



# MOE, MOEquity, MOWhat?!?

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## Virtual Spring Forum 2022 Planning for Uninterrupted Crises

Brustein & Manasevit, PLLC  
Planning for Uninterrupted Crises



## Agenda

- Maintenance of Effort
- Maintenance of Equity
- Guidance and Updates
- Qs from You!



# Where does MOEquity Come From?

- March 2021: **American Rescue Plan Act (ARP)**
- \$180 billion total for education
  - \$126 billion for ESSER III/ ARP-ESSER
  - New set-aside requirements
  - Continues Maintenance of Effort requirement
  - NEW Maintenance of Equity (ED: "MOEquity") requirement



# Maintenance of Effort





## Maintenance of Effort

	CARES	CRRSA	ARP
Comparison Years	3 preceding fiscal years (2017, 2018, 2019)	2017, 2018, 2019	2017, 2018, 2019
Applicable Years	2020, 2021	2022	2022, 2023
Comparison Tool	"at least at the levels of such support"	"at least at the proportional levels ... relative to such State's overall spending"	"at least at the proportional levels ... relative to such State's overall spending"



## Maintenance of Effort

- What funding is included?
  - "Funds provided through the primary funding mechanisms through which a State provides support for elementary and secondary education" and "principal funding mechanisms through which a State provides support to IHE"
  - Can also choose to include lottery, tobacco money
  - Can use data provided as "revenue from other sources" to NCES for K-12
  - Can include State need-based financial aid for higher ed
  - State discretion: choose a selection and stick with it



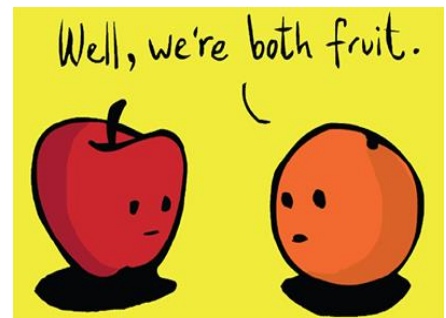
## Maintenance of Effort

- What funding is NOT included?
  - Funds from private donors
  - **Federal funds of any kind**
  - Local support for higher education
  - Support for higher ed capital projects, research and development, and tuition/fees paid by students



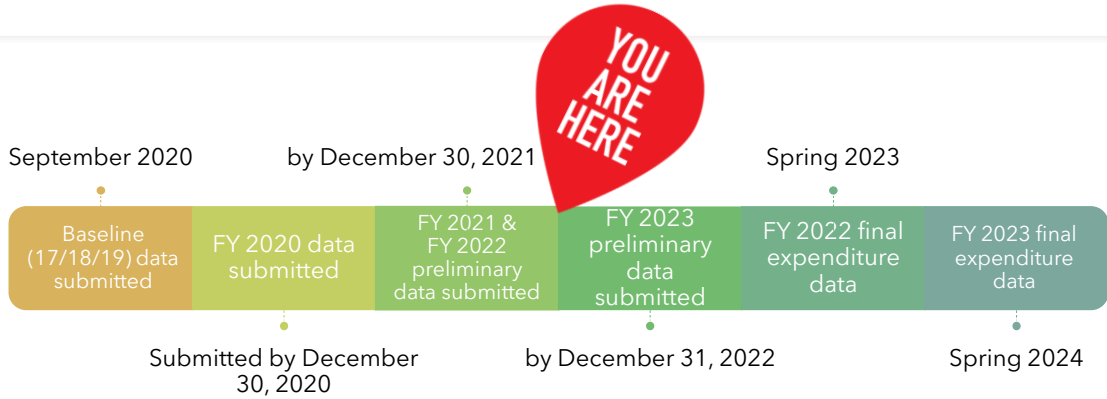
## Maintenance of Effort

- What data year to use?
  - A State may use either:
    - Actual State expenditure data, or
    - Data representing final appropriated or allocated
  - “fiscal year” can be the federal OR state fiscal year - but decide and stick with it





# Timeline for MOE Compliance



# Maintenance of Effort Waivers

CARES	CRRSA	ARP
“For the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources”	“For the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources”	“For the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus”



## Poll Question 1:

Will your State meet MOE requirements for CARES, CRRSA, and ARP?

- Yes, definitely
- I think so
- Likely not
- I don't know but I'm glad it's not my job!



## Maintenance of Effort Waivers

- Can request “when the State can demonstrate that it is unable to comply” → after the fact
- To be “in the consideration of the impact on students.”
- “The purpose of ARP ESSER, ESSER I, ESSER II, GEER I, GEER II, and EANS funds is to expand resources for K-12 and postsecondary schools and students, not to replace existing State commitments to K-12 and postsecondary education.”



## MOE Waiver Requests (as of April 2022)

<https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/performance-and-reporting/>

State	MOE Waiver Request	Status
<b>Colorado</b>	<a href="#">PDF</a>	<b>Under Review</b>
Florida	<a href="#">PDF</a>	Withdrawn by State
Idaho	<a href="#">PDF</a>	Withdrawn by State
<b>Kansas</b>	<a href="#">PDF, PDF</a>	<b>Under Review</b>
Michigan	<a href="#">PDF</a>	Withdrawn by State
<b>Minnesota</b>	<a href="#">PDF, Word</a>	<b>Under Review</b>
<b>North Dakota</b>	<a href="#">PDF, Word</a>	<b>Under Review</b>
<b>New Hampshire</b>	<a href="#">PDF, PDF, PDF</a>	<b>Under Review</b>
<b>New Jersey</b>	<a href="#">PDF</a>	<b>Under Review</b>
Oklahoma	<a href="#">PDF</a>	Withdrawn by State
<b>Puerto Rico</b>	<a href="#">PDF, PDF, Excel, PDF, PDF</a>	<b>Under Review</b>
<b>Washington</b>	<a href="#">PDF, PDF</a>	<b>Under Review</b>

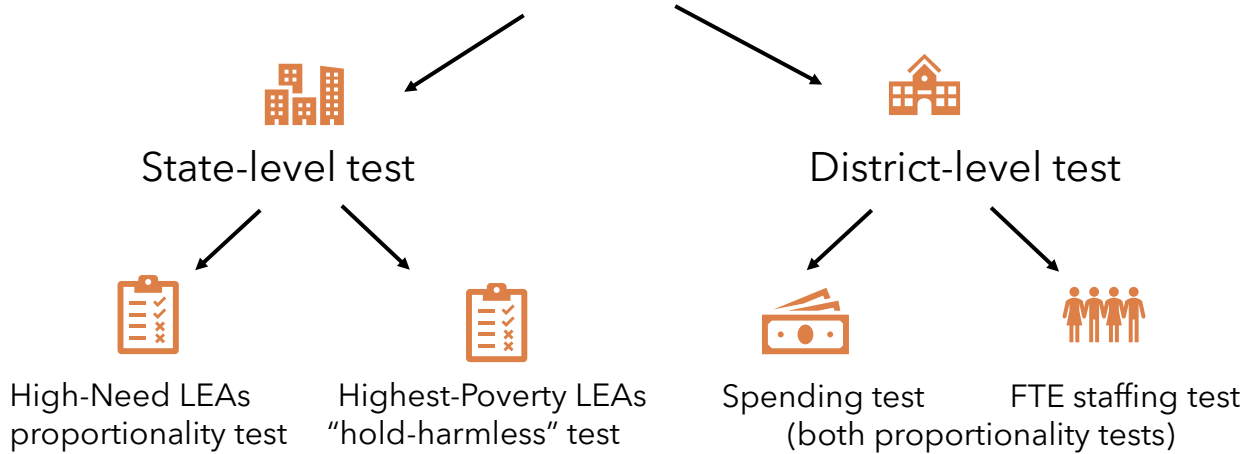


## Maintenance of Equity





# Maintenance of Equity



## State-Level Requirement - High-Need LEA

- States cannot reduce funding to **“high need” LEAs** in a way that is disproportionate to Statewide average
  - Applies to 2022 and 2023 State funds as compared to prior year
  - Calculated on a per-pupil basis using SAIPE data
- “High-need LEAs” - a group of LEAs that:
  - In rank order, have the highest percentage of economically disadvantaged students
  - Collectively serve at least 50% of the State’s total enrollment of students





