

SOAH DOCKET NO. 701-23-03509.IDEA  
TEA DOCKET NO. 053-SE-1022

[REDACTED] B/N/F [REDACTED] AND [REDACTED] Petitioner	§ § § § § § § §	BEFORE A SPECIAL EDUCATION   HEARING OFFICER FOR   THE STATE OF TEXAS
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v.

SPRING BRANCH INDEPENDENT  
SCHOOL DISTRICT,  
Respondent

ORDER NO. 3  
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

[REDACTED] (Student), by next friend [REDACTED] and [REDACTED] (Parents or, collectively, Petitioner), filed a request for a due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA) against Spring Branch Independent School District (Respondent or SBISD) on September 2, 2022. The due process hearing in this case is set for February 9, 2023, with the decision due on March 30, 2023.

Respondent filed a Traditional and Non-Traditional Complaint with the State Education Agency (SEA) on [REDACTED] (TUSD). Parents enrolled Student in a [REDACTED] (TUSD) within the boundaries of Houston [REDACTED]

**CONFIDENTIAL**  
**Pursuant to e3 2 0rre3 2 0d**

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Parents have not accepted SBISD's offer to reevaluate Student and have not received prior written notice from SBISD regarding reevaluation.<sup>10</sup> Parents did not receive a copy of the Notice of Procedural Safeguards from SBISD prior to the filing of the Complaint.<sup>11</sup>

## II. MOTION AND RESPONSE

SBISD's Motion is both a traditional and a no-evidence motion for summary judgment. SBISD argues that traditional summary judgment is appropriate in this case because it did not have reason to suspect Student had a disability and a corresponding need for special education services until September 2, 2022—the date Petitioner filed the Complaint. SBISD further argues that, shortly after receiving the Complaint, it offered to conduct a timely reevaluation and to provide proportionate share services.

With respect to its no-evidence motion, SBISD asserts that Petitioner has not produced any evidence that SBISD failed to conduct a reevaluation when it was obligated to do so.

Petitioner argues in its Response that (1) child find is an affirmative duty that falls on SBISD, (2) the hearing officer has authority to make determinations regarding proportionate share services offered by SBISD, (3) a prior order entered by the hearing officer on a motion to dismiss forecloses SBISD's motion for summary judgment, and (4) a hearing is necessary in order to exhaust Petitioner's non-IDEA claims and because Petitioner seeks relief available under the IDEA.

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<sup>10</sup> Motion, Exhs. B ¶8.

<sup>11</sup> Response, [REDACTED] Aff. ¶¶4-5.

### III. LEGAL STANDARD S

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. Tex. R. Civ. P. 166a(4). Due process hearings under the IDEA in this state are currently not exempt from the rules regarding summary judgment.

In addition, Federal Rule of Civil Procedure 56 governs motions for summary judgment in federal court. Fed. R. Civ. P. 56. The wording of the Texas and federal rules are materially the same, and federal precedent is considered persuasive. *See*, 555 S.W.3d 79, 86 87 (Tex. 2018).

#### A. Traditional Summary Judgment

Summary judgment is appropriate when the record on file, including discovery responses, the pleadings, affidavits, stipulations of the parties, and authenticated or certified public records, show that there is no genuine issue of material fact that the moving party is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(4). In considering a traditional motion for summary judgment, the nonmovant's burden cannot be satisfied by conclusory allegations, unsubstantiated assertions or only a scintilla of evidence. *See*, Cause No. AU-17CA-00627SS, 2019 WL 1102380, at \*3 (W.D. Tex. Mar. 20, 2019), 986 F. Supp. 2d 812, 819 (S.D. Tex. 2013). Factual controversies are to be resolved in favor of the nonmovant, but only when there is an actual controversy that is, when both parties have submitted evidence of contradictory facts.

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, 610 F.Supp. 2d 58294 (W.D. Tex. 2009), , 369 Fed. Appx. 573 (5th Cir. 2010) (per curiam).

Once the moving party has made an initial showing that there is no evidence to support the non-moving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of genuine fact issues. When ruling on a traditional motion for summary judgment, the hearing officer is required to view all inferences drawn from the factual record in the light most favorable to the non-moving party. Furthermore, the hearing officer may not make credibility determinations or weigh the evidence in ruling on a motion for summary judgment. , 2019 WL 1102380, at\*.

