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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
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ACCEPTED
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09/09/2021 3:52 PM
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ADMINISTRATIVE HEARINGS
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**SOAH DOCKET NO. 701-21-3066.IDEA
TEA DOCKET NO. 236-SE-0821**

<p>█ B/N/F █ and █ , Petitioner</p>	<p>§ § § § § § § § §</p>	<p>BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS</p>
<p>v. SHARYLAND INDEPENDENT SCHOOL DISTRICT, Respondent</p>		

**ORDER NO. 4
GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

Student, █ b/n/f █ and █ (collectively, Petitioner), filed a request for an expedited impartial due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA) on August 3, 2021, with notice issued by the Texas Education Agency (TEA) on August 4, 2021. The Respondent to the Complaint is the Sharyland Independent School District (Respondent). The due process hearing in this case is currently set for September 13, 2021 with the decision of the hearing officer due on September 28, 2021.

On August 31, 2021, Respondent filed a Motion for Summary Judgment. On September 3, 2021, Petitioner filed a Response to the Motion.

I. MOTION AND RESPONSE

Respondent’s Motion argues that summary judgment is warranted because Student is no longer subject to a disciplinary alternative education program (DAEP) removal, and therefore there is no basis to proceed with an expedited hearing and all of Petitioner’s non-expedited issues remain pending in the non-expedited case docketed at TEA docket number 175-SE-0521. Respondent also argues that summary judgment is warranted because Petitioner refused to participate in a resolution session for this matter.

Petitioner's Response to Respondent's Motion argues that, even without the DAEP removal on the table, Petitioner is seeking additional relief through the expedited due process hearing. Petitioner also argues that Respondent could reinstate the DAEP removal and Student remains subject to Respondent's disciplinary authority. Petitioner further argues that ■ is entitled to prevailing party status and attorney's fees in this matter and therefore dismissal is not appropriate. Lastly, Petitioner argues that ■ did participate in the resolution session and that Respondent failed to convene a proper resolution session.

II. 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 application of 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 56.¹ 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.²

¹ *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).

² *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).

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. 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.³

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.⁴

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.⁵

³ *M.L. ex. Rel. A.L v. El Paso Indep. Sch. Dist.*, 610 F.Supp.2d at 593.

⁴ *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).

⁵ *Id.* at 3.

III. ANALYSIS

Here, Respondent's Motion and attached evidence demonstrates that Student is no longer subject to the DAEP removal at issue in Petitioner's expedited complaint. Petitioner does not dispute this fact. Instead, Petitioner argues that dismissal is not appropriate because Student could be disciplined again and seeks other relief through this proceeding. Because no genuine issue of material fact remains regarding the present application of Student's DAEP removal, there remains no basis for an expedited due process hearing.

Petitioner's argument that Student could be disciplined again does not establish a basis to retain this expedited proceeding on the docket. If Student is subject to a disciplinary removal in the future, related to any past or future alleged misconduct, Petitioner would then have a basis to file a new expedited complaint. Petitioner's arguments that additional relief is being sought, and therefore this case should continue to be litigated are unavailing. To the extent Petitioner is seeking compensatory education as a result of a denial of FAPE during the relevant timeframe, whether related to the disciplinary process or not, that issue and request for relief remain pending in Petitioner's non-expedited matter, TEA Dkt. No. 175-SE-0521, and does not entitle Petitioner to an expedited proceeding. Petitioner's arguments related to attorney's fees and prevailing party status are likewise inapt in a situation such as this where the basis for the complaint has been eliminated outside of a settlement or judicial resolution.

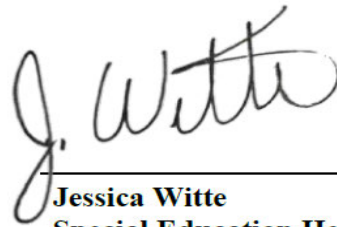
As such, Respondent's Motion must be granted, in accordance with Tex. R. Civ. P. 166a. The hearing officer declines to rule on the parties' arguments related to the resolution session as the Motion is granted on other grounds.

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**. Dismissal of this case does not rule upon the pending claims in Petitioner's non-expedited matter at TEA Dkt. No. 175-SE-0521.

SIGNED September 9, 2021.

A handwritten signature in black ink, appearing to read "J. Witte", is written over a horizontal line.

Jessica Witte
Special Education Hearing Officer
For the State of Texas