

FILED  
701-22-0495  
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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jessie Harbin, CLERK

ACCEPTED  
701-22-0495  
11/18/2021 3:16:32 pm  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jessie Harbin, CLERK

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

**SOAH DOCKET NO. 701-22-0495.IDEA**  
**TEA DOCKET NO. 047-SE-1021**

<b>[REDACTED]</b>	<b>B/N/F</b>	<b>[REDACTED]</b>	<b>and</b>	<b>§</b>	<b>BEFORE A SPECIAL EDUCATION</b>
				<b>§</b>	
<b>Petitioner</b>				<b>§</b>	
<b>v.</b>				<b>§</b>	<b>HEARING OFFICER FOR</b>
				<b>§</b>	
<b>ROCKWALL INDEPENDENT SCHOOL</b>				<b>§</b>	
<b>DISTRICT,</b>				<b>§</b>	
<b>Respondent</b>				<b>§</b>	<b>THE STATE OF TEXAS</b>

**ORDER NO. 4**  
**GRANTING RESPONDENT’S NOTICE OF INSUFFICIENCY AND**  
**GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

Petitioner [REDACTED] bnf [REDACTED]. (collectively Student or Petitioner) filed a request for a due process hearing (the Complaint) on October 19, 2021 against Respondent Rockwall Independent School District (the District or Respondent), with notice docketed by the Texas Education Agency on October 20, 2021. On November 3, 2021, through Order No. 2, the hearing officer granted Respondent’s challenge to the sufficiency of Petitioner’s Complaint. Petitioner timely filed a First Amended Complaint on November 8, 2021. The First Revised Scheduling Order (Order No. 3) established November 23, 2021 as Respondent’s deadline to notify the hearing officer and Petitioner if it believes the Amended Complaint does not meet the IDEA’s sufficiency requirements. Respondent filed its timely Notice of Insufficiency on November 12, 2021, along with a Motion for Summary Judgment (Motion). Petitioner did not file a response to the Motion for Summary Judgment.<sup>1</sup>

**I. SUFFICIENCY CHALLENGE**

A parent may file a due process complaint relating to the identification, evaluation, educational placement, and/or the provision of a free, appropriate public education (FAPE) under

<sup>1</sup> Responses to motions are due by 5 p m. on the third business day following receipt of the motion. (See Order No. 1, Attached Guidelines for Special Education Due Process Hearings, p. 1). Therefore, Petitioner’s response was due by 5 p m. on November 17, 2021.

IDEA. 34 C.F.R. § 300.507. Relevant IDEA regulations require that a due process complaint must be in writing and include the following:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- A description of the nature of the problem of the child relating to the proposed or refused initiation or change in the child's identification, evaluation, educational placement, and/or the provision of FAPE and including facts relating to the problem; and,
- A proposed resolution of the problem to the extent known at the time.

20 U.S.C. § 1415(b)(7)(A); 34 C.F.R. § 300.508(b)(1)-(6); 19 Tex. Admin. Code § 89.1165(c). A parent is not entitled to an impartial due process hearing until the hearing request meets these requirements. 20 U.S.C. § 1415(b)(7)(B); 34 C.F.R. § 300.508(c); 19 Tex. Admin. Code § 89.1165(d).

Respondent argues that the allegations in the Amended Complaint, like the allegations in the Original Complaint, do not allege any proposal or refusal to change Student's identification, evaluation, educational placement, or a denial of FAPE. Petitioner's Amended Complaint did not add any allegations related to a current denial of FAPE. Petitioner instead added assertions that the District may use the least restrictive environment (LRE) section of the IEP form to attempt to change Student's placement in the future. Petitioner's amendment did not cure the deficiency with the Original Complaint. Concerns about a hypothetical change of placement in the future do not represent an actionable issue. Petitioner's description of the problem still does not state an actionable violation of the IDEA. Therefore, the Amended Complaint is insufficient. 34 C.F.R. § 300.508(d)(2); 19 Tex. Admin. Code § 89.1180(f).

## II. RESPONDENT’S MOTION FOR SUMMARY JUDGMENT

Respondent’s Motion argues that summary judgment is warranted because Petitioner’s Complaint does not allege any proposal or refusal to change Student’s identification, evaluation, educational placement, or denial of FAPE. Petitioner did not file any response to the Motion.

### A. Legal Standard

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, i.e. a party against whom a claim is asserted. 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).

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>2</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>3</sup>

The substantive law identifies which facts are material. The non-movant’s burden cannot be satisfied by conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.

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<sup>2</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 curium).

<sup>3</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).

Factual controversies are to be resolved in favor of the non-movant, but only when there is an actual controversy; i.e., when both parties have submitted evidence of contradictory facts.<sup>4</sup>

When ruling on a motion for summary judgment, the hearing officer is required to view all inferences drawn from the factual records in the light most favorable to the nonmoving party. Furthermore, the hearing officer may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment.<sup>5</sup>

Once the moving party has made an initial showing there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of genuine fact issues. Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment.

Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment. Disputed fact issues that are irrelevant and unnecessary will not be considered in ruling on a summary judgment motion. If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof, summary judgment must be granted.<sup>6</sup>

## **B. Analysis**

Here, Respondent's Motion and attached evidence demonstrate that the parties agree that there has been no proposal or refusal related to Student's identification, evaluation, or placement. As

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<sup>4</sup> *M.L. ex. rel. A.L.*, 610 F.Supp.2d at 593.

<sup>5</sup> *T.W. bnf K.J. v. Leander Indep. Sch. Dist.*, 2019 WL 1102380, at \*2 (W.D. Tex. 2019) (school district entitled to summary judgment under Fed. R. Civ. P. 56 on issue of whether high school student was in need of special education).

<sup>6</sup> *Id.* at 3.

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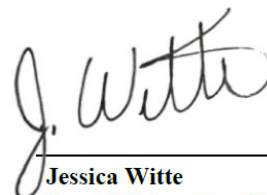
discussed above regarding the sufficiency challenge, it is also evident from the face of the Amended Complaint that Petitioner has not alleged a current denial of FAPE. Petitioner's Amended Complaint asserts a right to adjudicate the present dispute because the District may use the LRE section of the IEP as a justification to change Student's placement in the future. However, Petitioner filed no response and has offered no evidence to counter the District's Motion.

Because no genuine issue of material fact exists regarding a present dispute about the District's provision of FAPE to Student, there is no basis for the present proceeding. If in the future, there is a proposal or refusal related to Student's identification, evaluation, or placement, or the provision of FAPE to Student, then Petitioner will have a live complaint. At this point, the dispute is only hypothetical. As such, Respondent's Motion must be granted, in accordance with Tex. R. Civ. P. 166a.

### ORDERS

Based upon the foregoing, the record on file, the arguments of both parties, and in accordance with the Individuals with Disabilities Education Act and its implementing state and federal regulations, and because there are no genuine issues of material fact under Texas Rule of Civil Procedure 166a, it is therefore **ORDERED** that Respondent's Motion for Summary Judgment is hereby **GRANTED and this case is DISMISSED WITH PREJUDICE**.

**SIGNED November 18, 2021.**



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Jessica Witte  
Special Education Hearing Officer  
For the State of Texas