

# ***Primum Non Nocere: First, Do No Harm***

*An Ethical & Psychology-Based Analysis of The U.S. Department of Education's Change In Common Core Testing Policies for Divergent Learning Children In Public Schools*

#SpecialEducationKidsMatter



## Forward:

*Primum non nocere* in Latin means "first, do no harm." One of the elemental precepts of ethics, taught across disciplines and throughout the world, this ancient principle holds that given an existing problem, it may be better not to do something, or to do nothing, than to risk causing more harm than good. It reminds the doctor, the psychologist and the educator that he or she must consider possible damage that any intervention might do and to invoke *Primum non nocere* when considering use of any intervention that carries a less- than-certain chance of benefit.

As objective, local clinical community scientists, we at Early Life Child Psychology and Education Center have had no previous interest or involvement in education public policy or in politics. Our involvement now stems from observations as professionals, is founded on ethics, and must increase as we see that as a consequence of changes in education policy, many children's lives are being fractured.

We are not a special interest group: within the walls of our Education Psychology Clinic are professionals from diverse cultural, political, ethnic and religious backgrounds, united under one cause: the ethical and safe practice of administering psychological assessment, therapy, and educational interventions to "divergent learning" children who reside in our respective communities in Southern California, and Salt Lake City, Utah. We are African Americans, Caucasians, Latinos, Asians, progressives, tea party activists, socialists, LGBT, traditionally married and single parents, agnostics and conservative Christians.

The harmony we share as a diverse group of clinicians-educators, dedicated to serving the needs of children, has not been duplicated by the diverse group of political and corporate public policy makers who have been entrusted with decision-making power. We here note: that agenda-laden political and corporate partnerships, entrusted with power, have made life-altering decisions regarding education policies for children in public schools, placing their interests above the

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direct needs of children, resulting in ground-level chaos we have heretofore never seen.

This paper is written not only because of our professional observations of increased numbers of suffering public school children whom our clinic serves; it is also written in response to recent public policy changes, initiated by U.S. Department of Education Secretary Arne Duncan under the 2015 reauthorization of No Child Left Behind, regarding assessment practices and states' loss of authority over the education of our nation's "special education" children. Those new policies and the cited research, upon which they claim to be based, are herein examined.

Under the light and concept of ethics, using ethical application of peer-reviewed science toward the subject matter of testing and mental health, this paper examines the influence of each on education policies. It will be clear to objective readers that Secretary Duncan's policies do not share the ethical professionals' commitment to the standards set by the American Psychological Association's (APA) Code of Ethics. The US Department of Education's interpretation of cited "studies" used to justify policy changes have been dangerously manipulated and are utilized to achieve political goals at the expense of millions of public school children.

We strongly encourage politicians, policy makers, and state education leaders to examine education policies under the light and scope of ethics, as opposed to catering to the requests of corporate and political special interests. Failure to do so will result in harm to our nation's vulnerable divergent learning children, including African American, Latino, autistic, dyslexic, gifted, mentally ill, poverty-stricken, and "learning disabled" children.

Parents, not governments, are and must always be the resident experts of their own children.

May readers be endowed with discernment and wisdom as they ponder the effects of policy in the service of children.

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## **Acknowledgements:**

### **2. Wendy Hart & Brian Halliday:**

Alpine District school board members, whose intellect and courage, in the face of much ridicule and derision, has been an inspiration to thousands of parents nationwide.

### **3. Colorado public school teacher Peggy Robertson:**

Ms. Robertson's courageous stance against high stakes, experimental achievement testing for and behalf of poverty stricken African American and Latino youth in America, set the tone nationwide for public school teachers to find their voices.

### **4. 2016 Utah Gubernatorial Candidate Jonathan Johnson & Staff:**

For challenging the current incumbent, and high stakes testing proponent against all odds, so that ground level parents and teachers can best meet the needs of students, as opposed to corporate and political interests.

### **5. Parents, educators and advocates in the States of New York & Florida:**

Proof positive that opposition to the high stakes testing opposition is a culturally and politically diverse endeavor.

### **6. Licensed Clinical Psychologist Dr. Francis Thompson:**

Her creative and ethical service to children in our community, as well as her own large contingent of kids/teens in her own home, has been inspirational.

## **Media Inquiries:**

Please direct all inquiries for media requests, interviews, or commentary to Mr. Brook Wardle, Chief Operations Officer/Spokesperson for Early Life Psychology, via email ONLY:

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## Guide to Content:

Eight direct statements were examined from the U.S. Department of Education's August 2015 Rule titled: "*Improving the Academic Achievement of the Disadvantaged: Assistance to States for the Education of Children With Disabilities.*"

Every factual statement written by the USDOE that was referenced and cited to peer reviewed research as support for their policy changes was examined separately under the heading of "USDOE STATEMENT OF FACT #\_\_."

All eight "USDOE STATEMENT OF FACTS" were directly copied and pasted from the "Rule" to this review document. The statement of fact will be quickly and concisely reviewed and evaluated under the following subheadings:

1. **Research cited to support USDOE's factual statement:** A direct citation of the research cited by USOE is provided.

