for All Schools in a Grade Span

USDE’s MOEquity guidance provides that if there is *no decrease* in per-pupil state and local funds for a grade span, then the LEA cannot reduce per-pupil state and local funds for any high-poverty school in that grade span at all.<sup>27</sup> **If, however, an LEA can certify that it is not experiencing overall budget reductions, it can receive an exception for the 2021-2022 and/or 2022-23 school years.**<sup>28</sup> (See Question 3.)

More information about calculating fiscal equity is available in Question 27 of USDE’s [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#).

## **6. What are “state and local funds” for fiscal equity purposes?**

USDE guidance explains that state and local funds “generally includes all sources of state and local funds the LEA has available for current expenditures for free public education.”

The reference to state and local funds means the fiscal equity test only looks at state and local funding sources. Federal funds or support from private donors are not included.<sup>29</sup>

The term “current expenditures for free public education” is a legal term that comes from Section 8101(12) of the Elementary and Secondary Education Act (ESEA). It includes funding for:

- Administration,
- Instruction,
- Attendance and health services,
- Operation and maintenance of plant,
- Fixed charges, and
- Net expenditures to cover deficits for food services and student body activities.<sup>30</sup>

---

<sup>27</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 27, p. 17-18.

<sup>28</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 32.

<sup>29</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 26.

<sup>30</sup> ESEA, Sec. 8101(12)(A).

It does not cover funding for:

- Community services,
- Capital outlay, and
- Debt services.<sup>31</sup>

USDE’s guidance also clarifies that LEAs may exclude one-time disbursements for a specific purpose from the MOEquity calculation such as a revenue surplus that was distributed for only one year.<sup>32</sup>

Importantly, USDE’s use of the term “current expenditures” does not mean fiscal equity is an expenditure-based test. Instead, USDE appears to direct LEAs to look at how much state and local funding they plan to make available for the activities listed above (administration, instruction, etc.).

Specifically, USDE’s guidance directs LEAs to calculate MOEquity “once [they have] final appropriated and allocated amounts that are available for current expenditures for each . . . school . . . for the applicable fiscal year.”<sup>33</sup> The guidance also states that LEAs “should verify whether [they] will maintain equity prior to making final . . . local allocations to schools . . . so that [LEAs are] able to modify [their] local allocations to . . . high-poverty schools if equity is not achieved.”<sup>34</sup>

This implies the fiscal equity test measures *school allocations* in 2021-2022 and 2022-2023, which is likely based on budget or similar data. In other words, LEAs should consider how much state and local funding they will make available to schools in 2021-2022 and 2022-2023 for administration, instruction, attendance and health services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

To date, USDE has not provided additional clarification on precisely what data LEAs should use in their calculation, indicating LEAs have flexibility to use the best available data considering their unique systems and circumstances. USDE’s guidance notes, however, the data should be consistent with the sources of data used to report per-pupil expenditures under Title I, Part A.<sup>35</sup>

For more information about which state and local funding sources to include in the MOEquity calculation please see Question 26 of USDE’s [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#).

## **7. What enrollment data should an LEA use when calculating fiscal equity?**

LEAs may use the “most appropriate available enrollment data for the applicable fiscal year.”<sup>36</sup> This could include prior year enrollment, average enrollment over several years, or projected enrollment data.<sup>37</sup>

---

<sup>31</sup> ESEA, Sec. 8101(12)(B).

<sup>32</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 26.

<sup>33</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 8.

<sup>34</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 8.

<sup>35</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 26.

<sup>36</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 27(a).

<sup>37</sup> [USDE December 2021 MOEquity FAQs](#), Q&A 27(a).



For more information about enrollment data please see Question 27(a) of USDE’s [Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements](#).

### Calculating and Complying with MOEquity’s Staffing Equity Requirement

#### 8. How does an LEA calculate and comply with MOEquity’s staffing equity requirement?

**Important note:** LEAs that meet certain criteria are automatically exempted from MOEquity requirements (see Question 2). LEAs that certify (by submitting the USDE-developed template certification to NYSED) they are not experiencing overall budget reductions for school year 2021-2022 and/or 2022-23 are exempted from MOEquity for the year (see Question 3). These exceptions cover both the fiscal equity and staffing equity requirements.

To satisfy the staffing equity requirement, an LEA may not reduce the number of FTEs per-pupil for any high-poverty school by an amount that exceeds the total reduction in the number of FTEs per-pupil for all schools.<sup>38</sup>

In general, calculating staffing equity is a two-step process where an LEA first compares last year’s per-pupil FTE numbers for all schools to this year’s per-pupil FTE numbers for all schools to determine if there has been a decrease. That calculation then guides whether, and by how much, the LEA can decrease per-pupil FTE numbers in any of its high-poverty schools.

LEAs have the option to calculate staffing equity on a districtwide or grade-span basis as follows.