#### B. No-Evidence Summary Judgment

Texas Rule of Civil Procedure 166a also permits a party to file a no-evidence motion for summary judgment. It states:

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 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.

Tex. R. Civ. P. 166a(i).

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 motion must be granted. To defeat a no-evidence motion for summary judgment, the non-movant need not marshal evidence, but must point out

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in ■ response evidence raising a fact issue as to the ~~challenges~~ challenges. Tex. R. Civ. P.  
166a(i)cmt. If the nonmovingparty fails to make a showing sufficient to establish the ex3603 TS3rc -0.0



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to students attending the school. Response at ¶¶ 20-30. The Complaint, however, challenges SBISD's child find obligation specifically to Student To the extent Petitioner's argument challenges the broader issue of whether SBISD has policies and procedures in place as a part of an overall child find program, that claim was not raised in the Complaint against SBISD discussed during the initial prehearing conference. Complaint; Prehearing Tr. (Sep. 23, 2022). Petitioner cannot avoid summary judgment by making unsubstantiated assertions on an unpled claim.

In sum, SBISD made an initial showing that it did not have notice of Student's disability until September 22, 2022, and that, shortly thereafter, it offered to evaluate Student and provide proportionate share services. Petitioner was then required to come forward with competent summary judgment evidence of a genuine issue of material fact showing that an actual controversy exists with respect to the applicable legal standard. Petitioner failed to do so. Accordingly, the Ae

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SBISD moves for summary judgment on the ground that

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raised in the complaint; (2) a description of other options that the Admission, Review, and Dismissal (ARD) committee considered and the reasons why those options were rejected; (3) a description of each evaluation, procedure, a

