

# **No Child Left Behind: Something Fairly Amazing Happened on December 9**

**by  
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On December 9, the U.S. Department of Education published the final regulations about alternative assessments for students with significant cognitive disabilities.

These regulations affect how school districts and states will make AYP (Adequate Yearly Progress) calculations. The regulations do not affect who may or should take alternative assessments or who will be tested against alternative assessment standards. The IEP team, which includes the child's parents, will still decide how any child with an IEP is tested.

But that is not the noteworthy part.

The regulations contain a new requirement that the school will tell parents the significance of any testing decision the IEP team makes that will affect the child's ability to earn a regular diploma. For example, if the team is considering modifications on state testing that will invalidate the test and would result in the child not being able to pass an exit exam, they must tell the parents.

This is significant, but is not the part that stopped me in my tracks.

One interesting item, but not a surprise, is that while the regulations are specifically about significant cognitive disabilities, they do not include a definition of significant cognitive disabilities.

But that is not what I am referring to either.

To me, the noteworthy event on December 9, 2003, was not the new regulations at all. It was the Federal Register notice that published these new regulations.

A word appeared in the Federal Register that I did not expect to see. The word is in this section that describes what is required by No Child Left Behind. It is one small word - the word **best**.

"The Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and title I require inclusion of all students with disabilities in the State assessment system. Title I further requires that the assessment results for all students (and all students with disabilities, among other groups) who have been enrolled in a school for a full academic year be used in calculating AYP for the school, and that the assessment results of students who have been in a district for a full academic year be used in calculating AYP for the district and the State. System accountability should be just that-- accountability for everyone in the system. Students with disabilities are a part of the student body. Most of these students spend the majority of their time in general education classrooms, and receive instruction from regular classroom teachers. Regardless of where

students receive instruction, all students with disabilities should have access to, participate in, and make progress in, the general curriculum. Thus, all students with disabilities must be included in the measurement of AYP toward meeting the State's standards."

"Several critical elements in title I as amended by the NCLB Act ensure that schools are held accountable for educational results, so that **the best education possible is provided to each and every student** (emphasis added). Three critical elements--academic content standards, academic achievement standards, and assessments aligned to those standards--provide the foundation for an accountability system ensuring that students with disabilities reach high standards. State assessments are the mechanism for determining whether schools have been successful in teaching students the knowledge and skills defined by the content standards. States are required to hold all students to the same standards except that these regulations permit States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards."

I have been wondering if the No Child Left Behind law is too good to be true.

When I first heard the President talk about this law, he was making a speech about a bill that would be introduced. I was only half listening. But when I heard him say **all**, I started to pay more attention. Then I read his speech on the Internet. It really did say **all**.

I figured there would be a lot of talk in Congress. I thought a watered-down version would emerge from Congress and things would not change. The next thing I knew, the President was on television again. He was talking about enacting the No Child Left Behind Act.

Then we waited for the regulations. Surely the regulations would water down the law. But they did not.

Of course, the law would never be enforced. But it has been, most of the time.

I have met some of the people who are charged with helping the states comply with the law. They are the real deal. But that must just be a fluke, too. The U. S. Department of Education will not stand up to states and force them to comply with the law as it is written. They would never really mean to, and succeed in, educating **all** children. Not really **all**.

Or would they?

Read the [Federal Register notice](#). It is long. Print it out and highlight the important parts. Read all the way through to the comments the U. S. Department of Education received when they asked for public comment on the proposed regulations.

See how these final regulations came about. See the thought process. Pay attention to the language used.

They really do mean **all**.

## **NCLB Links**

[Press release \(December 9, 2003\)](#)

[Webcast from U. S. Department of Education](#)

[Fact Sheet](#) (2 pages)

**Federal Register, Volume 68, Number 236 (December 9, 2003)**

[Page 68697-68708]

[Regulation reported in Federal Register](#) (html)

[Regulation reported in Federal Register](#) (PDF)

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## About Sue Heath

Sue Heath is co-author of [\*Wrightslaw: No Child Left Behind\*](#) (ISBN: 1-892320-12-6) published by [Harbor House Law Press](#). She also writes [Doing Your Homework](#), a column about creative advocacy strategies that is available on [Wrightslaw](#).

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