## State-Level Requirement – Highest-Poverty LEA

- States cannot reduce funding to any “**highest-poverty**” LEA below the level of funding provided in FY 2019
  - Applies to 2022 and 2023 State funds
  - Calculated on a per-pupil basis
- “Highest-poverty LEAs” – a group of LEAs that:
  - In rank order, have the highest percentages of economically disadvantaged students in the State based on the most recent SAIPE data AND
  - Collectively serve at least 20% of the total State enrollment



## ED Guidance for State-level MOEquity

- [Guidance](#) updated December 2021
- What expenditures count?
  - Funds **appropriated and allocated** by the State to all LEAs for current expenditures for free public education
  - **Does NOT** include dedicated funds for capital outlay and debt service
  - **Does NOT** include federal funds, local revenues, or support from private donors.



## Guidance Updates on Local Revenues and the State Test

- “[a]n SEA **may include local revenues**, such as property taxes or taxes on mineral rights, **that are part of a State’s “guarantee” for education under State law**. Because the purpose of MOEquity is to ensure fiscal equity for high-need LEAs and highest-poverty LEAs, including local revenues required by State law as a “guarantee” or to “equalize” State funding for education is integral to understanding whether the State-determined funding level (including both State and local revenue components) is maintaining fiscal equity.” (updated August 2021)
  - For MOEquity only (does not apply to maintenance of effort test)



## Poll Question 2:

Which of the following may **not** be included in MOE calculations?

- Federal funds
- Local revenues that are not part of an equalization guarantee
- Private donations
- All of the above



## State MOEquity: How Does this Work?

Rank	LEA	SAIPE/derived SAIPE Poverty Percentage	Population	Population as percent of State total
1	Aspen	75%	5,000	5%
2	Beech	68%	10,000	10%
3	Cypress Charter School	54%	7,000	7%
4	Dogwood	52%	13,000	13%
5	Elm	45%	10,000	10%
6	Fig	40%	12,000	12%
7	Geranium	35%	10,000	10%
8	Hawthorn	18%	6,000	6%
9	Ivy	12%	14,000	14%
10	Juniper	5%	13,000	13%



## State MOEquity: "High-Need LEAs"

Rank	LEA	SAIPE/derived SAIPE Poverty Percentage	Population	Population as percent of State total
1	Aspen <small>Smallest LEA</small>	75%	5,000	5%
2	Beech	68%	10,000	10%
3	Cypress Charter School	54%	7,000	7%
4	Dogwood	52%	13,000	13%
5	Elm <small>Below 50%</small>	45%	10,000	10%
6	Fig	40%	12,000	12%
7	Geranium	35%	10,000	10%
8	Hawthorn	18%	6,000	6%
9	Ivy <small>Largest LEA</small>	12%	14,000	14%
10	Juniper	5%	13,000	13%

57% of total



## State MOEquity: "High-Need LEAs"

	High-need LEA per-pupil amount FY 2021	High-need LEA per-pupil amount FY 2022	difference	State per-pupil amount FY 2021	State per-pupil amount FY 2022	difference	MOEquity met?
LEA A	\$12,500	\$12,500	\$0	\$12,000	\$11,000	-\$1,000	Y
LEA B	\$12,500	\$12,000	-\$500	\$12,000	\$11,000	-\$1,000	Y
LEA C	\$12,500	\$11,000	-\$1,500	\$12,000	\$11,000	-\$1,000	N



## State MOEquity: "Highest-Poverty LEAs"

Rank	LEA	SAIPE/derived SAIPE Poverty Percentage	Population	Population as percent of State total
1	Aspen <small>Smallest LEA</small>	75%	5,000	5%
2	Beech	68%	10,000	10%
3	Cypress	54%	7,000	7%
4	Dogwood <small>Above 50%</small>	52%	13,000	13%
5	Elm	45%	10,000	10%
6	Fig	40%	12,000	12%
7	Geranium	35%	10,000	10%
8	Hawthorn	18%	6,000	6%
9	Ivy <small>Largest LEA</small>	12%	14,000	14%
10	Juniper	5%	13,000	13%

