

THE BRUMAN GROUP

Virtual Spring Forum 2023

SNS, MOE, and MOEquity

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New Math: Making It All Add Up After ESSER, GEER, and HEROE

Agenda

- Supplement, not Supplant
- Maintenance of Effort
- Maintenance of Equity

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Supplement Not Supplant

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SNS Requirements

SNS Standard	Programs										
	Title LA	Migrant Education	Title I, A	Title III, A	Title IV, A	REAP / SRSA	21 st CCLC	IDEA	Perkins	ESSER	
State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c)(2)									---
Non-Federal Funds			ESSA Sec. 2301		ESSA Sec. 4110					Sec. 211	---
Federal, State and Local Funds				ESSA Sec. 3115(g)		ESSA Sec. 5232	ESSA Sec. 4204 Subs Non-federal funds 4202(b)(2)(G)	34 CFR 300.164 (g) (SEA); 300.202 a) (LEA)			---

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ESSA Titles I, A Sec. 1118(b) SNS

- A LEA may use Part A funds *only to supplement* the funds that would, in the absence of the Part A funds, be made available from state and local sources for the education of students participating in a Part A program.
- In no case may a LEA use Part A funds to supplant funds from state and local sources.*
- [HTTPS://WWW2.ED.GOV/POLICY/ELSEC/LEG/ESSA/SNSFINALGUIDANCE06192019.PDF](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf)

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SNS “Special Rule” for Title I

An LEA may not be required to...

- 1) identify that an individual cost or service supported with Part A funds is supplemental; or
- 2) provide services through a particular instructional method or in a particular instructional setting.



See ESEA section 1118(b)(3)

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ESSA Title I, A Sec. 1118(b) (cont.)

- **TEST:** An LEA must demonstrate that it has a methodology (e.g., *through written procedures*) and uses it to allocate **state and local funds to each Title I school** [and] ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds—i.e., the LEA’s methodology may not take into account a school’s Title I status
 - ED frames this as “Title I neutral”

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What is a compliant methodology?

- One that results in Title I schools receiving “all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds”
 - Allocation methodology may include allocation of State and local dollars and/or the allocation of resources backed by State and local funds
 - E.g. weighted funding based on student characteristics, staffing distribution
- Methodologies can:
 - Differentiate by grade span or school type (e.g. charters), school enrollment
 - Consider “high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support”

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Exceptions - When may consider Title I Status

- When LEA is allocating more State and local funding to Title I school because of its status
- Where requirements are met but for certain expenditures that meet the “intents and purposes” of Title I
 - SEA or LEA may exclude supplemental state or local funds used for program that meet the *intents and purposes* of Title I, A. SNS Guidance Q&A 7
 - Also applies to the MEP program re: supplemental funds that meet MEP intents and purposes.

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What About District-level Activities?

- If a LEA reserves state and local funds for district-level activities:
- The LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status.
- For example, the LEA reserves the State and local funds for a social worker at the district level.
 - The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.
 - Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance, Section VI

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Are there any SNS exceptions?

- Excluded from SNS Methodology Test:
 - Single School LEAs;
 - LEAs with only Title I schools.
 - A grade span that contains only: a single school, non-Title I schools, or Title I schools.

SNS Guidance Q&A 26

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Title I vs. Other Programs

- For programs outside of Title I-A, can still use:
 - Specific Cost Test
 - Presumptions of Supplanting



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Presumptions of Supplanting

Auditors presume supplanting occurs if federal funds were used to provide services...

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
 - For Title III, A → other federal funds
3. **[Title I, C and Perkins only]** Provided services to eligible students with federal funds, and the same services were provided to non-eligible students with nonfederal funds.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available.

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IDEA Supplement not Supplant - SEA

- *General.* Funds paid to a State under IDEA Part B must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services. (34 CFR 300.164(a))
- “A State may use funds it retains under 300.704(a) [state admin] and (b) [state-level activities] without regard to the prohibition on supplanting other funds.”

