BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

LOMPOC UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019040355

and

LOMPOC UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019061146

ORDER DENYING STUDENT'S MOTION FOR ORDER TO SHOW CAUSE AND DENYING BOTH PARTIES' REQUEST FOR SANCTIONS

The hearing in this consolidated matter began on September 24, 2019. At the start of the hearing, counsel for Lompoc Unified School District informed the Administrative Law Judge on the record the director of special education for Lompoc

was in a serious automobile accident on the way to the hearing and was taken to get medical care. For the reasons set forth on the record, the hearing was continued to begin on December 10, 2019.

On October 8, 2019, Student filed Notice and Motion for an Order to Show Cause Why Sanctions Should Not Be Ordered. It appears from the supporting declarations and exhibits, that after the hearing was continued on September 24, 2019, Student's counsel and her paralegal searched police and fire department reports, California Highway Patrol reports, traffic websites, and local news agencies. They called local law enforcement, including first responders such as fire departments. Student's counsel wrote she "could find NO mention of any car accident that morning, let alone one requiring medical attention." Student now seeks an order requiring Lompoc's counsel and the special education director to prove the director was in a serious car accident and to produce documentation from the director's insurance company, hospital and emergency room records showing the director's medical treatment, and a police report, "all of which can be redacted to sanitize the alleged victim's identity…" Student seeks sanctions in the amount of $2,314.36 for costs of preparation, travel and hours of a witness, Student's attorney and her paralegal.

On October 11, 2019, Lompoc filed opposition to Student's motion and a motion for sanctions against Student. Lompoc argued Student's motion was frivolous and made for the purpose of harassment. Lompoc's request for costs is supported by a conclusory statement that it incurred costs "in excess of $1,949.50."

On October 14, 2019, Student filed a reply to Lompoc's opposition.

APPLICABLE LAW

An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

Student's motion comes perilously close to frivolity, especially in light of Lompoc's special education director's sworn testimony in another case before OAH on October 1, 2019, in which Student's counsel attempted the same tactic to no avail. Student's request for proof of auto insurance, medical records and a police report, redacted or not, without mention that the director testified as to the fact under penalty

of perjury on October 1, 2019, borders on bad faith. Student's motion and Lompoc's cross motion are denied.

IT IS SO ORDERED.

DATED: October 15, 2019

DocuSigned by:
Marian H. Tully
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Marian H. Tully
Presiding Administrative Law Judge
Office of Administrative Hearings