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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

**CONFIDENTIAL**  
Pursuant to FERPA – 20 U.S.C. § 1232g;  
34 C.F.R. Part 99

ACCEPTED  
701-22-0507  
3/2/2022 11:40:09 am  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Carol Hale, CLERK

**SOAH DOCKET NO. 701-22-0507.IDEA**  
**TEA DOCKET NO. 048-SE-1021**

**[REDACTED], B/N/F [REDACTED]**  
**Petitioner**

v.

**KATY INDEPENDENT SCHOOL**  
**DISTRICT,**  
**Respondent**

§ **BEFORE A SPECIAL EDUCATION**  
§  
§  
§ **HEARING OFFICER FOR**  
§  
§  
§ **THE STATE OF TEXAS**

**ORDER NO. 8**  
**GRANTING MOTION FOR SUMMARY JUDGMENT AND**  
**DISMISSAL WITH PREJUDICE**

This case is set for a due process hearing March 1-3, 2022, with a decision due date of April 14, 2022. The disclosure deadline in this case was February 21, 2022. Respondent properly disclosed its exhibits and list of witnesses in accordance with the IDEA and the Hearing Officer’s prior orders. Petitioner did not disclose any evidence either at the deadline or since the deadline. On February 23, 2022, Respondent filed a Motion for Summary Judgment (Motion). The Hearing Officer gave Petitioner until February 28, 2022, to provide a Response to the Respondent’s Motion. Petitioner did not provide a Response. For the reasons set out below, the Hearing Officer finds the Motion should be granted.

**I. MOTION AND RESPONSE**

Respondent’s Motion is a no-evidence motion for summary judgment. Respondent’s no-evidence motion argues that summary judgment is warranted on all claims because Petitioner has presented no evidence to support the allegations. As relief, Respondent seeks an order granting its Motion and dismissing Petitioner’s claims with prejudice.

## II. LEGAL STANDARD

Except as modified or limited by certain federal regulations, the Texas Rules of Civil Procedure apply in a due process hearing under the IDEA. 19 Tex. Admin. Code § 89.1185(d). Under the Texas Rules of Civil Procedure, a party seeking to recover on a claim, counterclaim, or cross-claim may, at any time after the adverse party has appeared or answered, move for summary judgment in the party's favor in whole or in part, with or without supporting affidavits. This rule extends to a defending party as well. A summary judgment shall be rendered if the record on file, including discovery responses, the pleadings, affidavits, stipulations of the parties, and authenticated or certified public records, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(a-c).

Due process hearings under the IDEA are not exempt from the rules regarding summary judgment. The summary judgment standards have been applied by the federal courts in the context of IDEA cases under the Federal Rules of Civil Procedure, specifically Federal Rule of Civil Procedure 56.<sup>1</sup> The wording between the federal and Texas rules is materially the same. Federal precedent on the federal rule is considered persuasive when applied to the Texas rule.<sup>2</sup>

The applicable rules authorize a party to file a no-evidence motion seeking summary judgment. Tex. R. Civ. P. 166a(i). Specifically,

“After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to

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<sup>1</sup> *M.L. ex rel. A.L. v. El Paso Indep. Sch. Dist.*, 610 F.Supp.2d 582 (W.D. Tex. 2009), aff'd 369 Fed. Appx. 573 (5th Cir. 2010) (per curiam).

<sup>2</sup> *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 86-87 (Tex. 2018) (operative clauses in Federal Rule 56a and Texas Rule 166a are materially indistinguishable).

which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.” *Id.*

A no-evidence motion should be specific as to the challenged elements to give fair notice to the non-movant of the matters on which it must produce some evidence.<sup>3</sup> A party can contest every element of its opponent’s case so long as each element is distinctly and explicitly challenged.<sup>4</sup>

