

*Phyllis D. Martin*

**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 full-time equivalent staff in all schools served by such LEA in such fiscal year (if any)



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  
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Ed Lenart  
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# 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

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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.

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<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](#)



## 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

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





## 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 fu per

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

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

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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 \(ESSER\) Progra\(y\)-1.7](#)

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-

<p style="text-align: center;"><b>2020-2021</b></p> <p>Total number of FTEs provided to all elementary schools in 2020-2021</p> <p>Total elementary school enrollment in 2020-2021</p>	<p>Compared to</p>	<p style="text-align: center;"><b>2021-2022</b></p> <p>Total number of FTEs provided to all elementary schools in 2021-2022</p> <p>Total elementary school enrollment in 2021-2022</p>
<p>Total number of FTEs provided to all middle schools in 2020-2021</p> <p>Total middle school enrollment in 2020-2021</p>	<p>Compared to</p>	<p>Total number of FTEs provided to all middle schools in 2021-2022</p> <p>Total middle school enrollment in 2021-2022</p>
<p>Total number of FTEs provided to all high schools in 2020-2021</p> <p>Total high school enrollment in 2020-2021</p>		

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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>

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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