22% of total



## State MOEquity: "Highest-Poverty LEAs"

	Highest-poverty LEA per-pupil amount FY 2019	Highest-poverty LEA per-pupil amount FY 2022	Difference	MOEquity met?
LEA A	\$12,500	\$12,500	\$0	Y
LEA B	\$12,500	\$12,000	-\$500	N
LEA C	\$12,500	\$11,000	-\$1,500	N



## LEA-Level Requirement: Funding

- LEA cannot reduce **per-pupil funding** for "high-poverty school" more than total reduction divided by number of students currently enrolled in LEA
  - Applies to 2022 and 2023 as compared to prior year
  - State and local funding combined





## LEA-Level Requirement: Staffing



- Cannot reduce the number of **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.
  - Applies to 2022 and 2023 as compared to prior year
  - Include all instructional and non-instructional contractors and employees



## LEA-Level Requirement: High-Poverty School

- “High-poverty school” is a school that is in **the highest quartile of schools** served by such local educational agency based on the percentage of economically disadvantaged students served, as determined by the State.
  - Guidance: round up to nearest whole number of schools
- State selects any measure(s) of poverty authorized under section 1113(a)(5) of the ESEA for LEAs to use, including the measure(s) of poverty it uses to rank its schools under section 1113(a) of the ESEA.



# New Option for LEAs - Grade Span

- In guidance ONLY
- LEA will identify high-poverty schools on a districtwide basis or by grade span
- LEAs should consider several factors to decide which option to use to identify its high-poverty schools, including:
  - Total number of high poverty students impacted
  - Relative concentration of poverty in schools that would be identified compared to those that would not
  - Whether grade spans would capture high schools if they would not otherwise be captured



# MOEquity: “High-Poverty School”

Rank	School	Percentage of Economically Disadvantaged Students	Grade Span
1	Alligator ES	80%	Elementary
2	Bear ES	75%	Elementary
3	Chipmunk Charter School	65%	Elementary
4	Dolphin MS	60%	Middle
5	Elephant HS	40%	High
6	Fox ES	35%	Elementary
7	Guppy ES	25%	Elementary
8	Hippopotamus MS	25%	Middle



# MOEquity: "High-Poverty School"

Rank	School	Percentage of Economically Disadvantaged Students	Grade Span
1	Alligator ES	80%	Elementary Top quartile = top 25% of <i>schools</i>
2	Bear ES	75%	
3	Chipmunk Charter School	Charter school 65%	Elementary
4	Dolphin MS	No % cut-off 60%	Middle
5	Elephant HS	40%	High
6	Fox ES	35%	Elementary
7	Guppy ES	25%	Elementary
8	Hippopotamus MS	25%	Middle



# MOEquity: Ranking by Grade Span

Rank	School	Percentage of Economically Disadvantaged Students	Elementary Grade Span	Middle School Grade Span	High School Grade Span
1	Alligator ES	80%	X		
2	Bear ES	75%	X		
3	Chipmunk Charter School	65%	X		
4	Dolphin MS	60%		X	
5	Elephant HS	40%			X
6	Fox ES	35%	X		
7	Guppy ES	25%	X		
8	Hippopotamus MS	25%		X	





# LEA MOEquity: How does this work?

	High-poverty school per-pupil amount FY 2021	High-poverty school per-pupil amount FY 2022	difference	LEA per-pupil amount FY 2021	LEA per-pupil amount FY 2022	difference	MOEquity met?
School A	\$12,500	\$12,200	<b>-\$300</b>	\$12,000	\$11,000	<b>-\$1,000</b>	Y
School B	\$12,500	\$12,000	<b>-\$500</b>	\$12,000	\$11,000	<b>-\$1,000</b>	Y
School C	\$12,500	\$11,000	<b>-\$1,500</b>	\$12,000	\$11,000	<b>-\$1,000</b>	N



# LEA MOEquity: How does this work?

	High-poverty school per-pupil FTE FY 2021	High-poverty school per-pupil FTE FY 2022	difference	LEA per-pupil FTE FY 2021	LEA per-pupil FTE FY 2022	difference	MOEquity met?
School A	16	14	<b>-2</b>	16	15	<b>-1</b>	N
School B	15	14	<b>-1</b>	16	15	<b>-1</b>	Y
School C	17	15	<b>-2</b>	16	15	<b>-1</b>	N



