


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.³ A party can contest every element of its opponent’s case so long as each element is distinctly and explicitly challenged.⁴

When a movant files a proper no-evidence motion for summary judgment, the bur -1.73 (r)3 ()4i (e)4 (s)-1

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

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

ORDER NO. 8

PAGE 5

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.