2. **Scope & Limitations of USDOE Cited Research:**

The size and conceptual scope of the research, and cautionary limitations of the cited research, often quoted directly by authors.

3. **Summary & Conclusion:**

A straightforward, brief summary analysis to determine if the research cited by the U.S.D.O.E., was relevant and supporting of the factual statement.

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Prior to presenting the Department of Education's eight "statement of facts", we have copied and pasted the Department's "Summary" and "Background" sections of the Rule for your brief review.

The full 8-page ruling can be found at this link:

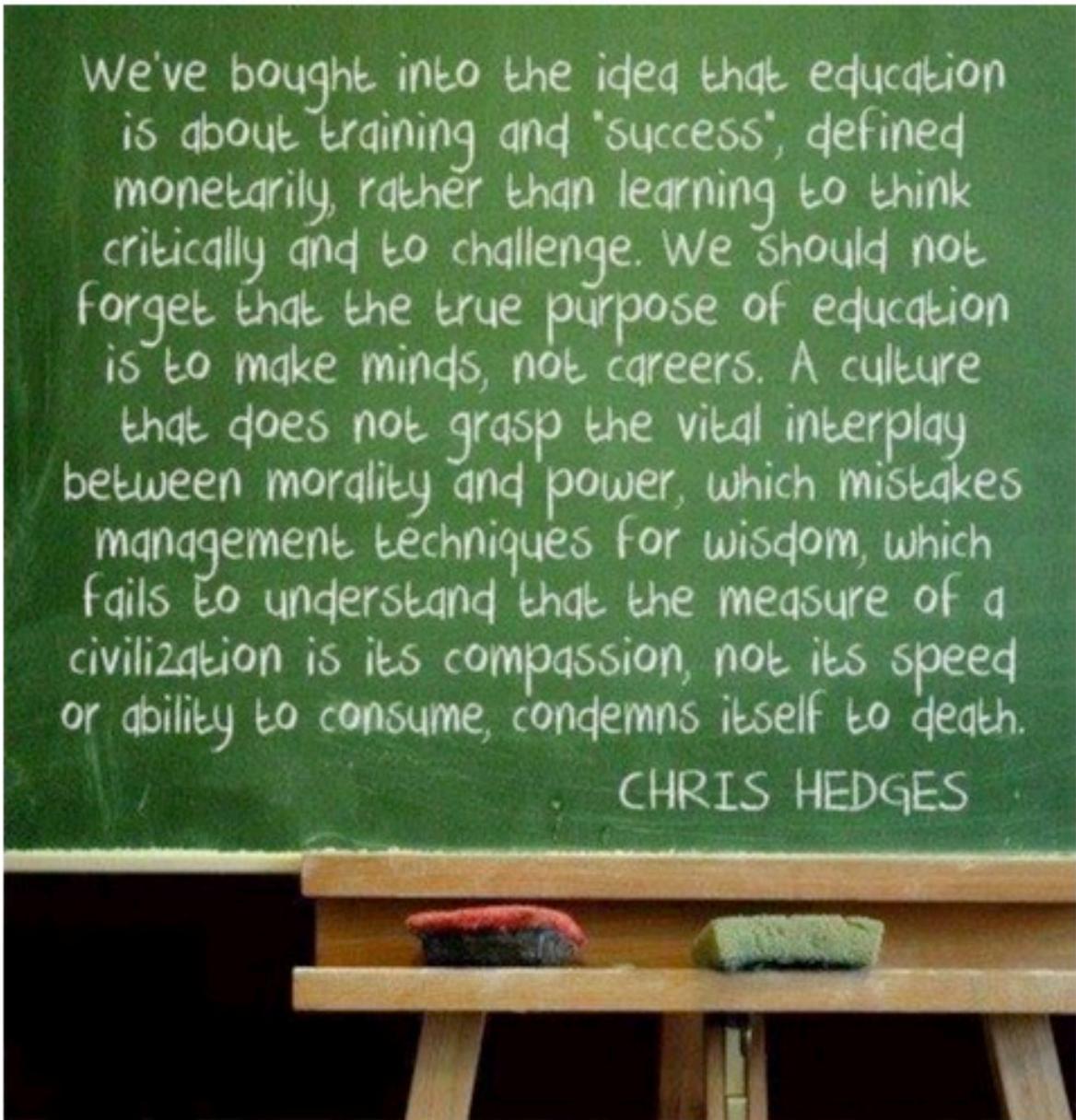
<http://www.noticeandcomment.com/Improving-the-Academic-Achievement-of-the-Disadvantaged-Assistance-to-States-for-the-Education-of-Children-fn-292468.aspx>

This review will close with a conclusion message to all stakeholders in public school education, and a reference to several applicable American Psychological Association (APA) ethics.

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We've bought into the idea that education is about training and "success", defined monetarily, rather than learning to think critically and to challenge. We should not forget that the true purpose of education is to make minds, not careers. A culture that does not grasp the vital interplay between morality and power, which mistakes management techniques for wisdom, which fails to understand that the measure of a civilization is its compassion, not its speed or ability to consume, condemns itself to death.