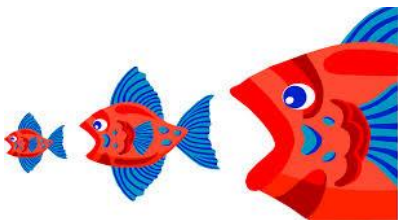
## From the Guidance

- What enrollment data should LEAs use?
  - Use the “most appropriate available enrollment data for the applicable fiscal year”
  - Can be:
    - The same enrollment data the LEA relied on to distribute or allocate funds for that year
    - Prior year enrollment data
    - An average of multiple prior years’ enrollment
    - Projected enrollment data for the next fiscal year



## LEA-Level Requirement: Exceptions

- LEA MOEquity exceptions:
  - LEAs with fewer than 1000 students
  - Single-school LEAs
  - LEAs with one school per grade span
  - LEAs that “demonstrate[] an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency, as determined by the Secretary of Education.”





## Poll Question 3:

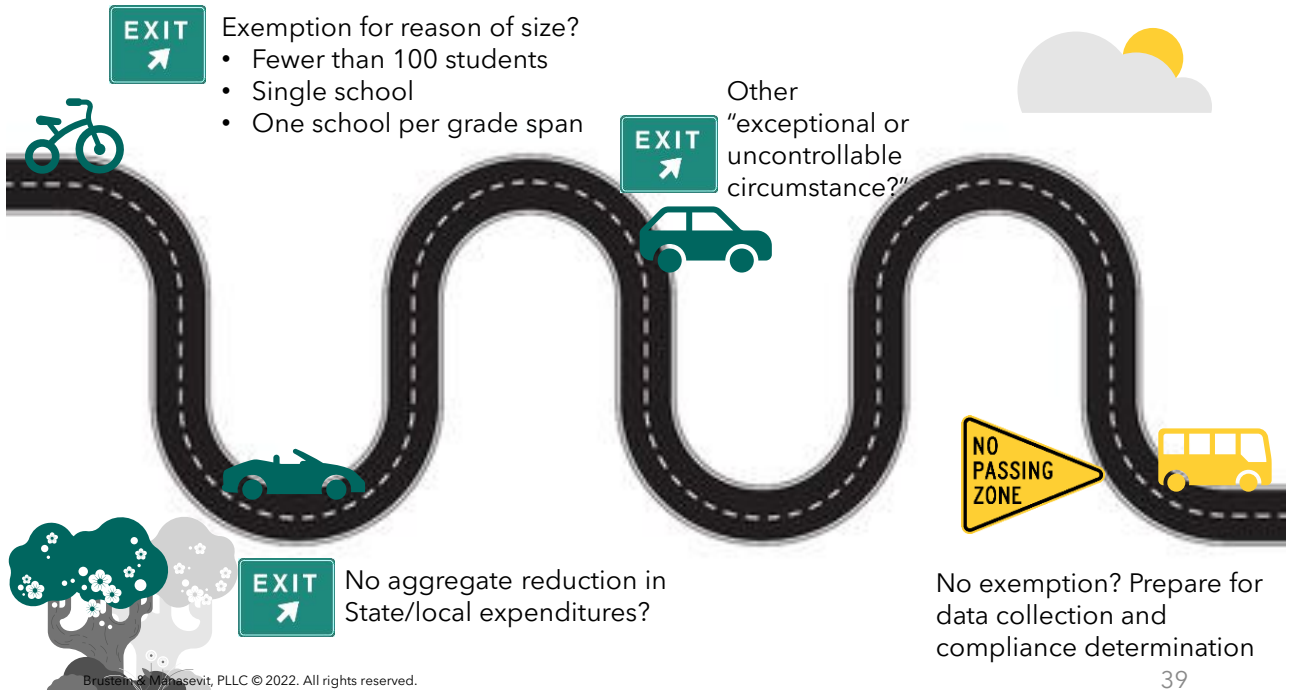
Which of the following LEAs will be exempt from MOEquity?