When a movant files a proper no-evidence motion for summary judgment, the burden shifts to the non-moving party, and unless the non-moving party produces summary judgment evidence raising a genuine issue of material fact, the trial court must grant the motion for summary judgment. Tex. R. Civ. P. 166a(i). To defeat a no-evidence motion for summary judgment, the non-movant need not marshal all ■ evidence, but must point out in ■ response evidence raising a fact issue as to the challenged elements.<sup>5</sup> Responding to a no-evidence summary judgment is virtually mandatory.<sup>6</sup> If the non-moving party fails to file a response and produce evidence, the party “is restricted to arguing on appeal that the no-evidence summary judgment is insufficient as a matter of law.”<sup>7</sup> The trial court is required to grant a no-evidence summary judgment if the nonmovant produces no summary judgment evidence in response to the summary judgment motion.<sup>8</sup>

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<sup>3</sup> See *Cnty. Initiatives, Inc. v. Chase Bank of Texas*, 153 S.W.3d 270, 279 (Tex.App.—El Paso 2004, no pet.).

<sup>4</sup> See *Martin v. McDonald*, 247 S.W.3d 224, 233 (Tex. App.—El Paso 2006, no pet.).

<sup>5</sup> See Comment to Tex. R. Civ. P. 166a(i).

<sup>6</sup> *Lee v. Palacios*, No. 14-06-00428-CV, 2007 WL 2990277, at \*1 (Tex. App.—Houston [14th Dist.] Oct. 11, 2007, pet. denied) (citing Judge David Hittner & Lynne Liberato, *Summary Judgments in Texas*, 47 S. TEX. L. REV. 409, 488 (2006)).

<sup>7</sup> *Viasana v. Ward County*, 296 S.W.3d 652, 654 (Tex. App.—El Paso 2009, no pet.).

<sup>8</sup> *Watson v. Frost Nat. Bank*, 139 S.W.3d 118, 119 (Tex. App.—Texarkana 2004, no pet.); see also *Michael v. Dyke*, 41 S.W.3d 746, 751 (Tex.App.—Corpus Christi 2001, no pet.) (recognizing that “[f]ailure to respond to a no-evidence motion is fatal”).

### III. ANALYSIS

A no-evidence motion for summary judgment is proper after adequate time for discovery. Here, Petitioner filed the due process hearing request in October 2021. The disclosure deadline was February 21, 2022. Petitioner produced no evidence at the disclosure deadline five business days before the due process hearing. The hearing officer concludes there has been adequate time for discovery and to disclose documents and witness lists at the disclosure deadline. A party to a special education due process hearing has the right to “prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.” 34 C.F.R. § 300.512(a)(3). The Motion asserted that Respondent would object to the introduction of evidence not produced at the disclosure deadline. The Hearing Officer will have to sustain that objection. *See Id.* Because Petitioner produced no evidence, Petitioner will not be able to present any evidence during the due process hearing. *See Id.*

The burden of proof in an IDEA due process hearing is on the party challenging the IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof is thus on Petitioner to show the District did not provide Student a FAPE. Petitioner cannot show any evidence at hearing due to their failure to disclose any evidence at or since the appropriate time for doing so.

Because Respondent’s Motion was proper in that it challenged each element and stated the elements of each claim as to which there is no evidence, Petitioner was given fair notice of the evidence they must present in response. The burden to produce summary judgment evidence raising a genuine issue of material fact then shifted to Petitioner. Petitioner did not respond to the Motion. The Hearing Officer gave Petitioner five days to do so, but Petitioner did not respond or produce any evidence during that time. Petitioner’s failure to disclose and/or respond to the Motion means that they cannot meet their burden. Petitioner has no evidence to present during a due process hearing in which Petitioner has the burden of proof. As such, Respondent’s Motion must be granted.

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### ORDERS

Based upon the foregoing, the record on file, in accordance with the IDEA and its implementing state and federal regulations, and because Petitioner did not produce any evidence at the disclosure deadline or any evidence in response to the Motion raising a genuine issue of material fact under Texas Rule of Civil Procedure 166a or 166a(i), it is therefore **ORDERED** that Respondent's Motion for Summary Judgment is hereby **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

**SIGNED March 2, 2022.**



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**Ian Spechler**  
**Special Education Hearing Officer**  
**For the State of Texas**