#### Calculating Staffing Equity on a Districtwide Basis

To calculate staffing equity on a districtwide basis for 2021-2022, an LEA:

- Divides the total number of FTEs (see Question 9) provided to all schools in 2020-2021 by the LEA’s total enrollment (see Question 7) in 2020-2021,
- Divides the total number of FTEs provided to all schools in 2021-2022 by the LEA’s total enrollment in 2021-2022, and then
- Compares the results to determine the overall decrease in per-pupil FTEs for all schools.

<b>2020-2021</b>		<b>2021-2022</b>
Total number of FTEs provided to all schools in 2020-2021 <hr style="width: 50%; margin: 5px auto;"/> Total enrollment in 2020-2021	Compared to	Total number of FTEs provided to all schools in 2021-2022 <hr style="width: 50%; margin: 5px auto;"/> Total enrollment in 2021-2022

<sup>38</sup> ARP, Sec. 2004(c)(1)(B).

### Complying with Staffing Equity on a Districtwide Basis When There Has Been a Decrease in Per-Pupil FTEs for All Schools

If there is an overall *decrease* in per-pupil FTEs for all schools, then the LEA cannot reduce per-pupil FTEs for any high-poverty school by more than that amount.

For example, if an LEA provided, on average, 0.09 FTE per-pupil<sup>39</sup> to its schools in 2020-2021 and plans to provide 0.08 FTE per-pupil to its schools in 2021-2022, then there has been a 0.01 reduction in per-pupil FTEs overall. In 2021-2022 the LEA may not reduce per-pupil FTEs in any high-poverty school by more than 0.01. If, for instance, a high-poverty elementary school received 0.1 FTEs per-pupil in 2020-2021, then it must receive at least 0.09 FTEs per-pupil in 2021-2022 to satisfy the staffing equity test.

### Complying with Staffing Equity on a Districtwide Basis When There Has Not Been a Decrease in Per-Pupil FTEs for All Schools

If there is *no decrease* in per-pupil FTEs for all schools, the LEA cannot reduce per-pupil FTEs for any high-poverty school at all.

For example, if an LEA provided, on average, 0.09 FTEs per-pupil to its schools in 2020-2021 and plans to provide at least 0.09 FTEs per-pupil to its schools in 2021-2022, then there has been a 0 decrease in FTEs per-pupil overall. In 2021-2022 the LEA may not reduce per-pupil FTEs to any high poverty school at all. If, for instance, a high-poverty school received 0.1 FTEs per-pupil in 2020-2021, then it must receive at least 0.1 FTEs per-pupil in 2021-2022.

LEAs should plan to repeat the steps described above for 2022-2023 comparing 2021-2022 to 2022-2023.

### Calculating Staffing Equity on a Grade Span Basis

To calculate staffing equity on a grade-span basis for 2021-2022, an LEA:

- Divides the total number of FTEs provided to all schools in each grade span in 2020-2021 by the LEA's total enrollment in each grade span in 2020-2021,
- Divides the total number of FTEs provided to all schools in each grade span in 2021-2022 by the LEA's total enrollment in each grade span in 2021-2022, and then
- Compares the results to determine the overall decrease in per-pupil FTEs for each grade span.

---

<sup>39</sup> FTEs per-pupil is not a common way to express staffing levels in USDE programs. To illustrate the calculation for an individual school, consider an elementary school with 460 students. The school has the following FTE positions: 1 principal, 1 assistant principal, 20 classroom teachers, 1 staff development coach, 0.7 ESOL teacher, 1.6 literacy specialist, 0.8 PE teacher, 0.8 art teacher, 0.8 music teacher, 1 special education teacher, 0.8 special education paraeducator, 0.4 related services provider, 1.375 instructional support paraeducators, 1 counselor, 1 media specialist, 3.375 administrative support staff, 3.5 building services staff, and 0.5 food services staff. This amounts to a total of 40.65 FTEs. Dividing the number of FTEs by the number of students yields approximately 0.09 FTEs per student ( $40.65 \div 460 = 0.088$ ).

<b>2020-2021</b>		<b>2021-2022</b>
$\frac{\text{Total number of FTEs provided to all elementary schools in 2020-2021}}{\text{Total elementary school enrollment in 2020-2021}}$	Compared to	$\frac{\text{Total number of FTEs provided to all elementary schools in 2021-2022}}{\text{Total elementary school enrollment in 2021-2022}}$
$\frac{\text{Total number of FTEs provided to all middle schools in 2020-2021}}{\text{Total middle school enrollment in 2020-2021}}$	Compared to	$\frac{\text{Total number of FTEs provided to all middle schools in 2021-2022}}{\text{Total middle school enrollment in 2021-2022}}$
$\frac{\text{Total number of FTEs provided to all high schools in 2020-2021}}{\text{Total high school enrollment in 2020-2021}}$	Compared to	$\frac{\text{Total number of FTEs provided to all high schools in 2021-2022}}{\text{Total high school enrollment in 2021-2022}}$

Complying with Staffing Equity on a Grade Span Basis When There Has Been a Decrease in Per-Pupil FTEs for All Schools

If there is an overall *decrease* in per-pupil FTEs for a grade span, then the LEA cannot reduce per-pupil FTEs for any high-poverty school by more than that amount.