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IDEA Supplement not Supplant - LEA

- *General.* Amounts provided to the LEA under IDEA Part B must be used to supplement State, local, and other Federal funds and not to supplant those funds. (34 CFR 300.202(a)(3))
- Compliance Supplement: Supplement not supplant is “not applicable”
 - (Old) ED Guidance: if meet local MOE, then meet supplanting requirement
- Presumptions of supplanting do not apply

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Title III SNS & “other Federal” Considerations

- Legal Obligations to English Learners under Title VI of the Civil Rights Act and the EEOA
- 1) Identify and Assess
- 2) Providing Language Assistance
- 3) Staffing
- 4) Meaningful Access
- 5) Avoid Unnecessary Segregation
- 6) Special Education
- 7) Opt Outs
- 8) Monitoring and Exiting EL Students
- 9) Evaluate Effectiveness of Program
- 10) Communication with LEP Parents

• <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

• Consider Also: OCR Resolution Agreements, Consent Decrees

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Additional “other Federal” Consideration: Title III & Migrant Education Program (MEP)

- SNS Standard
 - Title III - Federal, State and Local Funds, Sec. 3115(g)
 - MEP - State and Local Funds, Sec. 1304(c)(2)
- MEP Q&A Guidance: May MEP funds be used to support the participation of migrant students in another Federally-funded educational program (e.g., a program for ELs funded by Title III)?
 - Yes, however...
 - MEP ‘Unaddressed Needs’ Provision, Sec. 1306(b)(2)
 - Generally requires that MEP funds be used to address the needs of migratory children not addressed by services available from other Federal and non-Federal programs.

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Additional “other Federal” Consideration: Title III & MEP

- Sec. 1306(b)(2) → must provide services to migrant students from other Federal programs *before* using MEP funds to provide services
- Title III Example:
 - Migrant children who are eligible for Title III program must be selected for the program on the same basis as other eligible children.
 - These children should receive services from the Title III program *before* the MEP provides the same or similar service.



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SNS – Additional Program Requirements

- Rural Education Achievement Program (REAP) and Small, Rural School Achievement (SRSA) – include an additional SNS provisions:
 - if the activity is one that would ordinarily be covered with other Federal, State, or local funds (for example, in most cases, standard textbook purchases would ordinarily be covered with State or local funds)
- To rebut the presumptions: “the school district may be able to demonstrate that, because of certain changes, it no longer can support an activity with other Federal, State, or local funds that it supported in the prior year.”
- <https://oese.ed.gov/tag/elementary-secondary-education/page/69/>

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SNS Testing

- SNS is a current to prior year test.
- ESSER and GEER funds do not have a SNS requirement but are considered Federal Funds.
- May be able to use GEER/ESSER funds to remove supplanting presumptions for programs without an “other Federal” SNS test.

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Maintenance of Effort

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ESSA Maintenance of Effort (MOE) Sec. 1118(a) and 8521

- The combined **fiscal effort per student** *or* the **aggregate expenditures** of the LEA
- from *state and local* funds
- from preceding year must not be less than 90% of the second preceding year.

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MOE (34 CFR 299.5)

- ESSA MOE applies to:
 - Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies)
 - Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At Risk)
 - Title II, Part A (Improving Teacher Quality)
 - Title III, Part A (English Language State Grants)
 - Title IV, Part B (21st Century Learning Centers)
 - Title V, Part B (Subpart 2, Rural Education Programs)

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MOE Calculation 34 CFR 299.5

- | | |
|---|---|
| Include state and local expenditures for: | Exclude state and local expenditures for: |
| ▪ Expenditures for administration | ▪ Community services |
| ▪ Instruction | ▪ Capital outlay |
| ▪ Attendance and health services | ▪ Debt service |
| ▪ Pupil transportation services | ▪ Supplemental expenditures made as a result of a declared disaster |
| ▪ Operation and maintenance of plant | |
| ▪ Fixed charges | |
| ▪ Net expenditures to cover deficits for food services and student body activities. | |

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20/21 MOE Example: Expenditure Analysis

MOE Not Met = Reduce by 5.3%		
Analysis for Meeting MOE in Previous Year	Fiscal Effort per Student	Aggregate Expenditures
2018-19 Actual Amount	\$6,100	\$1,000,000
90% of 2018-19 Amount	\$5,490	\$900,000
2019-20 Actual Amount	\$5,200	\$850,000
Difference (Shortfall)	(\$290)	(\$50,000)
Percent Shortfall/Reduction in Award for 2021-22	-5.3%	-5.6%

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MOE Consequences Sec. 8521(b)

5 Year Penalty-Free

- LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.