CHRIS HEDGES



**U.S. DEPARTMENT OF EDUCATION  
AUGUST 2015 RULE:**

**“Improving the Academic Achievement of the  
Disadvantaged; Assistance to States for the  
Education of Children With Disabilities”**

**AGENCY:**

Office of Elementary and Secondary Education, Office of  
Special Education and Rehabilitative Services

**ACTION:**

Final regulations.

**USDOE’s SUMMARY:**

The Secretary amends the regulations governing title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (the “Title I regulations”), *to no longer authorize a State to define modified academic achievement standards and develop alternate assessments based on those modified academic achievement standards for eligible students with disabilities.*

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In order to make conforming changes to ensure coordinated administration of programs under title I of the ESEA and the Individuals with Disabilities Education Act (IDEA), the Secretary is also amending the regulations for Part B of the IDEA.

### **DATES:**

These regulations are effective September 21, 2015.

### **Background:**

In 2007, the Department amended the Title I regulations to permit States to define modified academic achievement standards for eligible students with disabilities and to assess those students with alternate assessments based on those modified academic achievement standards. The Department promulgated those regulations based on the understanding that (1) there was a small group of students whose disabilities precluded them from achieving grade-level proficiency and whose progress was such that they would not reach grade-level achievement standards in the same time frame as other students, and (2) the regular State assessment would be too difficult for this group of students and the assessment based on alternate academic achievement standards would be too easy for them. 72 FR 17748 (Apr. 9, 2007). In addition, at that time, the Department acknowledged that measuring the academic achievement of students with disabilities, particularly those eligible to be assessed based on modified academic achievement standards, was “an area

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in which there is much to learn and improve” and indicated that “[a]s data and research on assessments for students with disabilities improve, the Department may decide to issue additional regulations or guidance.” 72 FR 17748, 17763 (Apr. 9, 2007).

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## **BRIEF OUTLINE OF USDOE'S CHANGES TO EXISTING ASSESSMENT RULES:**

1. States may no longer define modified achievement standards for the vast majority of divergent learning students in public schools.
  2. States may no longer develop alternative assessments based on modified achievement standards (with the exception of a small percentage of children ill-defined and labeled "severely cognitively impaired").
  3. Prior April 2007 modifications allowed such action under the premise that students with disabilities would not reach grade level achievement standards in the same time frame as other students.
  4. Prior April 2007 modifications allowed testing modifications under the premise that students with disabilities would find the regular State Assessments too difficult.
  5. Prior April 2007 modifications stated that **"as addition data and research was obtained in the future on tests for students with disabilities, the Department "may decide to issue additional regulations for guidance". (72 FR 17748, 17763 (Apr. 9, 2007).**
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### **Summary:**

The Department of Education now requires that states can no longer modify academic standards for students with disabilities (with the noted “exception” of the most cognitively impaired special education students), nor can states develop alternative assessments for those modified assessments.

**The Department of Education justified these new rule modifications from the prior 2007 rules based on new research** that it claims supports the idea that all students with disabilities can perform on the same grade level as traditional students, and that students with disabilities can be tested fairly on the same test used by traditional students. An examination of the claims of the USDOE, and its research, which the Department says supports these claims, are outlined in the next section.

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FACTUAL STATEMENT  
ANALYSIS OF USDOE’S  
SUPPORTING RESEARCH

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## **USDOE FINDING OF FACT #1:**

*“Since these regulations went into effect, additional research has demonstrated that students with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided.”*

### **Research Cited To Support the USDOE’s Factual Finding #1:**

Scruggs, T., Mastropieri, M., Berkeley, S., & Graetz, J. (2010). Do Special Education Interventions Improve Learning of Secondary Content? A Meta-Analysis. *Remedial and Special Education, 31*(6), 437-449.

### **Scope & Limitations of USDOE Cited Research:**

1. Meta Analysis of existing research; not an original research study:

*(“To address these issues, we conducted a comprehensive literature search and synthesis”)* P.437

2. Criterion for inclusion in this study *did not include* elementary students from
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Kindergarten to grade 5:

*("Included in this meta-analysis were original content area intervention studies that included data on secondary aged students with disabilities for which standardized mean difference effect sizes could be computed. Students were considered secondary if they were identified as attending classes in middle schools, junior high schools, or high schools.")* (P. 438).

3. Content areas examined for this study were limited to only science, social studies, and English. Math and reading were *not included* in this meta-analysis:

*("Content area interventions included content relevant to any area within science (e.g., chemistry, biology), social studies (e.g., history, geography), or English.)* P.438

4. The mean grade level of participants reviewed was 8<sup>th</sup> grade:

*("Of the 67 studies (95.7%) that provided grade-level information, students were enrolled at a mean grade level of 8.3 (SD = 1.5)."* p. 439

5. The mean I.Q. level of reported participants was "Average":

*(The 42 (60.0%) studies that included IQ information reported a mean sample IQ of 91.2 (SD = 7.2).)* P.439

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6. Only 4.3% of the students examined in the Meta analysis were categorized as emotionally/behaviorally disturbed:

*“(Including students with emotional/behavioral disabilities (4.3%).). P. 439*

7.). Only 50% of the studies examined reported data on race/ethnicity. The studies that reported data on race and ethnicity were not sufficient in number to warrant substantive conclusions:

*“(These proportions overrepresented Caucasian students (61.7%) and underrepresented African American (20.5%), Hispanic (14.6%), and Asian/Pacific Islander (1.9%) students (USDOE, 2005)”). P. 440*

8. Only 10% of the studies examined reported subject matter data on English:

*“(More studies were conducted in the area of science (40.0%), followed by social studies (34.3%), English(10.0%) ). P. 440*

9. Researcher’s state that “unfortunate” limitations of this study are the lack of demographic variables:

*“(It was unfortunate to note that not all studies reported important demographic variables, such as gender and race/ ethnicity. Such information*

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*can provide information regarding whether research samples are representative of the students placed in special education today.)* P. 445

10. The study was paid for by the USDOE:

*(“Research for this article was supported in part from grants from the U.S. Department of Education, Office of Special Education Programs, numbers H325D020020, H325D070008, and H324C020085.)*

### **Summary & Conclusion:**

This peer-reviewed study cited by the USDOE, as “evidence” that all special education students “struggling in reading and mathematics” can “successfully learn grade level content,” is a claim that is clearly not supported. Specifically, the subject of math was not examined, *no Kindergarten through Grade 5 students were part of this meta-analysis*, and an extremely limited number of emotionally disabled, African American, Latino, or Pacific Islanders were examined. The study was funded by the U.S. Department of Education.

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## **USDOE FINDING OF FACT #2:**

**“In addition, nearly all States have developed new college- and career-ready standards and new assessments aligned with those standards. These new assessments have been designed to facilitate the valid, reliable, and fair assessment of most students, including students with disabilities who previously took an alternate assessment based on modified academic achievement standards.”**

### **Research Cited To Support the USDOE’s Factual Finding #2:**

NONE

### **Scope & Limitations of Cited Research:**

NOT APPLICABLE. NO INDEPENDENT RESEARCH CITED.

### **Summary & Conclusion:**

Not one of the Common Core testing consortia funded by grants from the U.S. Department of Education, and the Bill and Melinda Gates Foundation (SBAC, PARCC, AIR) who designed these new Common Core assessments, has published independently reviewed validity data on special education students (or any students for that matter).

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“Validity”, simply put, is the process of providing empirical evidence that a designed test performs as it’s stated purpose.

In the absence of such documentation, it is reasonable to conclude that the USDOE of educations statement in this regard, has no basis in truth, and to change policies based on this assertion is a potentially dangerous and far-reaching violation of ethics in the fields of psychology and psychometrics.<sup>1</sup>

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<sup>1</sup> The Florida Department of Education (FLDOE), under pressure from lawmakers and activists, paid \$600,000.00 to a private psychometric research group, Alpine Testing, to perform a validity test on their high stakes, experimental Common Core achievement test. The non-peer reviewed results of their study were published September 1, 2015. The scope, depth, and subject matter of inquiry of the test review deviated *radically* from traditional psychological methods of scientific assessment validity inquiry. We elected to not provide legitimacy to FLDOE’s politically driven “validity” project by providing extensive commentary to a report that does not place the legitimate science of psychometric validity in a true and accurate light.

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## **USDOE FINDING OF FACT #3:**

**“Therefore, we believe that alternate assessments based on modified academic achievement standards are no longer needed and, with high-quality instruction and appropriate accommodations, students with disabilities who took an alternate assessment based on modified academic achievement standards will be able to demonstrate their knowledge and skills by participating in the new general assessments.”**

### **Research Cited To Support the USDOE’s Factual Finding #3:**

Thurlow, M. L., Lazarus, S. S., & Bechard, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities*. (Note: This research was not peer reviewed, and was prepared by a “think tank” funded in full by the USDOE).

### **Scope & Limitations of Cited Research:**

1. Research was not peer reviewed, was funded by the USDOE and was written in collaboration with the USDOE-partnered education reform group, Council of Chief State School Officers.
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2. The compilation of multiple articles submitted by multiple State Offices of Education did not address specific special education populations.
  
3. Every separate article placed in this document *cited the need for further research*, and mostly relied on "surveys" of education teachers as the source of their data.

### **Summary and Conclusions:**

*Not one sentence*, or article submitted in this compilation of papers by various state education agencies, supported (or even mentioned) the USDOE's premise that alternative assessments should be eliminated for any population of public school students. In fact, multiple articles cited herein, suggested the need for further research on how to implement better alternative assessments for special education children in their respective states.

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## **USDOE FINDING OF FACT #4:**

“The assessments being developed by States based on college- and career-ready standards, including those developed by PARCC and the Smarter Balanced Assessment Consortium, do not eliminate the authority or need for States to administer alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities.”

### **Research Cited To Support the USDOE’s Factual Finding #4:**

NONE

### **Scope & Limitations of Cited Research:**

NOT APPLICABLE. NO INDEPENDENT RESEARCH CITED.

### **Summary & Conclusion:**

The USDOE has not issued eligibility criteria of what constitutes a special education student having “significant cognitive disabilities.” USDOE has stated within this document that these students will comprise approximately 10% of

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all disabled students in a given population. This narrow and arbitrary definition excludes minority groups who have traditionally not performed well in high stakes testing arenas (e.g., African American, Latino students, etc.) and also takes away local States’ choices so that they cannot create and implement alternative assessments for children with dyslexia, severe emotional disturbances and disabilities, and children who have been diagnosed as being along the autistic spectrum.

To date, no peer reviewed publication in the world has opined that the education or clinical psychology community has ever designed a high stakes achievement test that has achieved a high level of validity for the aforementioned groups of children and teens in public school systems. USDOE is thus dictating the use, application, and interpretation of a test not validated for these specific purposes or interpretations.

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## **USDOE FINDING OF FACT #5:**

**“Research demonstrates that low-achieving students with disabilities who struggle in reading [6] and low-achieving students with disabilities who struggle in mathematics [7] can successfully learn grade-level content when they have access to high-quality instruction.”**

### **Research Cited To Support the USDOE’s Factual Finding #5 (Reading):**

Allor, J. H., Mathes, P. G., Roberts, J. K., Cheatham, J.P., & Champlin, T. M. (2010). Comprehensive reading instruction for students with intellectual disabilities. *Psychology in the Schools, 47*, 445- 466

#### **Scope & Limitations of Cited Research:**

1. Extremely small sample size of study participants. Only three students were used: (“*Three students were selected based on teacher recommendation and difficulty in transferring skills on progress monitoring measures. The participants were Justin, Grace, and Kristen. Justin was an 8-year-old Hispanic male with an IQ of 52. Grace was a 10-year-old Hispanic female with an IQ of 59. Kristen was a 12-year-old African American female with an IQ of 45.*”) P.348

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***(“Clearly, we urge caution in interpretation of our findings given the small number of participants.”) P.354***

2. No independent investigation was taken to verify the accuracy and efficacy of the I.Q. scores of the participants located in their school records files. Regardless, by all indication, all three participant’s scores indicate “mental retardation” on a severe level.

3. The psychometric instrument to measure “reading” performance in this study was the DIBELS. No validity measures were provided for this instrument. No commonly used measures of reading that have decades of peer reviewed validity studies attributed to them were utilized for this study:

***(“Progress monitoring scores, specifically Dynamic Indicators of Basic Early Literacy Skills (DIBELS; Good & Kaminski, 2002), phoneme segmentation fluency (PSF), nonsense word fluency (NWF), and first-grade ORF subtests were used to identify students who showed limited growth despite some progress during the daily instructional sessions.”) P. 349***

4. The study does not conclude that the end result of the interventions provided, resulted in these children learning how to read. ***(“In summary, these preliminary results provide promising evidence that even students who initially do not respond to systematic instruction can learn to improve their ability to sound out and unitize words.”) P. 355***

5. The study did not, on any level, conclude (or even examine) whether the three participants were ever able to read at grade level.

6. Study funded by the “*Institute of Education Science,*” an arm of the USDOE.

### Summary & Conclusion:

Given the small sample size, as well as the other serious limitations in this study provided above, an attempt by the USDOE to utilize such psychometrically weak and/or non existant evidence to support broad claims that all students with

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disabilities can read at grade level with proper instruction, is fanciful at best, and deliberately deceitful at worst.

(The two other articles cited to support the USDOE statement specifically dealt with ADHD, and "interventions" to improve reading. Neither study provides any support for the USDOE's broad claims, and were not worthy of this reviewer's additional time to write up the deficiencies of the studies, as such related to the USDOE claims. For those who wish to review them; they are cited in the USDOE references under #7).

## **Research Cited To Support the USDOE's Factual Finding #5: (Math):**

Fuchs, L. S. & Fuchs, D., Powell, S. R., Seethaler, P. M., Cirino, P. T., & Fletcher, J. M. (2008). Intensive intervention for students with mathematics disabilities: Seven principles of effective practice.

### **Scope & Limitations of Cited Research:**

1. *This was the first independent, peer-reviewed article cited by the USDOE that was not funded by the Department of Education. It was very well written.*
  2. The authors listed "Seven Principles in Designing Effective Intensive Interventions" for student with math disabilities. One intervention, "Ongoing Progress Monitoring" was formed under the premise that "**no instructional method, even those validated using randomized control studies, works for all students**". P.86
  3. Individually tailored programs of intervention are needed. (*"We also emphasized that the last principle, ongoing progress monitoring to quantify*
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*response and formulate individually tailored programs, may be the most essential principle of intensive intervention.”) P. 86*

4. The focus of this research was *limited to only 3<sup>rd</sup> grade* students.

### Summary & Conclusion:

*This was the most complete, independent, interesting and well-researched article thus far cited by the USDOE, yet does not support the overreaching conclusions of the Department’s rule change in any aspect of its scholarly work. (In fact, this article may lend itself to the notion of even more diverse methods of intervention, teaching, and testing of children who suffer from math disabilities than what may be on the current “curriculum menu” in many public schools.)*

**Nevertheless, a well written and crafted study limited to just 3<sup>rd</sup> grade students, does not support USDOE premise that *every* learning disabled child in America can, and will benefit from current interventions developed and implemented in public schools.**

(The last article cited by the USDOE as evidence of efficacy for the 5<sup>th</sup> “finding of fact”, was written directly and published by the USDOE and will not be reviewed. The subject matter is based on “Response to Intervention”, and it is general knowledge amongst educational and neuropsychologist in the field that this practice, although effective amongst some student populations, has no peer-reviewed backing that suggests that it can be used on all reading “disabled” students successfully in the entire country.)

