



CHIEF FINANCIAL OFFICER
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August 15, 2022

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

FROM: Phyllis D. Morris, Chief Financial Officer

RE: **UPDATED: Implementation of Local Educational Agency (LEA)-Level Federal American Rescue Plan (ARP) Maintenance of Equity (MOEquity) Requirements**

Background

Section 2004 of the federal American Rescue Plan (ARP) Act of 2021 imposes a Local Educational Agency (LEA) maintenance of equity (MOEquity) requirement that is separate and distinct from prior maintenance of effort requirements. The United States Department of Education (USDE) has stated that the maintenance of equity requirement is a condition for LEAs to receive ARP Elementary and Secondary School Emergency Relief (ESSER) funds.

Under section 2004(c) of the ARP Act, the maintenance of equity provision requires that each LEA safeguard its “high poverty” schools from disproportionate reductions in funding and staffing in the 2021-22 and 2022-23 school years. USDE published a [proposed requirement](#) on January 3, 2022 and a [Notice of Final Requirements](#) on June 8, 2022 regarding the LEA-level maintenance of equity provisions under section 2004(c) of the ARP Act.

Which LEAs are Subject to the ARP MOEquity Requirement?

Section 2004(c) of the ARP Act provides criteria under which an LEA can be excepted from the ARP MOEquity requirement. LEAs are automatically excepted if the LEA:

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

The same section of ARP created an exception process under which each LEA that is not automatically excepted may be eligible for an exception. NYSED published a memo on [January 5, 2022](#) detailing the exception application process and eligibility criteria, as follows:

1. Each LEA may demonstrate that it is excepted from the ARP MOEquity requirements by certifying to NYSED that it did not and will not implement an aggregate reduction in combined State and local per pupil funding in the 2021-22 school year.
2. Each LEA experiencing an “exceptional or uncontrollable circumstance” may apply directly to USDE for an exception.

As far as NYSED is aware, to date, no New York State LEAs have applied directly to USDE for a 2021-22 school year exception. LEAs had until July 8, 2022 to apply to USDE for an exception for the 2021-22 school year. LEAs should contact NYSED at ChiefFinancialOfficer@nysed.gov prior to submitting an application to USDE.

As required by the USDE rulemaking, NYSED has published on our [website](#) a list of LEAs which are automatically excepted, LEAs which are excepted through submission of a 2021-22 school year certification to NYSED, and LEAs to which the ARP MOEquity requirements will apply for the 2021-22 school year. **LEAs that meet one or more of the automatic exception criteria and LEAs that submitted a 2021-22 school year certification to NYSED are excepted from the 2021-22 ARP LEA MOEquity requirements and no further action by such LEAs is required.**

What Schools are Covered by the MOEquity Requirement?

USDE has provided detailed [instructions](#) on how to determine which schools are designated “high poverty” within an LEA subject to the ARP MOEquity requirement. One fourth of the schools within the LEA with the highest percentage of economically disadvantaged students are designated “high poverty.”

USDE guidance allows each LEA to designate high poverty schools by grade span or as a whole. As required by June 2021 USDE guidance, NYSED provided [preliminary designations of high poverty schools to USDE on July 29, 2021](#) under both options. NYSED’s [January 5, 2022](#) memorandum asked each LEA to notify NYSED if the LEA wished to identify a different set of “high poverty” schools consistent with USDE guidance. On July 13, 2022, NYSED provided each non-excepted LEA with a final list of its “high poverty” schools and requested that the LEA provide any changes to NYSED prior to June 23, 2022. As required by the USDE rulemaking, NYSED has published on our [website](#) the identity of each “high poverty” school for each LEA that is not excepted from the LEA-level ARP MOEquity requirements.

How will NYSED Determine if an LEA has Complied with the ARP MOEquity Requirement?

USDE [guidance](#) explains that each LEA subject to the ARP MOEquity requirement must maintain equity for each “high poverty” school as a condition of receiving ARP ESSER funds. Under section 2004(c) of the ARP Act, for each school identified by the LEA as a “high poverty” school, the LEA may not, in the 2021-22 or 2022-23 school years:

1. Reduce per pupil funding (from combined State and local funding) by an amount that exceeds the total reduction, if any, in LEA per pupil funding for all schools served by the LEA in such fiscal year; or
2. Reduce the number of full-time equivalent (FTE) staff per pupil by an amount that exceeds the total reduction, if any, in FTE staff per pupil in all schools served by the LEA in such fiscal year.

Subdivision (d) of USDE’s June 8, 2022 [Notice of Final Requirements](#) allows NYSED to rely on per pupil expenditure data collected for the Every Student Succeeds Act (ESSA) financial transparency requirement. This data is required by federal law pursuant to section 1111(h)(1)(C)(x) of the Elementary and Secondary Education Act of 1965. Utilizing this data avoids imposing another duplicative data collection process.

The 2020-21 school year ESSA financial transparency data will be the base year utilized to compare per pupil expenditures and FTE staff per pupil in the 2021-22 school year. The 2020-21 ESSA

financial transparency reports were published April of 2022. Each LEA was notified when these reports became available.

Annual Determination

After the close of the 2021-22 and 2022-23 school years, NYSED will utilize ESSA financial transparency data for each school designated as “high poverty” within an LEA that has not been excepted from the ARP MOEquity requirement to determine if the requirement has been met. NYSED will compare per pupil expenditures from field “J. Total School Level Local/State Spending” and the “Student-to-Teacher Ratio” on the Financial Transparency Reports available on data.nysed.gov. Each field will be compared to the same field from the prior school year.