(b)(5)(D) (b)(5)(C) (b)(5)(A) (b)(7)(C) (b)(7)(D) (b)(7)(E) (b)(7)(F) (b)(7)(G) (b)(7)(H) (b)(7)(I) (b)(7)(J) (b)(7)(K) (b)(7)(L) (b)(7)(M) (b)(7)(N) (b)(7)(O) (b)(7)(P) (b)(7)(Q) (b)(7)(R) (b)(7)(S) (b)(7)(T) (b)(7)(U) (b)(7)(V) (b)(7)(W) (b)(7)(X) (b)(7)(Y) (b)(7)(Z) (b)(7)(aa) (b)(7)(ab) (b)(7)(ac) (b)(7)(ad) (b)(7)(ae) (b)(7)(af) (b)(7)(ag) (b)(7)(ah) (b)(7)(ai) (b)(7)(aj) (b)(7)(ak) (b)(7)(al) (b)(7)(am) (b)(7)(an) (b)(7)(ao) (b)(7)(ap) (b)(7)(aq) (b)(7)(ar) (b)(7)(as) (b)(7)(at) (b)(7)(au) (b)(7)(av) (b)(7)(aw) (b)(7)(ax) (b)(7)(ay) (b)(7)(az) (b)(7)(ba) (b)(7)(bb) (b)(7)(bc) (b)(7)(bd) (b)(7)(be) (b)(7)(bf) (b)(7)(bg) (b)(7)(bh) (b)(7)(bi) (b)(7)(bj) (b)(7)(bk) (b)(7)(bl) (b)(7)(bm) (b)(7)(bn) (b)(7)(bo) (b)(7)(bp) (b)(7)(bq) (b)(7)(br) (b)(7)(bs) (b)(7)(bt) (b)(7)(bu) (b)(7)(bv) (b)(7)(bw) (b)(7)(bx) (b)(7)(by) (b)(7)(bz) (b)(7)(ca) (b)(7)(cb) (b)(7)(cc) (b)(7)(cd) (b)(7)(ce) (b)(7)(cf) (b)(7)(cg) (b)(7)(ch) (b)(7)(ci) (b)(7)(cj) (b)(7)(ck) (b)(7)(cl) (b)(7)(cm) (b)(7)(cn) 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(b)(7)(gb) (b)(7)(gc) (b)(7)(gd) (b)(7)(ge) (b)(7)(gf) (b)(7)(gg) (b)(7)(gh) (b)(7)(gi) (b)(7)(gj) (b)(7)(gk) (b)(7)(gl) (b)(7)(gm) (b)(7)(gn) (b)(7)(go) (b)(7)(gp) (b)(7)(gq) (b)(7)(gr) (b)(7)(gs) (b)(7)(gt) (b)(7)(gu) (b)(7)(gv) (b)(7)(gw) (b)(7)(gx) (b)(7)(gy) (b)(7)(gz) (b)(7)(ha) (b)(7)(hb) (b)(7)(hc) (b)(7)(hd) (b)(7)(he) (b)(7)(hf) (b)(7)(hg) (b)(7)(hh) (b)(7)(hi) (b)(7)(hj) (b)(7)(hk) (b)(7)(hl) (b)(7)(hm) (b)(7)(hn) (b)(7)(ho) (b)(7)(hp) (b)(7)(hq) (b)(7)(hr) (b)(7)(hs) (b)(7)(ht) (b)(7)(hu) (b)(7)(hv) (b)(7)(hw) (b)(7)(hx) (b)(7)(hy) (b)(7)(hz) (b)(7)(ia) (b)(7)(ib) (b)(7)(ic) (b)(7)(id) (b)(7)(ie) (b)(7)(if) (b)(7)(ig) (b)(7)(ih) (b)(7)(ii) (b)(7)(ij) (b)(7)(ik) (b)(7)(il) (b)(7)(im) (b)(7)(in) (b)(7)(io) (b)(7)(ip) (b)(7)(iq) (b)(7)(ir) (b)(7)(is) (b)(7)(it) (b)(7)(iu) (b)(7)(iv) (b)(7)(iw) (b)(7)(ix) (b)(7)(iy) (b)(7)(iz) (b)(7)(ja) (b)(7)(jb) (b)(7)(jc) (b)(7)(jd) (b)(7)(je) (b)(7)(jf) (b)(7)(jg) (b)(7)(jh) (b)(7)(ji) (b)(7)(jj) (b)(7)(jk) (b)(7)(jl) (b)(7)(jm) (b)(7)(jn) (b)(7)(jo) (b)(7)(jp) (b)(7)(jq) (b)(7)(jr) (b)(7)(js) (b)(7)(jt) (b)(7)(ju) (b)(7)(jv) (b)(7)(jw) (b)(7)(jx) (b)(7)(jy) (b)(7)(jz) (b)(7)(ka) (b)(7)(kb) (b)(7)(kc) (b)(7)(kd) (b)(7)(ke) (b)(7)(kf) (b)(7)(kg) (b)(7)(kh) (b)(7)(ki) (b)(7)(kj) (b)(7)(kk) (b)(7)(kl) (b)(7)(km) (b)(7)(kn) (b)(7)(ko) (b)(7)(kp) (b)(7)(kq) (b)(7)(kr) (b)(7)(ks) (b)(7)(kt) (b)(7)(ku) (b)(7)(kv) (b)(7)(kw) (b)(7)(kx) (b)(7)(ky) (b)(7)(kz) (b)(7)(la) (b)(7)(lb) (b)(7)(lc) (b)(7)(ld) (b)(7)(le) (b)(7)(lf) (b)(7)(lg) (b)(7)(lh) (b)(7)(li) (b)(7)(lj) (b)(7)(lk) (b)(7)(ll) (b)(7)(lm) (b)(7)(ln) (b)(7)(lo) (b)(7)(lp) (b)(7)(lq) (b)(7)(lr) (b)(7)(ls) (b)(7)(lt) (b)(7)(lu) (b)(7)(lv) (b)(7)(lw) (b)(7)(lx) (b)(7)(ly) (b)(7)(lz) (b)(7)(ma) (b)(7)(mb) (b)(7)(mc) (b)(7)(md) (b)(7)(me) (b)(7)(mf) (b)(7)(mg) (b)(7)(mh) (b)(7)(mi) (b)(7)(mj) (b)(7)(mk) (b)(7)(ml) (b)(7)(mm) (b)(7)(mn) (b)(7)(mo) (b)(7)(mp) (b)(7)(mq) (b)(7)(mr) (b)(7)(ms) (b)(7)(mt) (b)(7)(mu) (b)(7)(mv) (b)(7)(mw) (b)(7)(mx) (b)(7)(my) (b)(7)(mz) (b)(7)(na) (b)(7)(nb) (b)(7)(nc) (b)(7)(nd) (b)(7)(ne) (b)(7)(nf) (b)(7)(ng) (b)(7)(nh) (b)(7)(ni) (b)(7)(nj) (b)(7)(nk) (b)(7)(nl) (b)(7)(nm) (b)(7)(nn) (b)(7)(no) (b)(7)(np) (b)(7)(nq) (b)(7)(nr) (b)(7)(ns) (b)(7)(nt) (b)(7)(nu) (b)(7)(nv) (b)(7)(nw) (b)(7)(nx) (b)(7)(ny) (b)(7)(nz) (b)(7)(oa) (b)(7)(ob) (b)(7)(oc) (b)(7)(od) (b)(7)(oe) (b)(7)(of) (b)(7)(og) (b)(7)(oh) (b)(7)(oi) (b)(7)(oj) (b)(7)(ok) (b)(7)(ol) (b)(7)(om) (b)(7)(on) (b)(7)(oo) (b)(7)(op) (b)(7)(oq) (b)(7)(or) (b)(7)(os) (b)(7)(ot) (b)(7)(ou) (b)(7)(ov) (b)(7)(ow) (b)(7)(ox) (b)(7)(oy) (b)(7)(oz) (b)(7)(pa) (b)(7)(pb) (b)(7)(pc) (b)(7)(pd) (b)(7)(pe) (b)(7)(pf) (b)(7)(pg) (b)(7)(ph) (b)(7)(pi) (b)(7)(pj) (b)(7)(pk) (b)(7)(pl) (b)(7)(pm) (b)(7)(pn) (b)(7)(po) (b)(7)(pp) (b)(7)(pq) (b)(7)(pr) (b)(7)(ps) (b)(7)(pt) (b)(7)(pu) (b)(7)(pv) (b)(7)(pw) (b)(7)(px) (b)(7)(py) (b)(7)(pz) (b)(7)(qa) (b)(7)(qb) (b)(7)(qc) (b)(7)(qd) (b)(7)(qe) (b)(7)(qf) (b)(7)(qg) (b)(7)(qh) (b)(7)(qi) (b)(7)(qj) (b)(7)(qk) (b)(7)(ql) (b)(7)(qm) (b)(7)(qn) (b)(7)(qo) (b)(7)(qp) (b)(7)(qq) (b)(7)(qr) (b)(7)(qs) (b)(7)(qt) (b)(7)(qu) (b)(7)(qv) (b)(7)(qw) (b)(7)(qx) (b)(7)(qy) (b)(7)(qz) (b)(7)(ra) (b)(7)(rb) (b)(7)(rc) (b)(7)(rd) (b)(7)(re) (b)(7)(rf) (b)(7)(rg) (b)(7)(rh) (b)(7)(ri) (b)(7)(rj) (b)(7)(rk) (b)(7)(rl) (b)(7)(rm) (b)(7)(rn) (b)(7)(ro) (b)(7)(rp) (b)(7)(rq) (b)(7)(rr) (b)(7)(rs) (b)(7)(rt) (b)(7)(ru) (b)(7)(rv) (b)(7)(rw) (b)(7)(rx) (b)(7)(ry) (b)(7)(rz) (b)(7)(sa) (b)(7)(sb) (b)(7)(sc) (b)(7)(sd) (b)(7)(se) (b)(7)(sf) (b)(7)(sg) (b)(7)(sh) (b)(7)(si) (b)(7)(sj) (b)(7)(sk) (b)(7)(sl) (b)(7)(sm) (b)(7)(sn) (b)(7)(so) (b)(7)(sp) (b)(7)(sq) (b)(7)(sr) (b)(7)(ss) (b)(7)(st) (b)(7)(su) (b)(7)(sv) (b)(7)(sw) (b)(7)(sx) (b)(7)(sy) (b)(7)(sz) (b)(7)(ta) (b)(7)(tb) (b)(7)(tc) (b)(7)(td) (b)(7)(te) (b)(7)(tf) (b)(7)(tg) (b)(7)(th) (b)(7)(ti) (b)(7)(tj) (b)(7)(tk) (b)(7)(tl) (b)(7)(tm) (b)(7)(tn) (b)(7)(to) (b)(7)(tp) (b)(7)(tq) (b)(7)(tr) (b)(7)(ts) (b)(7)(tt) (b)(7)(tu) (b)(7)(tv) (b)(7)(tw) (b)(7)(tx) (b)(7)(ty) (b)(7)(tz) (b)(7)(ua) (b)(7)(ub) (b)(