

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERNVILLE UNION SCHOOL
DISTRICT.

OAH Case No. 2014090030

ORDER DENYING MOTION TO
DISMISS

On August 26, 2014, Student's parent on behalf of Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming Kernville Union School District (Kernville) as the respondent.

On September 8, 2014, Kernville filed a motion to dismiss, alleging that Student did not properly serve Kernville with the complaint.¹

On September 9, 2014, Student filed an opposition to the motion.

DISCUSSION

Kernville's motion to dismiss asks OAH to put form over substance and adhere to the fiction that Kernville had no notice of this due process case, when in reality Kernville had actual notice and a copy of the complaint. A review of the procedural facts, taken from the declarations Kernville filed with its motion and other documents on file with OAH, demonstrates this.

According to the declaration of Kernville's counsel Kathleen LaMay, Esq., Student's counsel faxed a copy of the complaint to Attorney LaMay's office on August 26, 2014, the same day the complaint was filed with OAH. Attorney LaMay had not been retained to represent Kernville in the instant case as of that day, although she represented Kernville in a separate matter relating to this same Student.

¹ The motion was sent to OAH via fax on Friday evening at 6:15 p.m., and was deemed filed with OAH the following Monday, on September 8, 2014.

The next day, August 27, 2014, Attorney LaMay called Kernville to let Kernville know about the complaint she had received. At that time, Kernville had not yet been served with a copy of the complaint by Student.

On that same day, August 27, 2014, Attorney LaMay filed a notice of representation with OAH, indicating that her law firm would be representing Kernville in this matter. On September 5, 2014, at 4:50 p.m., Attorney LaMay, on behalf of Kernville, filed a response to the complaint, alleging that Kernville had not yet received a copy of the complaint. Later that same evening, Attorney LaMay filed the instant motion to dismiss.

The basis for the motion to dismiss was that Student had never served Kernville with the complaint. Student had served the complaint on Attorney LaMay's office, but Attorney LaMay had not officially been retained to represent Kernville in the instant case at the time service was made. On that basis, Kernville argued that service was improper. Kernville asked that the case be dismissed for lack of service or, alternatively, that the timelines for the case be extended until the actual date of service.

On September 9, 2014, Student filed an opposition. Student's counsel explained that counsel served Attorney LaMay with the complaint because counsel believed Attorney LaMay was representing Kernville. Attorney LaMay had represented Kernville in a related matter between these parties. When Student's counsel had dealt with Attorney LaMay on other cases in the past, Attorney LaMay had insisted that Student's counsel have contact only with Attorney LaMay, not with the school district staff.

After Student's counsel received the motion and learned there was a possible problem with the service, counsel served the complaint on Kernville on September 8, 2014.

While a highly technical reading of the law might favor Kernville's position in this matter, neither common sense nor equity supports it. Kernville retained Attorney LaMay as its counsel the day after Attorney LaMay received the complaint. At that point, Kernville had actual notice of the case and began to file documents with OAH. Had Attorney LaMay truly felt that physical service on her client was necessary, a courtesy call or email to Student's counsel would have solved the entire situation without need for a motion.

There is no indication whatsoever that Student's counsel served Attorney LaMay with the complaint (rather than Kernville) in order to delay the case or for any other improper motive. To the contrary, Student's counsel believed that service was proper. When Student's counsel received the motion to dismiss, counsel corrected the situation and served the complaint on Kernville.

To dismiss the case under these circumstances would be to elevate form over substance. The motion must be denied.

There is also no need to extend timelines. Kernville had actual notice of Student's complaint the day after it was filed, when Attorney LaMay filed her notice of representation with OAH. Kernville had plenty of time to comply with its statutory obligations, such as holding a resolution session.

ORDER

The motion to dismiss is denied. The matter shall proceed as scheduled.

DATE: September 10, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings