BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. KERN COUNTY SUPERINTENDENT OF SCHOOLS.	OAH Case No. 2016040211 ORDER DENYING MOTION TO DISMISS AND ORDERING STUDENT TO SERVE KERN COUNTY SUPERINTENDENT OF SCHOOLS

On March 30, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Kern County Superintendent of Schools. The Request for Due Process hearing contained a Proof of Service which indicated that a copy had been sent by facsimile to OAH and attorneys Kyle Holmes, Darren Bogie, and Kelly Lazerson of the Schools Legal Service, a law firm. No copy was sent on Kern. Thus, service was not made on Kern.

On March 31, 2016, Student filed with OAH a Corrected Due Process Complaint (complaint) naming Kern. The attached Proof of Service indicated that a copy of the complaint had been sent by facsimile to OAH and the three Schools Legal Service attorneys served with the original Request for Due Process Hearing. No copy was sent to Kern. Thus, service was not made on Kern.

On April 4, 2016, Kern filed a Motion to Dismiss on grounds that Kern had not been served as required by Education Code section 56502. Student did not submit a response.

Education Code section 56502, subsection (C)(1) requires a party initiating a due process proceeding to serve a written request to the State Superintendent and "shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the Superintendent." Thus, a party initiating a due process proceeding is required to serve the opposing party. Here, Student has failed to serve Kern.

ORDER

1. Kern's motion to dismiss Student's complaint is DENIED without prejudice.

2. Student is ordered to serve Kern with a copy of the Corrected Due Process Complaint within five business days of the date of this order, and concurrently file a copy of the proof of service with OAH.

3. The April 4, 2016 Scheduling Order is hereby vacated. Should Student appropriately serve a copy of the Corrected Due Process Complaint on Kern, OAH will issue a new scheduling order based on the date of proper service on Kern. If Student fails to timely serve Kern, OAH shall dismiss this action.

DATE: April 8, 2016

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings