STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	
[Father] and [Mother], Complainants, vs. **PUEBLO COUNTY SCHOOL DISTRICT 70,** Respondent.	**COURT USE ONLY** **CASE NUMBER:** **EA 2020-0020**

DECISION

The evidentiary hearing in this matter was convened before the undersigned Administrative Law Judge ("ALJ") on February 19, 2021, via videoconference. Complainants [Father] and [Mother] ("Complainants") appeared through [Mother] on behalf of their son, the Student. Respondent Pueblo School District 70 (the "District") appeared through its counsel, Mr. Anthony Perko. The following documentary exhibits were offered and admitted into evidence: Hearing Exhibits C, G, H, J, L, M, N, P, R from Complainants' set, and No. 1, No. 4, and No. 5 from the District's set. The hearing was electronically and stenographically recorded.

ISSUE PRESENTED

As confirmed in a Prehearing Procedural Order issued in this matter on October 9, 2020, the substantive issues framed by the Amended Due Process Complaint herein are as follows: whether the District was bound to provide certain procedural safeguards to the Student during disciplinary proceedings during the period April through June, 2018, pursuant to the federal Individuals with Disabilities Education Act ("IDEA") and its Colorado counterpart, the Exceptional Children's Education Act ("ECEA"); and whether the District was obligated to provide an Independent Educational Evaluation ("IEE") to the Student pursuant to the same laws.

FINDINGS OF FACT

Based on the evidence presented at hearing, the ALJ finds the following:

1. At the time of the events relevant to the issues here, the Student resided with Complainants in the Pueblo, Colorado, area. Their residence was outside of the jurisdictional boundaries of the District.

2. In 2017, Complainants requested and were granted the ability to register the Student in the District and enroll him in the eighth grade at [Middle School] ("[Middle School]"). The District termed this permission "transfer status." [Middle School] is a public school serving grades six through eight. Prior to that time, the Student was educated in the state of [Other State].

3. Complainants presented the testimony of [Teacher]. [Teacher] is a teacher employed by the District. She taught at [Middle School] in the Fall Semester of 2017 and had the Student enrolled in her social studies class.

4. At hearing, [Teacher] did not have a detailed recollection of the Student but knew that he did not arrive in her class with an Individualized Education Program ("IEP"). [Teacher] also recalled documenting facts about him in the District's "Power School" data management system. On August 24, 2017, within the first weeks that the Student started at [Middle School], [Teacher] noted that he was struggling with getting lost in the building, remembering assignments, leaving items in the classroom, and processing multi-step instructions. She also suspected that he might have issues with his vision. Hearing Exhibit J.

5. [Teacher] recalled speaking with the Student's mother at a back-to-school night event soon after the beginning of the Fall Semester in 2017. [Teacher] remembered that [Mother] verified that the Student did not have an IEP in place at the time. [Mother] did not express any concerns about the Student possibly having a disability to [Teacher]. [Teacher] established that if she had concerns that the Student may have been affected by a disability, she would have contacted the District's Exceptional Student Services ("ESS") staff.

6. [Teacher] implemented what she termed "RTI" measures as a way to mitigate the issues she documented on August 24, 2017. *Id*. The acronym refers to "response to intervention" which is understood to mean research-based strategies that can be attempted in a general education setting in order to improve student performance. RTI can take the form of a written plan that involves data collection and analysis to determine its efficacy. [Teacher] did not use the term that way. Rather, she stated that she merely attempted to modify aspects of her teaching approach to the Student to facilitate better understanding of the curriculum material. The accommodations she recorded were preferential seating, extended time to complete work, guidance in the hallway, giving directions one at a time, providing visual and verbal cues, and repeating instructions for reinforcement. *Id*.

7. [Teacher] established that the Student did not struggle in her class throughout the school year. The issues that she documented on August 24, 2017, dissipated as he became more acclimated to the environment at [Middle School]. As such, [Teacher] did not

communicate any concerns about a possibility of the Student being disabled to the ESS department or to Complainants. As of May 1, 2018, the Student had a grade of "C" in her class based on an overall score of 78 percent. Hearing Exhibit N.