7)(uc) (b)(7)(ud) (b)(7)(ue) (b)(7)(uf) (b)(7)(ug) (b)(7)(uh) (b)(7)(ui) (b)(7)(uj) (b)(7)(uk) (b)(7)(ul) (b)(7)(um) (b)(7)(un) (b)(7)(uo) (b)(7)(up) (b)(7)(uq) (b)(7)(ur) (b)(7)(us) (b)(7)(ut) (b)(7)(uu) (b)(7)(uv) (b)(7)(uw) (b)(7)(ux) (b)(7)(uy) (b)(7)(uz) (b)(7)(va) (b)(7)(vb) (b)(7)(vc) (b)(7)(vd) (b)(7)(ve) (b)(7)(vf) (b)(7)(vg) (b)(7)(vh) (b)(7)(vi) (b)(7)(vj) (b)(7)(vk) (b)(7)(vl) (b)(7)(vm) (b)(7)(vn) (b)(7)(vo) (b)(7)(vp) (b)(7)(vq) (b)(7)(vr) (b)(7)(vs) (b)(7)(vt) (b)(7)(vu) (b)(7)(vv) (b)(7)(vw) (b)(7)(vx) (b)(7)(vy) (b)(7)(vz) (b)(7)(wa) (b)(7)(wb) (b)(7)(wc) (b)(7)(wd) (b)(7)(we) (b)(7)(wf) (b)(7)(wg) (b)(7)(wh) (b)(7)(wi) (b)(7)(wj) (b)(7)(wk) (b)(7)(wl) (b)(7)(wm) (b)(7)(wn) (b)(7)(wo) (b)(7)(wp) (b)(7)(wq) (b)(7)(wr) (b)(7)(ws) (b)(7)(wt) (b)(7)(wu) (b)(7)(wv) (b)(7)(ww) (b)(7)(wx) (b)(7)(wy) (b)(7)(wz) (b)(7)(xa) (b)(7)(xb) (b)(7)(xc) (b)(7)(xd) (b)(7)(xe) (b)(7)(xf) (b)(7)(xg) (b)(7)(xh) (b)(7)(xi) (b)(7)(xj) (b)(7)(xk) (b)(7)(xl) (b)(7)(xm) (b)(7)(xn) (b)(7)(xo) (b)(7)(xp) (b)(7)(xq) (b)(7)(xr) (b)(7)(xs) (b)(7)(xt) (b)(7)(xu) (b)(7)(xv) (b)(7)(xw) (b)(7)(xx) (b)(7)(xy) (b)(7)(xz) (b)(7)(ya) (b)(7)(yb) (b)(7)(yc) (b)(7)(yd) (b)(7)(ye) (b)(7)(yf) (b)(7)(yg) (b)(7)(yh) (b)(7)(yi) (b)(7)(yj) (b)(7)(yk) (b)(7)(yl) (b)(7)(ym) (b)(7)(yn) (b)(7)(yo) (b)(7)(yp) (b)(7)(yq) (b)(7)(yr) (b)(7)(ys) (b)(7)(yt) (b)(7)(yu) (b)(7)(yv) (b)(7)(yw) (b)(7)(yx) (b)(7)(yy) (b)(7)(yz) (b)(7)(za) (b)(7)(zb) (b)(7)(zc) (b)(7)(zd) (b)(7)(ze) (b)(7)(zf) (b)(7)(zg) (b)(7)(zh) (b)(7)(zi) (b)(7)(zj) (b)(7)(zk) (b)(7)(zl) (b)(7)(zm) (b)(7)(zn) (b)(7)(zo) (b)(7)(zp) (b)(7)(zq) (b)(7)(zr) (b)(7)(zs) (b)(7)(zt) (b)(7)(zu) (b)(7)(zv) (b)(7)(zw) (b)(7)(zx) (b)(7)(zy) (b)(7)(zz)

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decided on the face of the pleadings. Tex. R. Civ. P. 91a cmt. (stating that the rule is intended to provide for the dismissal of baseless claims upon motion and without evidence) and summary judgment, on the other hand, seeks judgment on a claim as a matter of law when there are no genuine issues of material fact and contemplates the submission of evidence in support of and/or opposition to the motion. Tex. R. Civ. P. 91a, 160a. In this case, Pm2( PmE4)et[ Tc -0.029 Tw7.029 -0

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166a or 166a(i), it **ORDERED** that Respondent's Motion for Traditional and No Evidence Summary Judgment is hereby **GRANTED** and this case **DISMISSED WITH PREJUDICE**.

SIGNED January 2, 2023.



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