For example, if an LEA provided, on average, 0.09 FTE per-pupil to its elementary schools in 2020-2021 and plans to provide 0.08 FTE per-pupil to its elementary schools in 2021-2022, then there has been a 0.01 reduction in per-pupil FTEs overall. In 2021-2022 the LEA may not reduce per-pupil FTEs in any high-poverty elementary school by more than 0.01. If, for instance, a high-poverty elementary school received 0.1 FTEs per-pupil in 2020-2021, then it must receive at least 0.09 FTEs per-pupil in 2021-2022 to satisfy the staffing equity test.

Complying with Staffing Equity on a Grade Span Basis When There Has Not Been a Decrease in Per-Pupil FTEs for All Schools

If there is *no decrease* in per-pupil FTEs in a grade span, the LEA cannot reduce per-pupil FTEs for any high-poverty school in that grade span at all.

For example, if an LEA provided, on average, 0.09 FTEs per-pupil to its elementary schools in 2020-2021 and plans to provide at least 0.09 FTEs per-pupil to its elementary schools in 2021-2022, then there has been a 0 decrease in FTEs per-pupil overall. In 2021-2022 the LEA may not reduce per-pupil FTEs to any high-poverty school elementary school at all. If, for instance, a high-poverty elementary school received 0.1 FTEs per-pupil in 2020-2021, then it must receive at least 0.1 FTEs per-pupil in 2021-2022.

LEAs should plan to repeat the steps described above for 2022-2023 comparing 2021-2022 to 2022-2023.

More information about calculating staffing equity is available in Question 30 of USDE's [\*Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements\*](#).

### **9. What is an FTE for staffing equity purposes?**

According to USDE guidance, LEAs “must include all paid staff, both instructional and non-instructional when determining whether it maintained staffing equity . . . This would include all employees and those hired by contract who perform school-level services.”<sup>40</sup> Because neither the ARP law nor USDE guidance specify that staffing equity is limited to state and locally funded FTEs, it appears that LEAs should include all FTEs performing school-level services regardless of funding source.

If a staff member splits their time between more than one school, the LEA should include the proportional FTE for each school in the staffing equity calculation.<sup>41</sup>

LEAs should calculate staffing equity “once both enrollment and staffing decisions are final for a specific school year.”<sup>42</sup> LEAs do not have to redetermine staffing equity if there are unpredictable changes in student enrollments or personnel assignments later in the school year.<sup>43</sup>

More information about counting FTEs is available in Questions 28 and 29 of USDE's [\*Frequently Asked Questions American Rescue Plan Elementary and Secondary School Emergency Relief \(ESSER\) Program Maintenance of Equity Requirements\*](#).

Questions about this guidance may be sent to NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

LEAs may also send questions about the MOEquity requirements to the U.S. Department of Education at [NewYork.oese@ed.gov](mailto:NewYork.oese@ed.gov) and include “MOEquity” in the subject line. Please copy NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) on the email so we may keep track of the guidance USDE is providing to better support our LEAs.

---

<sup>40</sup> [\*USDE December 2021 MOEquity FAQs\*](#), Q&A 28.

<sup>41</sup> [\*USDE December 2021 MOEquity FAQs\*](#), Q&A 28.

<sup>42</sup> [\*USDE December 2021 MOEquity FAQs\*](#), Q&A 29.

<sup>43</sup> [\*USDE December 2021 MOEquity FAQs\*](#), Q&A 29.

Attachment: LEA Certification of Exception from Local Maintenance of Equity Requirements

Excerpted from Appendix B of the U.S. Department of Education’s MOEquity FAQs

Please submit to NYSED at [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov) by February 11, 2022. If more time is needed for school year 2022-23, please inform NYSED by February 11, 2022 via email to [ChiefFinancialOfficer@nysed.gov](mailto:ChiefFinancialOfficer@nysed.gov).

**American Rescue Plan  
LEA Certification of Exception from  
Local Maintenance of Equity Requirements**

Please submit this certification to your SEA, which will notify the Department which LEAs in the State are excepted from the local maintenance of equity requirements under section 2004(c)(2) of the American Rescue Plan (ARP) Act due to such certifications for FY 2022, FY 2023, or both FYs 2022 and 2023.

LEA name: \_\_\_\_\_

State: \_\_\_\_\_

On behalf of my local educational agency (LEA), I \_\_\_\_\_ (name),  
\_\_\_\_\_ (title), certify that for the:

- 2021-2022 school year (FY 2022)
- 2022-2023 school year (FY 2023)

this LEA demonstrates an exceptional or uncontrollable circumstance under section 2004(c)(2) of the ARP Act. Specifically, this LEA faces one-time implementation challenges due to the enactment of the ARP Act in March 2021 and the impact of the pandemic with respect to budget and enrollment uncertainty. The LEA certifies it will not implement an aggregate reduction in combined State and local per-pupil funding for the relevant fiscal year(s).

By signing this certification, I hereby confirm that I am the authorized representative, with the fiscal and legal authority, to certify on behalf of this school district. In addition, to the best of my knowledge and belief, all the information in this certification is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name and date