8. [Spanish Teacher] testified in her capacity as Spanish language teacher at [Middle School]. [Spanish Teacher] also had the Student in her class during the 2017-18 school year and used the Power School system to document facts about him and the other children.

9. On August 28, 2017, [Spanish Teacher] noted that the Student struggled with tasks that "scaffold" one to the other, with comprehension of large tasks and/or assignments, with organization, with finding his way around school and remembering where he left items, and with understanding directions. To mitigate the struggles, she broke down directions into smaller chunks, printed instructions into a checklist format, assigned work in smaller tasks, and checked frequently for his understanding. [Spanish Teacher] established that these early concerns were resolved such that the Student did not struggle throughout the year.

10. On December 11, 2017, [Spanish Teacher] recorded an incident in which the Student blurted out profane words in class. Hearing Exhibit J. She was concerned by the behavior and considered it to be abnormal. As she got to know the Student better, she understood the behavior to be his way of making other boys in the class laugh. [Spanish Teacher] confronted the Student about using profanity and she characterized his response as embarrassed and apologetic. He was able to control the behavior and complied with his promise to her not to do it again.

11. [Spanish Teacher] did not have any professional concern that the Student suffered from a learning disability. She was aware that he did not have an IEP at the time, and understood that she had the duty to report any concerns to the ESS staff. The Student did not struggle in her class and had achieved a score of 74 percent as of May 1, 2018. Hearing Exhibit N. [Spanish Teacher] did not discuss any observations of the Student with other teachers or the ESS department at [Middle School]. She testified that the Student had no need for evaluation of a potential learning disability based on his conduct and proficiency in her Spanish class without the benefit of any specially-designed instruction.

12. [Language Arts Teacher] testified in her capacity as a language arts teacher at [Middle School]. She also had the Student in her class for eighth grade and used the Power School system to document observations. [Language Arts Teacher] recorded approximately seven disciplinary concerns regarding the Student being "off task" during the 2017-18 school year. Hearing Exhibit J. She established that the majority of the incidents involved the Student's inappropriate use of his cell phone. She did not see any connection between such behaviors and a possible disability and therefore did not discuss her observations with other teachers.

13. [ESS Teacher] testified in her capacity as an ESS teacher at [Middle School]. She was familiar with the Power School system and with the procedural and substantive

requirements of special education laws. She did not review any Power School entries for the Student during 2017-18 because she was not "working with" him as a child with a disability and/or an implemented IEP. She confirmed that the head of ESS would have had the ability to access information about the Student in Power School at the time.

14. [ESS Teacher] established that evaluation of a child for potential disability can be triggered by concerns of teachers, of parents, or in cases where the ESS staff has otherwise become aware of issues with a child. She was not aware of any concerns regarding the Student, nor any steps to initiate a formal evaluation.

15. [Dean of Students] testified in his capacity as Dean of Students and Athletic Director at [Middle School] during the 2017-18 school year.[1] He was familiar with the Student and remembered him participating on the football team.

16. [Dean of Students] recalled a disciplinary incident involving the Student on April 24, 2018. [Dean of Students] testified that he was informed by [Director of Student Services][2] that the Student had sent an inappropriate, threatening message to another student using some form of social media. [Dean of Students] brought the Student to his office but could not remember any specific conversation between them. [Dean of Students] did not recall many details about the aftermath of the incident, including whether he or [Director of Student Services] questioned the Student or the other children involved, whether the Student had a cell phone in his possession, or whether anyone else was with the Student in his office. [Dean of Students] was not aware of which social media platform was involved in the messaging, only that [Director of Student Services] showed him a screen capture of a text purportedly sent by the Student.[3] Hearing Exhibit No. 4.

17. [Dean of Students] testified that [Director of Student Services] decided that the Student would be suspended for his role in the incident and instructed [Dean of Students] to write a letter informing Complainants of the suspension of the Student for five days. On April 24, 2018, [Dean of Students] composed a letter using a template that included language about a "manifestation" hearing as part of the disciplinary process. Hearing Exhibit G. [Dean of Students] testified that the letter should not have included the manifestation language because that is only appropriate for children being educated with IEPs. As the Student did not have an IEP, [Dean of Students] acknowledged that he used the wrong letter format.

18. [Principal] testified in his capacity as Principal of [Middle School]. 2018 was his first year as Principal. He established that he has no specialized training or certification related to educating children with learning disabilities. [Principal] established that it was he, and

1 At the time of hearing, [Dean of Students] was Assistant Principal at [Middle School].

2 [Director of Student Services] is a certified school psychologist employed by the District as Director of Student Services.

3 The screen capture reflected a variation of the Student's first name that witnesses established was commonly used at school. Neither party presented definitive evidence that the message in question actually originated from the Student.

not [Director of Student Services], who instructed [Dean of Students] to suspend the Student following the text message incident. [Principal] testified that the Student admitted to him writing the threatening message; District policy requires that such actions result in suspension for students whether or not they are being educated with an IEP.

19. [Principal] met with Complainants on April 24, 2018. A video of the encounter made by [Mother] was played during the hearing and admitted as Hearing Exhibit C. However, the conversations between people in the video were inaudible to the ALJ, which was noted during the course of the hearing.

20. [Principal] confirmed that the letter sent to Complainants by [Dean of Students] incorrectly included manifestation language intended for children with disabilities. He did not review the letter before it was sent by [Dean of Students]. [Principal] composed a corrected version of the suspension letter that was transmitted to Complainants on April 26, 2018. Hearing Exhibit H. That letter did not include any mention of a manifestation determination meeting.

21. [Director of Student Services] testified that he had been employed by the District since 1995. He was not aware of the contents of Hearing Exhibit G when it was sent by [Dean of Students]. [Director of Student Services] stated that a manifestation determination is appropriate when a child has been identified with a disability or where a suspicion of disability arises during a meeting with parents regarding a disciplinary incident.

22. [Director of Student Services] convened a Student Services disciplinary hearing with Complainants on May 1, 2018, to discuss the messaging incident and what actions the District would take as a result. He established that the hearing could have considered issues of potential disability if it had not been disrupted by the Student's father. A video recording of the meeting was admitted as Hearing Exhibit M and played during the hearing. [Director of Student Services] made clear during the hearing that all circumstances would be discussed and that the Student's parents would have the opportunity to be heard. [Father] repeatedly interrupted the initial statements by [Director of Student Services] describing the District's view of the incident. [Director of Student Services] politely and respectfully asked [Father] to stop interrupting and reiterated that the parents would be able to have the floor after he was through talking. At one point, [Director of Student Services] advised that the meeting would not continue if the interruptions persisted. When [Father] interjected another statement, [Director of Student Services] terminated the hearing without completing the discussion of the incident and the District's response. At no point during the meeting did Complainants raise the issue of a possible disability or request an evaluation of the Student.

23. [Director of Student Services] acknowledged that he asked a District resource (enforcement) officer to be present during the hearing because he was concerned about how [Father] would conduct himself. [Director of Student Services] did not introduce the officer as a participant. At the evidentiary hearing, he testified that the officer, as a District employee acting in his official capacity, could appropriately observe the disciplinary hearing

notwithstanding the sensitive nature of the subject matter and the Student's educational rights.

24. On May 1, 2018, [Director of Student Services] wrote a letter advising Complainants that the Student's transfer status was being revoked. Hearing Exhibit N. [Principal] established that the initial suspension did not end the Student's enrollment the District. However, after the failed meeting on May 1, 2018, the District determined that the serious nature of the disciplinary incident on April 24, 2018, justified revoking the Student's transfer status and essentially requiring his return to his home school in a different district.[4] From that date, the Student was no longer enrolled in the District and was not permitted to complete any further work in the classes he had been taking. The District did confirm that the Student's grades would be frozen effective April 24, 2018.

25. [Director of Student Services] had several conversations with Complainants between May 1, 2018, and June 5, 2018. He maintained that because the Student had not been expelled, he had flexibility to explore alternative ways for the Student to re-enter the District and to entertain the possibility of an evaluation for special education eligibility if requested.

26. On June 5, 2018, Complainants attended a meeting of the District board, and spoke in the open-forum portion of the meeting. [Director of Student Services] attended as well and spoke to Complainants after conclusion of the meeting. He characterized the interaction as a "good conversation" and felt like Complainants were grateful for the opportunity to discuss middle ground, including a possible evaluation. [Director of Student Services] was still willing to work with Complainants at that point.

27. [Superintendent] testified in his capacity as Superintendent of the District. [Superintendent] became aware of the Student only after the incident on April 24, 2018. [Superintendent] received a letter from Complainants dated June 3, 2018, that requested an "independent evaluation regarding possible learning disabilities" based on the Student's disciplinary report. Hearing Exhibit R. [Superintendent] referred the letter to [Director of Student Services] and established that the Complainants also delivered the same letter to the District board on June 5, 2018. He was unaware if the Student was ever evaluated for a learning disability or ever identified as a child with a disability.

28. [Director of ESS] testified in her capacity as Director of ESS for the District. She held that position during the 2017-18 academic year. [Director of ESS] holds master's level academic credentials in the areas of special education, administration, and leadership. She was admitted as an expert witness and permitted to give opinion testimony regarding special education policies and procedures.

29. [Director of ESS] established that Complainants completed an enrollment form for the Student on August 9, 2017. Hearing Exhibit No. 1. [Mother] completed the form and signed it. She did not identify any history of the Student receiving special education and

4 Pueblo City Schools.

did not list any health concerns. *Id* at pages 2 and 5. [Director of ESS] had not seen any records from the Student's enrollment in school(s) in [Other State] prior to August, 2017.

30. [Director of ESS] did not attend the disciplinary hearing on May 1, 2018, with Complainants and [Director of Student Services]. She established that if there had been any request by the Student's parents for her to attend, or mention of special education concerns, then she would have been involved. On cross-examination, [Director of ESS] acknowledged that the parents of a student are not obligated to identify potential learning disabilities. School personnel might determine that a child should be evaluated without any parent request.

31. [Director of ESS] established that concerns documented by teachers do not necessarily equate to a need for special education. She reviewed Hearing Exhibit J and concluded that it did not demonstrate that a formal RTI plan was implemented in the Student's classroom(s) during the 2017-18 year. She interpreted the reference to "RTI" in [Teacher]'s comments to refer to initial teacher measures to address the struggles she observed. A formal RTI plan would be characterized by documentation of grades, District assessments, and data taken on time required to complete assignments, among other elements. That data would be analyzed over time to determine if the general education accommodations were sufficiently mitigating concerns, or whether further evaluation for special education eligibility might be appropriate. The parents of student would be notified prior to a formal RTI process being initiated.

32. [Director of ESS] looked at the teacher comments about the Student struggling early in the 2017-18 school year. The observations did not warrant providing procedural safeguards to Complainants pursuant to special education law as there had been no determination of disability. [Director of ESS] was not aware of any evaluation of the Student related to a possible disability. If the struggles recorded by [Teacher] and [Spanish Teacher] had continued, then [Director of ESS] opined that the Student's parents should have been informed. As the concerns abated through the use of basic general education accommodations allowing the Student to receive grades in the good-to-average range, [Director of ESS] did not see an indication of a learning disability.

33. Around April 24, 2018, [Director of ESS] received a copy of Hearing Exhibit G that initially referenced a manifestation determination process. This was her first awareness of the Student; she checked his academic record and confirmed that he did not have an IEP in place. [Director of ESS] then informed [Principal] that the wrong letter had been sent to the Student's parents regarding his suspension. She established that a manifestation determination would have been completed if the Student was identified with a disability or if an evaluation was in process.

34. [Father], the Student's father, testified that the Student had not been evaluated for special education eligibility prior to the time of hearing. Nor had the Student been educated on an IEP at the time of his enrollment in the District. Complainants did not know about the observations of the Student's struggles or have any suspicion of a learning disability before

they received a copy of Hearing Exhibit J from the District. [Father] confirmed that the Complainants did not request an evaluation for special education eligibility prior to the disciplinary hearing on May 1, 2018. Nevertheless, he maintained that the Student should have been evaluated because of what the District knew, and should have benefitted from the manifestation determination process before the District revoked the transfer status.

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education ("FAPE") that provides special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). States are empowered to implement statutory and regulatory programs to further the goals of the federal law. *Id* at § 1407. Colorado has adopted the ECEA as well as rules for its administration here. Article 20 of Title 22, C.R.S., and 1 *Code of Colorado Regulations* ("CCR") 301-8, respectively. The IDEA is also implemented through regulations found at 34 Code of Federal Regulations § 300, *et seq*.

Burden of Proof

Although the IDEA does not explicitly assign the burden of proof, *Schaffer v. Weast*, 546 U.S. 49, 58 (2005) places the burden of persuasion "where it usually falls, upon the party seeking relief." *See also Thompson R2-J Sch. Dist. v. Luke P.,* 540 F.3d 1143, 1148 (10th Cir. 2008) (stating that "[t]he burden of proof . . . rests with the party claiming a deficiency in the school district's efforts"). Complainants therefore bear the burden of proving by a preponderance of the evidence that the District violated its obligations under the IDEA.

Child Find

34 CFR § 300.111 states, in part:

> (a) General.
>
> > (1) The State must have in effect policies and procedures to ensure that—
> >
> > > (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

Pursuant to 1 CCR 301-8, § 4.02(1)(a), each administrative unit (school district) in Colorado shall develop and implement procedures for locating, identifying, and evaluating all children ages birth to 21 who may have a disability and are eligible for special education services under IDEA Part B (ages 3 to 21).

1 CCR 301-8, § 4.02(1)(a)(ii) provides:

Part B child identification shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education. Child identification shall be the responsibility of the administrative unit in which the child attends public or private school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.

As described in § 4.02(3) of the same rules, a special education referral may be initiated by either an administrative unit (school district) as a result of a building level screening and/or referral process, or the parent of a child. Any other interested person who believes that a child is in need of an initial evaluation must work with the administrative unit or parent of the child.

Accordingly, during the time that the Student was enrolled in the District, the District had the responsibility to comply with the requirements of the child find provisions. This meant that the District had a duty to identify and evaluate children who may have had a disability and were eligible for special education supports and services. As established by [Director of ESS], if the Student had an IEP or was in the process of evaluation, he was entitled to procedural safeguards afforded by the IDEA and ECEA during the disciplinary process.

Procedural Safeguards regarding Discipline (Manifestation Determination)

Pursuant to 20 U.S.C. § 1415(k)(1)(B), school personnel "may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities)." Subsection (1)(C) of the same statute provides, "if school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities."

Finally, Subsection (E) sets forth the manifestation determination process as follows:

(i) In general. Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation. If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Independent Educational Evaluation

Pursuant to 34 CFR §300.502(b)(1), the parents of a child with a disability have the right to obtain an independent educational evaluation of the child at public expense "if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section." Paragraphs (b)(2) through (b)(4) describe conditions and limitations on the performance of an IEE that are inapplicable to the evidence in the record here.

DISCUSSION

The evidence at hearing established the following chronology that is relevant to the analysis here: The Student enrolled in the District in August, 2017, to attend eighth grade on "transfer status." He had not been evaluated or educated pursuant to an IEP prior to that time. The Student's teachers documented struggles with organization, processing instructions, and orienting himself on the [Middle School] campus during the first weeks of the semester. At least two teachers implemented regular education accommodations that resolved these concerns. The Student had other behavioral incidents throughout the fall and early spring that were relatively minor and not described by any District personnel as a serious issue. There was no evidence of any formal discipline resulting in a change of educational placement prior to April 24, 2018. On April 24, 2018, the District suspended the Student for transmitting what it determined were threatening messages to another student. The suspension was to last five days. The District erroneously sent a letter to Complainants that described a manifestation determination process even though the Student had not been identified with a disability and was not being evaluated. That letter was corrected. Following a Student Services disciplinary hearing that was cut short due to the conduct of [Father], the District revoked the Student's transfer status on May 1, 2018, based on a finding that the Student had committed a serious violation of the code of conduct. From that date forward, the Student was not enrolled in the District. On June 3, 2018, Complainants requested that the District perform an independent evaluation of the Student. There is no evidence that the request was acted upon.

