

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

To: Superintendents of Schools and Charter School Principals **Date:** February 8, 2010
From: Ira Schwartz, Assistant Commissioner for Accountability
Subject: Update on Changes to 2009-10 School Year AYP Determinations for the Students with Disabilities Subgroup

In December 2009, I wrote to you regarding the expiration of flexibility that was made available to states by the United States Department of Education (USED) in December 2002. This flexibility allowed states to make a statistical adjustment to the determination of Adequate Yearly Progress (AYP) for the Students with Disabilities group in recognition that some students with disabilities, who are ineligible to participate in alternate assessments, are unable to demonstrate proficiency without access to an alternate assessment based on modified achievement standards. This statistical flexibility was intended to provide time for states to develop this assessment. Under this flexibility as implemented in New York State, a school or district could be given credit for making AYP if the only group that failed to achieve either the Effective Annual Measurable Objective or Safe Harbor was the Students with Disabilities group, the Students with Disabilities group met the 95 percent participation requirement, and the addition of 34 points to the Performance Index (PI) resulted in the group's PI meeting or exceeding the Annual Measurable Objective. In my December memo, I also noted that Commissioner David Steiner had written to the USED seeking permission for New York to continue during the 2009-10 school year to use this statistical adjustment when determining AYP.

On February 4, 2010, the State Education Department received [correspondence](#) from the USED confirming that the statistical adjustment had sunset and will not be available for the 2009-10 school year.

We regret that we were not able to persuade the USED to change its position, and we will continue to work on your behalf to ensure that as the Elementary and Secondary Education Act (ESEA) is reauthorized the most appropriate mechanisms for holding schools and districts accountable for the educational results of their students are featured in the law.

cc: David Steiner
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