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MOE Waiver Sec. 8521(c)

Secretary of Education may waive MOE if "equitable":

- Exceptional or uncontrollable circumstances, such as a natural disaster; or
- A change in the organizational structure of the LEA; or
- A precipitous decline in the financial resources of the LEA.

Waiver = meeting MOE!

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IDEA Maintenance of Effort Requirements

IDEA Maintenance of State Fiscal Support (MFS)
IDEA Local Maintenance of Effort (MOE)

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Maintenance of State Financial Support 34 CFR § 300.163

- State requirement to not reduce the amount of state financial support for special education and related services (MFS) made available for children with disabilities
 - Includes ALL State funds
- Subsequent years rule
- Waiver permitted for exceptional or uncontrollable circumstance
 - One fiscal year at a time
 - Contact state lead at OSEP for assistance
 - Note past OSEP decisions, proportionality of cuts analysis

<https://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>

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Failure to Meet State MFS

- Consequences for failure to maintain support:
 - ED reduces allocation for **any** FY following the FY in which the State fails to comply
 - Reduction is the same amount by which the State fails to meet the requirement
 - Following year reverts back to previous level of effort
- Ability of SEA to reduce its fiscal effort is VERY RARE!
(IDEA Regs Section 300.230)

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IDEA Maintenance of Effort (LEA)

The general rule:

- An LEA may not reduce the amount of local, or state and local, funds that it spent for the education of CWDs below the amount it spent for the preceding fiscal year.
- Subsequent years rule

Two components:

- Eligibility standard (34 CFR 300.203(a))
- Compliance standard (34 CFR 300.203(b))

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IDEA MOE: Four Ways to Calculate 34 CFR 300.203(b)

1. Comparison of total expenditures using local funds only.
2. Comparison of total expenditures using State and local funds.
3. Comparison of the per pupil amount using local funds only, or
4. Comparison of the per pupil amount using State and local funds.

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Allowable Exceptions (Reductions) to MOE

1. The voluntary departure or departure for just cause, of special education or related services personnel
 2. A decrease in the enrollment of CWDs
 3. A CWD with an exceptionally costly program (as determined by SEA) left the LEA, aged out, or no longer needs the program
 4. The termination of costly expenditures for long-term purchases (equipment, construction, etc.)
 5. The assumption of cost by the high cost fund operated by the SEA
- (34 CFR 300.204)

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Allowable Exceptions (Reductions) to MOE

For any fiscal year for which an LEA's IDEA allocation exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures for the education of children with disabilities otherwise required by not more than 50 percent of the amount of that excess.

- Must use the reduction on ESSA allowable activities

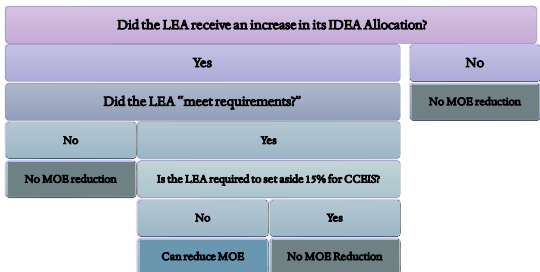
(34 CFR § 300.205(d) & 300.226(a))

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Limitations on Reducing LEA MOE

- If an LEA elects to set-aside Part B funds for voluntary Coordinated Early Intervening Services (CEIS), the LEA must subtract any CEIS set-aside from the LEA MOE reduction amount. 300.205(d) & 300.226(a)
- The LEA, however, is **prevented** from reducing its MOE, if the LEA:
 1. The LEA is identified as having significant disproportionality
 - The LEA **must** set aside 15% of the IDEA funds for comprehensive CEIS – know as CCEIS to address factors contributing to significant disproportionality.
 - OR
 2. The LEA does not meet “meet requirements”

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Failing the Compliance Standard

- SEA payback to ED with nonfederal funds:
 - Lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year
 - Can use most favorable method
- SEA can use State procedures to recover funds from LEA
- LEA MOE Subsequent Years Rule, 34 CFR 300.203(c)
 - If LEA fails to meet MOE requirements, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

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Maintenance of Effort in Stimulus Funds

- Slightly different provisions in all three stimulus bills (CARES, CRRSA, ARP)
- State-level requirement ONLY
- Must maintain State spending for K-12, higher education at a certain level
- Must maintain spending relative to average over 2017, 2018, and 2019
 - In 2020/21 at dollar levels
 - In 2022/2023 at proportional levels of spending
- Can be waived under certain circumstances

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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"

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Maintenance of Effort

- What funding is included?
 - Actual or budgeted spending
 - State or federal FY
 - “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
- Can also include CRF and SLFRF spent on education per ED guidance

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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



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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”

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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.”

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Maintenance of Effort Waivers

- Will look at:
 - Has total/per-pupil funding for education increased from prior year?
 - Has total/per-pupil funding for education decreased over time?
 - Has the State appropriated an increase in funding for future years?
 - Are there specific economic impacts that required reduced spending?
 - What steps were taking to minimize reductions?
 - How did reductions compare to other budget categories?
 - Did State use SLFRF (State and local fiscal recovery funds) from ARP to support education?
 - Is State using ESSER/GEER/HEERF to replace State funding?

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Maintenance of Equity

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Maintenance of Equity

- Guidance from ED (last updated January 2023)
- Comes from the American Rescue Plan (ARP)
 - General concept: States and LEAs must show that they are maintaining equitable distribution of funds to highest need schools in order to get ARP ESSER funds
- Actually four separate tests

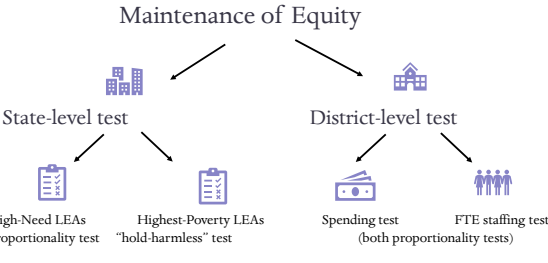


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Maintenance of Equity



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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

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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

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In or out?

- May include:
 - Funds **appropriated and allocated** by the State to all LEAs for current expenditures for free public education
 - CRF/SLFRF dollars allocated to the LEAs (per Jan 2023 guidance updates)
 - **Local revenues**, such as property taxes or taxes on mineral rights, **that are part of a State's "guarantee" for education under State law**
- May not include:
 - Dedicated funds for capital outlay and debt service
 - Other federal funds or local revenues
 - Support from private donors

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State Exceptions



- Funding increases:
 - If an SEA increases or maintains per-pupil funding to all LEAs in FY 2022, then for the purposes of determining whether the SEA has maintained fiscal equity for its high-need LEAs, the reduction is zero.

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State Exceptions

- Small district “tolerance” may be proposed by State
 - SEA must demonstrate:
 - How it has maintained equity
 - Why its level of tolerance is reasonable
 - The submission may also include:
 - A definition of a very small LEA within the State’s context,
 - The number and percentage of LEAs that meet such definition, and
 - The number and percentage of high-need and highest-poverty LEAs that are very small.
 - Definition of the degree of tolerance it would propose to use

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Tolerance Parameters

- ED has approved tolerance requests that identify a “very small” district as:
 - Tiers of 25/100/500
 - Tiers of 5/200
 - Under 180
 - Under 500
 - Under 1,000
- Reductions in spending approved:
 - 5%
 - 10%
 - 15/20/55% scaled to size
 - 7/50% scaled to size

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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



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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 2021
- Include all instructional and non-instructional contractors and employees

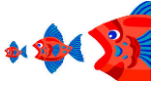
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LEA-Level Requirement: High-Poverty School

- “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.
- 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.
- Identified on a district-wide basis or by grade span

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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.”

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LEA 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”
 - 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.”
- BUT: “The Department anticipates very few ‘exceptional or uncontrollable circumstances’ that prevent an LEA from maintaining equity”

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MOEquity Timelines

July 2022: State publishes exception status for 2021-22, compliance plan

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

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

YOU ARE HERE

July 31, 2023:
Deadline for SEAs to provide final FY 2023 data to ED

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

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Enforcement?

- 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.”
- 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
- ????


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The Future of MOEquity

- MOEquity test is applicable for TWO YEARS ONLY: SY 2021-22 and SY 2022-23
- BUT! Congress is not completely done with the concept
 - Proposed "Pay Teachers Act" (Sanders) would incorporate permanent MOEquity into Title I



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