Based on the record, the ALJ finds and concludes that while the District was obligated to identify children with suspected disabilities by the child find provisions, it did not violate those provisions as they related to the Student. As noted, there was no history of any evaluation or determination of disability in his prior educational placements. [Mother]

did not indicate otherwise on the enrollment form and expressed no concerns related to disability at the parent night interaction with [Teacher]. The Student experienced some level of disorientation during the first weeks of eighth grade, but had just changed schools. Accordingly, he was confronted with a new physical environment, new rules, new schedule, new teachers, and new peers. [Teacher] and [Spanish Teacher] established that they implemented informal accommodations in response to the struggles they observed. These mitigated the concerns and the Student was able to access and progress in the curricula across the spectrum of language arts, Spanish language, and social studies.

These factors could not have reasonably led to a suspicion of disability prior to April 24, 2018, and no other information was adduced to alter that conclusion. When on April 24, 2018, the District determined that the Student was responsible for a serious violation of the code of conduct involving physical threats to another student, Complainants had not requested a special education evaluation or otherwise expressed any concern related to a possible disability. They might have raised that issue at the time of the disciplinary hearing, but the hearing was terminated based on [Father]'s repeated disruptions. The video that was played during the evidentiary hearing (Hearing Exhibit M) provided ample justification for the decision to discontinue the disciplinary proceeding. Thus, as of the time that the District terminated the Student's enrollment on May 1, 2018, no information suggesting a possible disability had been observed or reported by his teachers or his parents. Even though [Director of ESS] acknowledged that the IDEA procedural safeguards, including application of the manifestation determination provisions, would have been triggered by the evaluation process, no such process was underway. Nor does the ALJ find that the District had any reason to have initiated it at that time.

Looking at the manifestation determination procedure, the initial suspension would not have triggered it as removals up to ten days are permitted without consideration of the impact of disability. The revocation of transfer status essentially disenrolled the Student from the District and therefore would have required a manifestation determination if the Student had been already been identified with a disability or was in the process of evaluation either due to a parent request or District referral (child find). The situation was greatly complicated by [Dean of Students]'s issuance of a letter that incorrectly suggested that a manifestation determination meeting would be convened. However, multiple witnesses including [Dean of Students] established that the inclusion of that language was simply a mistake. Neither [Dean of Students] nor any other District personnel meant to communicate that the Student was suspected of having a disability merely by the inclusion of the reference to a manifestation determination. Nor was any manifestation determination hearing ever actually scheduled and/or cancelled. While it might be difficult for Complainants to accept the explanation of [Dean of Students] that he committed a confusing error, the ALJ does accept the explanation and finds it to be fact.

For these reasons, the ALJ has determined that the District did not violate any obligation to initiate an evaluation of the Student while he was enrolled at [Middle School]. [Father] acknowledged that Complainants did not request evaluation until after the transfer status was revoked. After the Student was no longer enrolled in the District, his district of residence became responsible for child find. As he had not been identified as a child with a

disability, and was not in the process of evaluation at the time of the disciplinary action, the Student was not entitled to a manifestation determination hearing.

Turning to the issue of an IEE, the Complainants requested an "independent evaluation" on June 3, 2018. On that date, the Student was no longer enrolled in the District and, therefore, his district of residence was responsible for initial evaluation and determination of disability pursuant to 1 CCR 301-8, § 4.02(1)(a)(ii). If the Complainants request was for an IEE, as the federal regulation points out, a parent's right to an IEE is triggered by the parent's disagreement with the evaluation obtained by the public agency. No evaluation had been conducted by a public agency when Complainants sent their request. Therefore, the District was not obligated to provide an IEE as requested.

DECISION

The ALJ concludes that the Complainants did not meet their burden of establishing that the District should have initiated an evaluation of the Student pursuant to its child find obligation and/or that it should have conferred the procedural safeguards afforded by the IDEA as part of the disciplinary proceeding begun on April 24, 2017. Nor was the District obligated to perform an initial evaluation after the Student was disenrolled, or an Independent Educational Evaluation as no public agency had been conducted prior to June 3, 2018. Accordingly, Complainants are not entitled to any relief on the issues raised by their Amended Due Process Complaint herein.

This Decision is the final decision except that any party has the right to bring a civil action in an appropriate court of law, either federal or state, pursuant to 34 C.F.R. 300.516.

DONE AND SIGNED this 26th day of March, 2021.

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KEITH J. KIRCHUBEL
Administrative Law Judge