If all schools designated as “high poverty” do not show a year-over-year decline in expenditures per pupil or increase in student-to-teacher ratio, the LEA will be determined to be compliant with the ARP MOEquity requirement. If any school designated as “high poverty” shows a decline in expenditures per pupil and/or an increase in the student-to-teacher ratio, NYSED will compare these values to LEA-wide values. If the LEA-wide value changed proportionately more than each “high poverty” school, the LEA will be determined to be compliant with the ARP MOEquity requirement. If district submitted data shows per pupil expenditures decreased or student-to-teacher ratio increased in one or more “high poverty” schools disproportionately to the LEA-wide value, the LEA will be determined to not be in compliance with the ARP MOEquity requirement.

LEA MOEquity Data Publication

USDE’s [Notice of Final Requirements](#) requires NYSED to publish LEA MOEquity data for each LEA in the state that is not excepted from this requirement. NYSED is required to publish per pupil expenditures and student-to-teacher ratios both district-wide and for each “high poverty” school. In addition, NYSED is required to publish whether each LEA subject to LEA MOEquity complied with this requirement.

USDE has approved NYSED’s request to publish this information by May 1 following the close of each school year to be consistent with the release of the Financial Transparency Reports on data.nysed.gov. The ESSA Financial Transparency data collection process will therefore be unaffected. LEAs subject to the ARP MOEquity requirement will be subject to the same ESSA Financial Transparency data submission deadline of December 31 as in the prior year. Financial Transparency reports released in Spring of 2023 and 2024 will include a line with a determination on whether non-excepted LEAs maintained equity for any “high poverty” school.

Addressing LEA MOEquity Non-Compliance

Subdivision (b) of USDE’s [Notice of Final Requirements](#) requires that NYSED publishes a description of how it will ensure non-excepted LEAs comply with this requirement, so that the LEA can make necessary adjustments in a timely manner. The rulemaking commentary clarifies that this requirement is to understand efforts each State is making to ensure that LEAs that did not maintain equity take remedial action.

Within 30 days after the publication of LEA MOEquity data for each LEA in the state that is not excepted from this requirement, NYSED will provide technical assistance to any LEA that was determined to have not maintained equity in one or more high poverty schools. This technical assistance will provide information on the cause of identification, such as enrollment growth, reduced expenditures, or fewer classroom teachers in “high poverty” schools and the spending or staffing threshold that would have maintained equity.

Following receipt of this information, each non-excepted LEA that did not maintain equity for one or more “high poverty” schools must provide the following information to NYSED no later than 60 days after the LEA MOEquity data are published: (1) an explanation as to why the LEA was not able to maintain equity for the “high poverty” school(s) in question and (2) remedial allocational changes made for the next school year.

Summary of LEA Maintenance of Equity Deadlines

- **June 29, 2022:** NYSED published on our [website](#) a list of LEAs which are automatically excepted for 2021-22, LEAs which are excepted through submission of a 2021-22 school year certification to NYSED, and LEAs to which the ARP MOEquity requirements will apply for the 2021-22 school year, including the identity of each “high poverty” school within each LEA.
- **July 8, 2022:** Deadline for LEAs to apply to USDE for a MOEquity exception for the 2021-22 school year. LEAs should contact NYSED at ChiefFinancialOfficer@nysed.gov prior to submitting an application to USDE.
- **August 15, 2022:** NYSED notified non-excepted LEAs that USDE has approved NYSED’s extension request and that the ESSA financial transparency deadline is December 31 for 2022 and 2023.
- **October 1, 2022:** Deadline for LEAs to submit 2022-23 ARP MOEquity exception certification forms to NYSED.
- **November 1, 2022:** NYSED will publish on our [website](#) a list of LEAs which are automatically excepted for 2022-23, LEAs which are excepted through submission of a 2022-23 school year certification to NYSED, and LEAs to which the ARP MOEquity requirements will apply for the 2022-23 school year, including the identity of each “high poverty” school within each LEA.
- **December 31, 2022:** All LEAs must complete ESSA Financial Transparency submissions.
- **January 2023:** NYSED will notify non-excepted LEAs whether their initial data submissions indicate that they have maintained equity on a per-pupil and FTE basis in FY 2022 to enable such LEAs to either submit corrected/revised data or address violations when LEAs begin developing budgets for the 2023-2024 school year.
- **May 1, 2023:** NYSED will publish on our [website](#) data that determines whether each non-excepted LEA complied with the ARP MOEquity for the 2021-22 school year.
- **June 1, 2023:** NYSED will provide technical assistance to each LEA that did not maintain equity in 2021-22 in order to identify the cause.
- **July 1, 2023:** Each LEA that did not maintain equity in 2021-22 must provide an explanation of the cause and identify remedial actions that will be taken.
- **December 31, 2023:** All LEAs must complete ESSA Financial Transparency submissions.
- **January 2024:** NYSED will notify non-excepted LEAs whether their initial data submissions indicate that they have maintained equity on a per-pupil and FTE basis in FY 2023 to enable such LEAs to either submit corrected/revised data or address violations when LEAs begin developing budgets for the 2023-2024 school year.
- **May 1, 2024:** NYSED will publish on our [website](#) data that determines whether each non-excepted LEA complied with the ARP MOEquity for the 2022-23 school year.
- **June 1, 2024:** NYSED will provide technical assistance to each LEA that did not maintain equity in 2022-23 in order to identify the cause.
- **July 1, 2024:** Each LEA that did not maintain equity in 2022-23 must provide an explanation of the cause and identify remedial actions that will be taken.

Thank you for your ongoing assistance in meeting USDE reporting requirements. Please direct ARP MOEquity questions to ChiefFinancialOfficer@nysed.gov.

cc: Commissioner Betty A. Rosa
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