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## **USDOE FINDING OF FACT #6:**

*“the developers of the new generation of assessments considered the needs of students with disabilities to ensure that the assessments are designed to allow those students to demonstrate their knowledge.”<sup>[9]</sup>*

### **Research Cited To Support the USDOE’s Factual Finding #6:**

For additional information on assessment accommodations, see: PARCC Accessibility Features and Accommodations Manual (Nov. 2014) at [http://www.parcconline.org/sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14\\_final.pdf](http://www.parcconline.org/sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14_final.pdf).

### **Scope & Limitations of Cited Research:**

1. Disturbingly, test developer cited by the USDOE (PARCC) to support this bold premise, no longer has the link listed above on its corporate site. (“*The requested URL /sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14\_final.pdf. was not found on this server.*”).

### **Summary & Conclusion:**

There are no independent studies (or even grant-supported studies from the USDOE) in existence, which indicates that Common Core test developers (PARCC, AIR, SBAC) have published validity documents indicating that they

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*“considered the needs of students with disabilities to ensure that the assessments are designed to allow those students to demonstrate their knowledge.”* More than likely, these high stakes, Common Core developed tests are *still in the experimental phase of development* while they are being currently used on special education students, as well as every other child in public schools in the nation.

*Evidence strongly suggests that the above-named testing consortia and developers, supported by tax payers’ dollars, may in fact be in the midst of the largest, most comprehensive experimentation --as defined by the Ethics Code of the American Psychological Association-- on American public school children, in our nation’s history.*

If, in fact, independent investigations confirm this well-grounded theory, the U.S. Department of Education, and Secretary Arne Duncan, are in violation of multiple APA (American Psychological Association) assessment and experimentation ethics codes. (See APA Ethics Codes 8.02 “Informed Consent to Research” & 8.07 “Deception in Research” & 9.03 “Informed Consent In Assessments” <http://www.apa.org/ethics/code/principles.pdf>)

The basic foundational purpose of conforming assessment and research practices to ethics codes is to ensure that vulnerable populations, such a special education students, are not exploited and/or harmed.

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## **USDOE FINDING OF FACT #7:**

**“We learned through States that received funding from the Department through the GSEG and EAG programs that some students with disabilities who might be candidates for an alternate assessment based on modified academic achievement standards may not have had an opportunity to learn grade-level content, and more effort was needed to support teachers in ensuring students have meaningful opportunities to learn grade-level content..... Six of the projects found that students who might be candidates for an alternate assessment based on modified academic achievement standards had difficulty...”**

### **Research Cited To Support the USDOE’s Factual Finding #7:**

Thurlow, M. L., Lazarus, S. S., & Bechar, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

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## **Scope & Limitations of Cited Research:**

*(Note: This same compilation of research "studies" was cited above in Findings of Facts #3. The "limitations" noted in #3 are applicable and repeated below).*

1. Research is not peer-reviewed and is funded by the USDOE. It was written in collaboration with the Council of Chief State School Officers, a group long partnered with USDOE (for example, USDOE and CCSSO partnered in the creation of national common educational data standards, called CEDS.)
2. The compilation of multiple articles submitted by multiple State Offices of Education did not address specific special education populations.
3. Every article placed in this document cited the need for further research, and mostly relied on "surveys" to education teachers.

## **Summary and Conclusions:**

A statement of belief by the USDOE that "*more effort was needed to support teachers in ensuring students have meaningful opportunities to learn grade-level content*" is not justification to limit local and states' judgment and creativity with regard to modifying assessments and curriculum for special education students.

Not one sentence or article submitted in this compilation of papers by various state education agencies, supported (or even mentioned) the USDOE's premise that alternative assessments should be eliminated. In fact, multiple articles cited herein the need for further research on how to implement better alternative assessments for special education children in their respective states.

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## **USDOE FINDING OF FACT #8:**

**“Parents and teachers have the right and need to know how much progress all students, including students with disabilities, are making each year toward college and career readiness. That means all students, including students with disabilities, need to take annual Statewide assessments.”**

### **Research Cited To Support the USDOE’s Factual**

#### **Finding #8:**

NONE

### **Scope & Limitations of Cited Research:**

NOT APPLICABLE. NO INDEPENDENT RESEARCH CITED.

### **Summary & Conclusion:**

It would be reasonable and proper to assume that parents and education stakeholders would “have the right and need to know” how much progress their divergent learning students were making *academically*.

