

The tragic story of how North Carolina is failing students with disabilities and their families under the Individuals with Disabilities Education Act (IDEA)

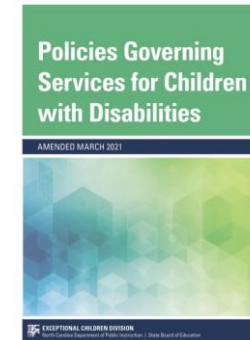
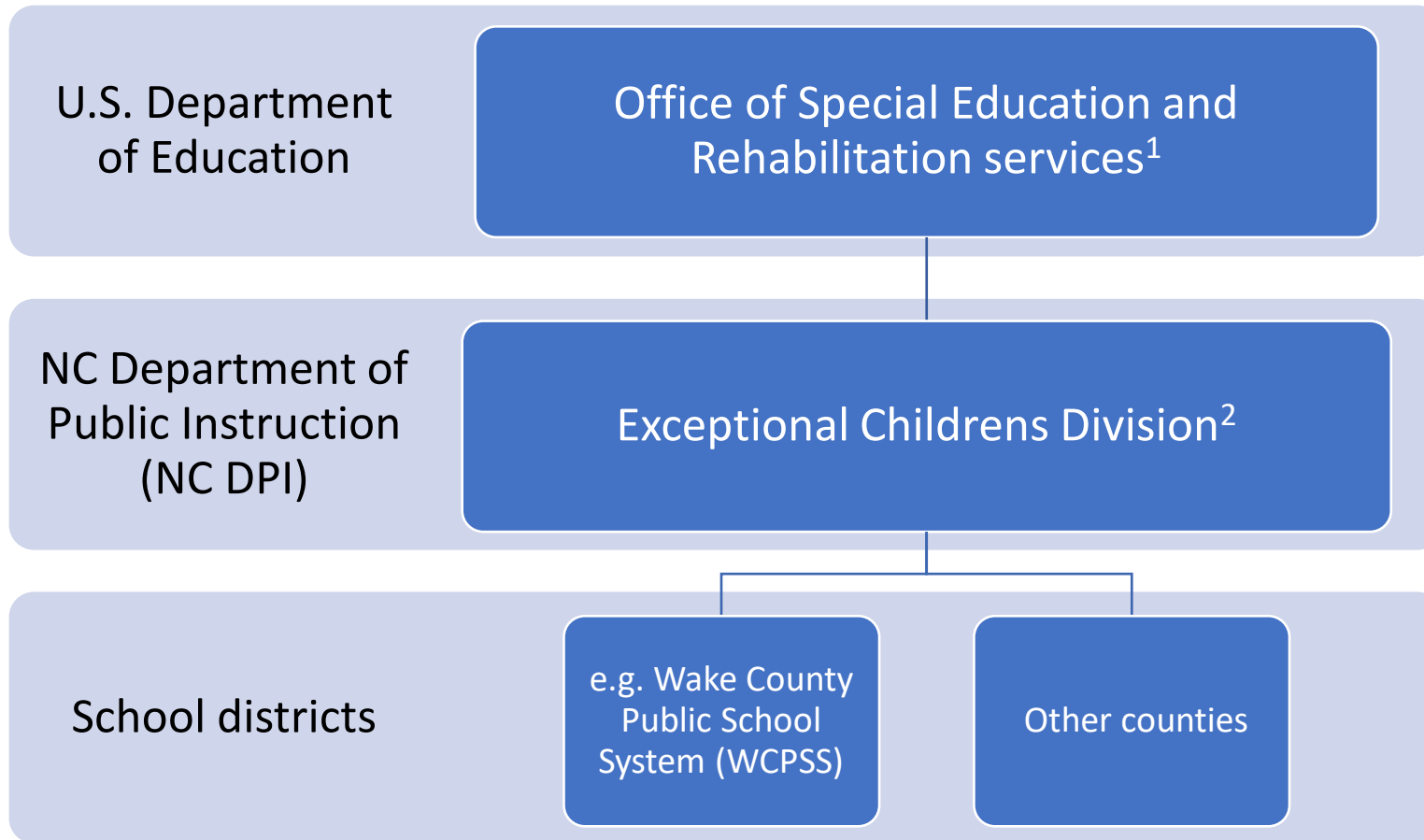
Anil Daswani

Contact: @a_daswani

August 2021

Last updated: December 2022

IDEA devolved responsibility to the school district level, while ensuring State level oversight to ensure school district accountability




<https://www.dpi.nc.gov/media/8754/open>

1. <https://www2.ed.gov/about/offices/list/osers/index.html>
2. <https://www.dpi.nc.gov/districts-schools/classroom-resources/exceptional-children-division>

The cornerstone of accountability under IDEA are the Individualized Education Program (IEP), and the Prior Written Notice (PWN)

Sample IEP



This sample is intended for reference and training purposes only. By clicking on the  you can navigate to a "Tip Sheet" with references, resources and reminders for specific components of the IEP.

ECATS Training Site
IEP Document

Student: Henry Test
School: DPI Test School
Primary Eligibility: LD


Student UID #: 112245
Grade: Third Grade
Secondary Eligibility:

DOB: 05/13/2009
Age: 10


INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Meeting Purpose: Annual Review

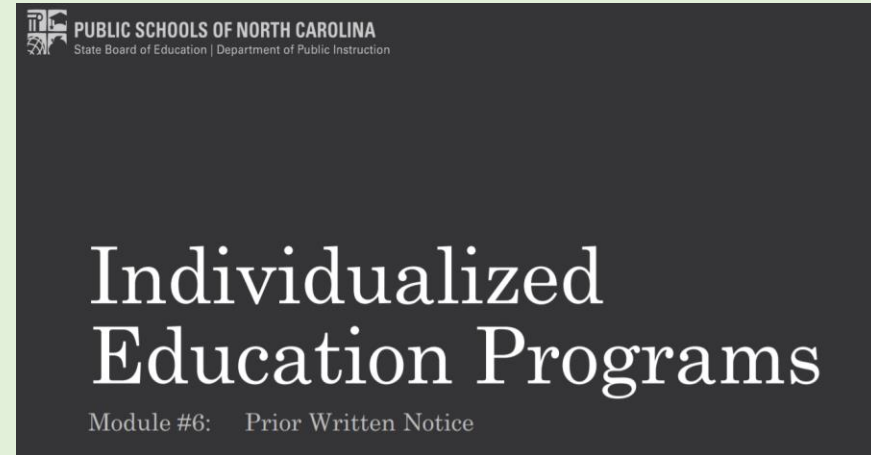
Meeting Date: 10/08/2019

From: 10/15/2019 To: 10/07/2020 

Student Profile

Student's overall strengths that contribute to success in the educational environment: 
Positive attitude and relationships with others: Henry is a friendly and cooperative student who wants to do well in school. He gets along well with his peers and teachers. Typically, Henry puts forth his best efforts on assignments.

<https://www.dpi.nc.gov/media/10433/download?attachment>

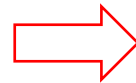
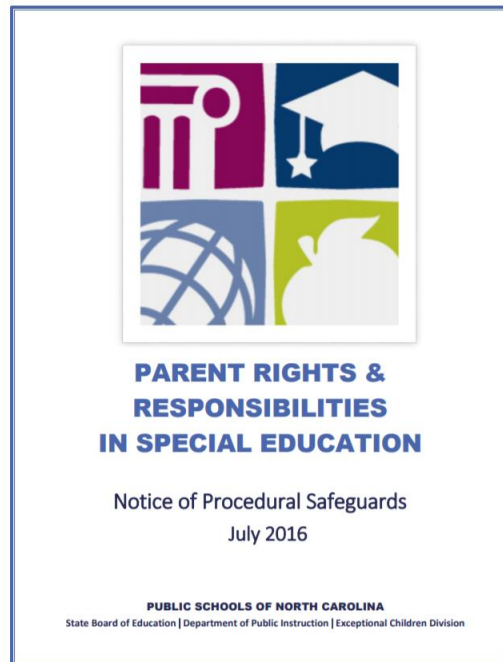


What is the Purpose of Prior Written Notice?

- Provides **comprehensive** documentation of proposed and refused actions made by an IEP team
- Makes sure LEA and parents are clear and “on the same page” about this student’s educational program
- Provides sufficient information behind the teams’ decision making regarding a particular proposed or refused action
- Allows the parents or family adequate time to seek resolution if they disagree with the school’s decision

But our school district has often undermined the legal validity of the content in the Prior Written Notice (PWN) i.e., content in a legal document.

Question: What recourse do parents have when some of the PWN content is written merely to inform, rather than be in strict compliance with state & federal laws?



PARENT RIGHTS & RESPONSIBILITIES IN SPECIAL EDUCATION: NC NOTICE OF PROCEDURAL SAFEGUARDS

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Our experience has been that NC DPI implements just the minimum State complaint procedures, contrary to expectations in the Federal register. Our school district is therefore absolved of their responsibility under state & federal laws.

We are concerned about this serious issue of undermining the PWN content potentially being systemic affecting all students with disabilities in our school district.

Our story:

- In September 2020, we respectfully filed a state complaint with NC DPI about multiple PWN violations by our school district.
- We requested NC DPI to investigate if the root cause were a systemic practice, given the seriousness of the issue
- But sadly, the NC DPI Director chose to follow just the minimum procedures in the state investigation, despite the undeniable evidence, and absolved our school district of its responsibility under state and federal laws

Our memorial website in honor of IDEA's soul

<https://www.rip-idea.info>



Dear Internet,

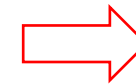
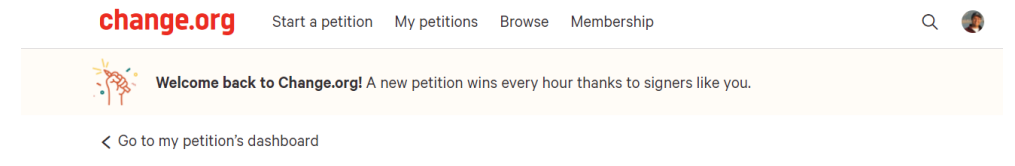
My wife and I are writing to share the sad news that the Individuals with Disabilities Education Act (IDEA) has lost her soul, shortly after her 45th anniversary. IDEA now continues to live on paper alone. So we wrote IDEA a letter to grieve her loss. We would appreciate your taking a few minutes to read our letter below.

We sincerely hoped to avoid this tragic outcome and we did everything you would expect a parent to do — advocated at the school level, at the county level, at the state level and even at the federal level. But instead here we are at this crossroads because the Office of Special Education Programs (OSEP) and North Carolina Department of Public Instruction (NC DPI) together failed IDEA. The reality is that our state complaint procedures, which are meant to be a "powerful tool" in service of students as explained in the Federal Register, have sadly become frail at protecting the core of IDEA. Why is that? Because although our state's complaint investigation follows the letter of the law, it fails her spirit by following just the minimum procedures, contrary to the expectations in the Federal Register, and thereby absolves school districts of their responsibility under the law.

And while this sad story is true in North Carolina, this could conceivably be the case in any other state, and thereby be affecting all students with disabilities in the United States. This affects all of us Americans — certainly every family with a child with a disability, but especially teachers, therapists, staff and so many others who chose the highest of callings by serving our students with disabilities. So we pray for grace to find our way back into the light of day, by restoring the kind of leadership that our current and future generation of students with disabilities not only deserve but that our nation desperately needs to fulfill our national policy today, so that the United States may shine as a beacon of hope for the rest of the world tomorrow.

Change.org petition for strong State complaint procedures

<https://www.change.org/p/u-s-department-of-education-please-join-us-to-restore-the-soul-of-idea-we-owe-it-to-all-students-with-disabilities>

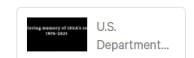


Please help us restore the soul of IDEA. We owe it to all students with disabilities.



108 have signed. Let's get to 200!

At 200 signatures, this petition is more likely to be featured in recommendations!



Send a Facebook message

Send an email to friends

Tweet to your

ANIL DASWANI started this petition to U.S. Department of Education and 1 other

Dear Dr. Miguel Cardona:

Congratulations on your appointment as Secretary of Education

Many families, including an expert on IDEA, have signed our petition.
 Prominent professor at Duke Law has acknowledged that NC is failing families.

1. Rud Turnbull



H. RUTHERFORD TURNBULL III
 Ross and Marianna Beach Distinguished Professor Emeritus
 rud@ku.edu
 3111H Haworth Hall

One of the 36 individuals who have "changed the course of history for individuals with intellectual and developmental disabilities across the 20th century"

<https://specialedu.ku.edu/rud-turnbull>

Rud was amongst the initial people who signed our petition

1	Name	City	State	Postal Cod	Country	Signed On
2	ANIL DASWANI	Morrisville	NC		US	6/10/2021
3	D					21
4	Be					21
5	Sh					21
6	Ka					21
7	Ro					21
8	Ja					21
9	ar					21
10	Cassidy Taylor	Raeford		28370	US	6/15/2021
11	Rud Turnbull	Pittsboro	NC	27312	US	6/22/2021
12	Sh					6/22/2021
13	A					21
14	Dani	Fred	NC	27535	US	6/22/2021

2. Professor Crystal Grant



Clinical Professor of Law,
 Duke Law School

<https://law.duke.edu/fac/grant/>

Crystal Grant, J.D.
 to me

Jul 30, 2021, 10:47 AM

Hi Anil,

Thank you for sharing this. I'm so sorry that exercising your rights under the IDEA proved to be an impossible task and traumatic experience. I know that the advocacy community will appreciate you sharing your story as another example of how we can do better as the state is failing families. Wishing you all the best.