- A charter LEA with 1200 students across 2 schools
- A district with one high school, one middle school, and three elementary schools
- A small LEA with 150 students at one school site
- A district with 800,000 students that saw a 2% increase in spending each year



## Updated Guidance: New Exceptions

- “Exceptional Circumstances” may include an LEA that “did not and will not implement an aggregate reduction in combined State and local per-pupil funding ...(i.e., is not facing overall budget reductions)”
  - **Now applies in 2022-23** (updated December 2021; previously was only for 2021-22)
  - Must fill out form in guidance Appendix B and submit to State
- For other circumstances, LEAs seek waiver from ED (and copy SEA)
  - ED: “The Department anticipates very few ‘exceptional or uncontrollable circumstances’ that prevent an LEA from maintaining equity”



## MOEquity Timeline updates!

- Deadline was originally March 31, 2022
- March 2022: ED announced through G5 system that it will publish a final rule in the Federal Register
  - "Each State educational agency (SEA) was scheduled to report information regarding the local maintenance of equity requirements to the Department by March 31, 2022, as proposed in the Federal Register. The Notice of Final Requirements has not been published yet, so the proposed March 31st deadline has been postponed. When the final rule is published in the Federal Register, States will be notified and provided with at least 30 days to submit the required reporting elements."



# MOEquity Timelines

March 31, 2022  
State publishes  
exception status for  
2021-22,  
compliance plan

December 31, 2022  
State publishes  
funding and staffing  
levels, compliance  
determinations for  
2021-22

November 1, 2022  
State publishes  
exception status for  
2022-23

December 31, 2023  
State publishes funding  
and staffing levels,  
compliance  
determinations for  
2022-23



# MOEquity Timelines

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**YOU  
ARE  
HERE**

November 1, 2022  
State publishes  
exception status for  
2022-23

December 31, 2023  
State publishes funding  
and staffing levels,  
compliance  
determinations for 2022-  
23

LEA reports on  
funding and  
staffing for 21-22

LEA reports on  
funding and staffing  
for 22-23



## Poll Question 4:

What kind of document does the State have to publish this spring?

- A description of what “equity” means to the SEA
- A plan for funding its schools in 2024 and beyond
- An explanation of its funding structure for members of Congress
- A plan for ensuring LEA compliance with MOEquity
- An evidence-based recipe for a really good margarita



## Enforcement: State-level requirement

- Compliance officially determined after amounts allocated for each fiscal year
- HOWEVER, ED says SEA should “verify whether it will maintain equity prior to making final State and local allocations ... so that the SEA ... is able to modify its State and local allocations... if equity is not achieved.”
- ?????????



## Enforcement: LEA-level requirement

- State must provide on its website “a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity requirements is ensuring that” it is compliant with MOEquity
- Guidance: States should not withhold funding until compliance can be demonstrated
- ????????



## FAQs





## Q: Are charter schools included?

A: YES. Charter schools must be counted as they are legally constituted (as districts if they are charter LEAs, or as schools within an LEA). Charter LEAs may be eligible for an exemption if they have fewer than 1,000 students, but must claim that exemption with the State.



## Q: Does my district have high-poverty schools if all schools are above 40% poverty?

- A: YES. Every district has high-poverty school as defined in ESSER (the top quartile of schools as ranked by the metric set out by the State). This will be at least a quarter of your total number of schools (rounded to the nearest whole number, may be more if using grade-span ranking).





Q: What are other “exceptional or uncontrollable” circumstances that might yield a waiver?

- A: ED guidance suggests:
  - A “very small school where the MOEquity calculations do not result in meaningful information about resource availability”
  - An uncontrollable circumstance “such as a significant change in the expenses of a school that no longer serves a student whose educational and support needs required services that have a particularly high cost.”



Q: Do I have to include federally-funded staff in the staffing test?

A: Yes. ED guidance says ALL contractors and employees, instructional and non-instructional (includes school food if individual contractors or employees, custodial, teachers, aides, SLP, etc. – everyone assigned to or employed directly by a school)



## How long do I have to do this for?

- Stimulus MOE runs 2020-2023
- MOEquity test is applicable for TWO YEARS ONLY: SY 2021-22 and SY 2022-23
- Does not extend beyond that!



## Poll Question 5:

How are you feeling about your compliance with MOE and Maintenance of Equity?

- Confident, and I reinforced my knowledge!
- Still figure it out, but getting there
- I'm not sure...
- HELP!



# Questions?



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**November 30 –  
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