The USDOE, however, insists that parents and teachers need to know about students’ “career and college readiness.” What exactly is “career- and college readiness” and how does such a confusing and undefined standard apply to children and teens with diagnosed learning disabilities?

What evidence does the USDOE have to show that all students wish to have a career, and if so, are at a developmental or life-experience level to start to think along those lines?

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What evidence does the USDOE have to show that it is responsible, or even possible, to assess for "college readiness" for divergent-learning students?

What evidence does the USDOE have to make the unilateral decision, on behalf of every student and scientist living in the country, without regard to the judgment or wishes of individual students, parents, teachers, doctors, or states, that all students, including students with disabilities, "must take annual statewide assessments?"

How ethical is it to require every public school student in the country to take an experimental test, without their informed written consent; a test that has yet to undergo independent validity reviews by any organization free of contractual ties to either the U.S. Department of Education or the Bill and Melinda Gates Foundation?

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## **FINAL CONCLUSION AND SUMMARY OPINIONS:**

We need to know much more than we now know about the actual consequences of implementing large-scale, high-stakes assessment and accountability systems. It is *assumed* that holding schools responsible for improved outcomes for students with disabilities, will lead to increased instructional effort, improved instruction, and better outcomes. A government education agency, making policy changes based on assumptions, is engaging in experimentation-- unethical experimentation on our nation's most vulnerable children.

Educators do not yet have the science to know how to teach most of these standards to students with moderate and severe developmental disabilities. At the present time little is known about how much academic content students with moderate and severe learning and emotional disabilities can learn in traditional public school settings.

Common sense, as well as decades of peer-reviewed research in the areas of cognitive and developmental psychology, indicates strongly that *restricting students to curricula beyond their cognitive capacities substantially lowers their achievement.*

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Test publishers often have not conducted adequate research on how accommodations affect test validity. It is unfair and discriminatory to penalize a student with a disability, any disability, for using a needed accommodation on an assessment, simply because the test publisher has not conducted the necessary research about the effect of the particular accommodation on the test.

In fact it is unfair, discriminatory and unethical to require *any* student to take a test that, by all accounts, is an experimental design that has yet to undergo extensive, independent validity reviews. **There should be candor not only about what is known about these high stakes, computer adaptive assessments, but also about what is unknown.** (LORAN Commission, 1988, p. 27) (LORAN Commission. (1988). *Report of the LORAN Commission to the Harvard Community Health Plan: Harvard Community Health Plan, Boston, MA.*)

Assessment technology, like medical technology, is not perfect; there are potentially harmful side effects associated with treatments determined to be *generally* safe and efficacious. We certainly are not suggesting to throw the baby out with the proverbial bathwater. (We utilize the same, if not similar, innovative assessment technologies as the education system). However, like physicians and clinical psychologists, educators should know the nature and extent of research

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documented harmful side effects on vulnerable groups of children, *before* adopting any high- stakes testing program. Always, there must be informed, written consent from parents.

Failure to do so places special education students in positions of being subjected to frustrations that may exacerbate known, as well as unknown, potential comorbid emotional disorders that many of these students may possess.

We encourage public school districts across the nation to disprove our well-researched and disturbing hypothesis, that not one district website in the entire nation has notified parents of the experimental nature of Common Core high-stakes testing, nor has a single one of the government-funded test makers ever completed independent, peer reviewed validity studies on these assessments.

These "lies of omission," perpetuated and sponsored by the U.S. Department of Education under the leadership of Secretary Duncan, *will continue to have dangerous consequences for traditionally "test vulnerable" African American, Latino, Pacific Islander, autistic, dyslexic, dual-exceptional, poverty-stricken, and emotionally disturbed children who are enrolled in public and charter schools across the country.*

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It is the ultimate height of hypocrisy for an Education Department Secretary to insist on "evidence" based conformity to unilateral rule changes, and then make massive special education rule changes based on cited references which appear to have been pulled blindly out of the magician's hat.

Under Secretary Arne Duncan's tenure, public schools and special education teachers are not getting the support they need to meet IDEA requirements anywhere in the country, despite special education ballooning class sizes and despite massive layoffs of teachers and support staff all over the country.

Secretary Duncan's prescription of education reform has resulted thus far in feeding those frenzied financial interests that are aligned with corporate testing corporations, as well as alienating masses across the country, and not just conservative-leaning "white suburban moms" as Secretary Duncan blustered.

We are not politicians or public policy experts. We do not purport to have the answers to perplexing issues facing our nations children in public schools. What we DO know is that **parents are, and must always be, the resident experts of their own children.**

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A shift from the dictatorial-like control now emanating from the Department of Education, and supported by Big Testing’s financial corporate interests-- back to states, local school districts, and ground level teachers and parents-- is the foundation from which all hope and change in our nation’s education system must start.

Respectfully submitted by:

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## USDOE SUPPORTING REFFERENCES & COMMENTARY COPIED VERBATIM:

1. See discussion of this research in *Assessing Students with Disabilities Based on a State's Academic Achievement Standards*.
  2. See Scruggs, T., Mastropieri, M., Berkeley, S., & Graetz, J. (2010). Do Special Education Interventions Improve Learning of Secondary Content? A Meta-Analysis. *Remedial and Special Education, 31(6)*, 437-449.
  3. ESEA flexibility refers to the Department's initiative to give a State flexibility regarding specific requirements of the No Child Left Behind Act of 2001 in exchange for developing a rigorous and comprehensive plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction.
  4. For more information, see: Thurlow, M. L., Lazarus, S. S., & Bechard, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.
  5. The IDEA prescribes certain requirements for IEPs for students who take alternate assessments aligned to alternate academic achievement standards. **34 CFR 300.160(c)(2)(iii)**, 300.320(a)(2)(ii), and 300.320(a)(6) (ii).
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This approach addresses the educational and assessment needs of a relatively small percentage of students with the most significant cognitive disabilities, estimated at approximately 1% of all students in a State (approximately 10% of students with disabilities), who cannot be held to the same academic achievement standards as students without the most significant cognitive disabilities.

6. For example, see: Allor, J. H., Mathes, P. G., Roberts, J. K., Cheatham, J.P., & Champlin, T. M. (2010). Comprehensive reading instruction for students with intellectual disabilities. *Psychology in the Schools, 47*, 445- 466;

Kamps, D., Abbott, M., Greenwood, C., Wills, H., Veerkamp, M., & Kaufman, J. (2008); Mautone, J. A., DuPaul, G. J., Jitendra, A. K., Tresco, K. E., Junod, R. V., & Volpe, R. J. (2009). The relationship between treatment integrity and acceptability of reading interventions for children with attention- deficit/hyperactivity disorder. *Psychology in the Schools, 46*, 919-931; and

Scammacca, N., Vaughn, S., Roberts, G., Wanzek, J., & Torgesen, J. K. (2007). Extensive reading interventions in grades K-3: From research to practice. Portsmouth, N.H.: RMC Research Corporation, Center on Instruction; and Vaughn, S., Denton, C. A., & Fletcher, J. M. (2010).

Why intensive interventions are necessary for students with severe reading difficulties. *Psychology in the Schools, 47*, 32-444; Wanzek, J. & Vaughn, S. (2010). Tier 3 interventions for students with significant reading problems. *Theory Into Practice, 49*, 305-314.

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7. For example, see: Fuchs, L. S. & Fuchs, D., Powell, S. R., Seethaler, P. M., Cirino, P. T., & Fletcher, J. M. (2008). Intensive intervention for students with mathematics disabilities: Seven principles of effective practice. *Learning Disabilities Quarterly*, *31*, 79-92; and Gersten, R., Beckmann, S., Clarke, B., Foegen, A., Marsh, L., Star, J. R., & Witzel, B. (2009).

*Assisting students struggling with mathematics: Response to Intervention (RtI) for elementary and middle schools* (NCEE 2009-4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education. Retrieved November 1, 2010 from <http://ies.ed.gov/ncee/wwc/publications/practiceguides/>.

8. For example, see Archambault, I., Janosz, M., & Chouindard, R. (2012). Teacher beliefs as predictors of adolescent cognitive engagement and achievement in mathematics. *The Journal of Educational Research*, *105*, 319-328;

Hinnant, J., O'Brien, M., & Ghazarian, S. (2009). The longitudinal relations of teacher expectations to achievement in the early school years. *Journal of Educational Psychology*, *101* (3), 662-670; and

Hornstra, L., Denessen, E., Bakker, J., von den Bergh, L., & Voeten, M. (2010). Teacher attitudes toward dyslexia: Effects on teacher expectations and the academic achievement of students with dyslexia. *Journal of Learning Disabilities*, *43* (6), 515-529.

9. For additional information on assessment accommodations, see:

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PARCC Accessibility Features and Accommodations Manual (Nov. 2014) at [http://www.parcconline.org/sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14\\_final.pdf](http://www.parcconline.org/sites/parcc/files/parcc-accessibility-features-accommodations-manual-11-14_final.pdf).

10. For more information, see: Thurlow, M. L., Lazarus, S. S., & Bechard, S. (Eds.). (2013). *Lessons learned in federally funded projects that can improve the instruction and assessment of low performing students with disabilities*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

11. Achieve. (2012). *The Future of the U.S. Workforce: Middle Skills Jobs and the Growing Importance of Post Secondary Education*. American Diploma Project, [www.achieve.org](http://www.achieve.org).

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**RELEVANT APA ETHICS CODES:**

# Ethical Principles of Psychologists and Code of Conduct

Adopted August 21, 2002 Effective June 1, 2003

With the 2010 Amendments Adopted February  
20, 2010 Effective June 1, 2010

**INTRODUCTION AND APPLICABILITY (In Part)**

Areas covered include but are not limited to the clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design and evaluation; and administration.

**PREAMBLE (In Part)**

Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness.

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## **ETHICAL STANDARDS (In Part)**

### **3.04 Avoiding Harm**

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and un- avoidable.

### **8.02 Informed Consent to Research**

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers.

### **9.01 Bases for Assessments**

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

### **9.05 Test Construction**

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

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