Sincerely,
 Crystal

Crystal M. Grant, JD, MSW
 Director, Children's Law Clinic
 Clinical Professor of Law
 Duke Law School

In October 2021, we filed a follow-on State complaint about NC DPI's processing of our original systemic State complaint, and specifically requested an independent investigation based on the OSERS memo of July 2013.

- We requested the investigation be processed by Disability Rights North Carolina – the federally designated protection and advocacy agency for NC.
- But NC DPI made the self-serving decision to investigate themselves rather than an independent investigation. As expected, NC DPI's role and actions failed to show requisite accountability.
- The NC DPI final report from December 2021 states:
"The complainants' dissatisfaction with the sufficiency of NCDPI's investigation or disagreement with the adequacy of corrective actions issued for this complaint do not constitute a violation of Policies, Formal State Complaint Procedures, or Part B Regulations."
- However, NC DPI's conclusion completely contradicts SEA expectations for formal State complaint procedures, as described in the [Federal Register](#).
 - See email #5 and #6 at <https://www.rip-idea.info>

The only recourse left for parents -- when NC DPI renders the State complaint weak -- is to file for due process. But NC DPI *actually* has a responsibility and authority to limit the number of due process complaints filed and hearings held.

Please refer to the following in the Federal Register:

"Adoption of State Complaint Procedures (§ 300.151)

...

We believe the broad scope of the State complaint procedures, as permitted in the regulations, is critical to each State's exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the SEA with a powerful tool to identify and correct noncompliance with Part B of the Act or of part 300."

and

"We believe placing limits on the scope of the State complaint system, as suggested by the commenters, would diminish the SEA's ability to ensure its LEAs are in compliance with Part B of the Act and its implementing regulations, and may result in an increase in the number of due process complaints filed and the number of due process hearings held."

On November 12, 2021 we chose to file a complaint with the Educational Opportunities Section of the Civil Rights Division in the US Department of Justice
i.e. on the same day NC DPI informed us of their decision to investigate themselves

- US Department of Justice deferred my complaint to OSERS as having sole jurisdiction over IDEA, but also redirected my complaint to Office of Civil Rights (OCR) in the US Department of Education.
 - OCR however does not enforce IDEA.
 - As expected, OCR dismissed my allegations claiming lack of jurisdiction over the subject matter.
- My wife and I explored every option -- diligently -- to ensure accountability for our son, save for filing a due process complaint which we cannot afford because it entails considerable time, effort and money.
 - **Unfortunately we seemed to reach the end of the road.**

We concluded that the root cause of the issues are:

1. OSERS memo of July 2013 that gives NC DPI the option to investigate themselves
2. Lack of NC legislation that
 - a. prohibits NC DPI from investigating themselves, and
 - b. requires NC DPI to assign allegations against itself to Disability Rights NC

For #1

- On August 2, 2022, I followed up with OSEP with one last question:

Qs. “What was OSEP’s rationale in setting such a precedent where States may use its own personnel to resolve a complaint against itself despite the clear conflict of interest, and under what legal authority did OSEP set this precedent via the July 2013 memo?”

- Please see OSEP’s response dated Oct 17, 2022 towards the end at <https://www.rip-idea.info>

For #2

- We will require NC legislator support.



<https://joebiden.com/presidency-for-all-americans/>

I've always believed we can define America in one word: Possibilities.

That in America everyone should be given the opportunity to go as far as their dreams and God-given ability will take them.

You see, I believe in the possibility of this country.

We're always looking ahead.

Ahead to an America that's freer and more just.

Ahead to an America that creates jobs with dignity and respect.

Ahead to an America that cures disease — like cancer and Alzheimers.

Ahead to an America that never leaves anyone behind. <- Sadly, not yet true for students with disabilities in NC

Ahead to an America that never gives up, never gives in.

This is a great nation.

And we are a good people.

This is the United States of America.

And there has never been anything we haven't been able to do when we've done it together.