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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAI STUART, MOTHER OF A.S., A
CHILD WITH A DISABILITY

Plaintiff,

v.
CARLSBAD UNIFIED SCHOOL
DISTRICT; DOES 1 through 10,

Defendant.

CASE NO. 16cv2295-WQH-BGS
ORDER

HAYES, Judge:

The matter before the Court is Defendant Carlsbad Unified School District’s Motion to Dismiss. (ECF No. 6).

I. Background

On September 12, 2016, Plaintiff, proceeding pro se on behalf of her child A.S., initiated this action by filing the Complaint. (ECF No. 1). On September 12, 2016, Plaintiff filed a motion to proceed in forma pauperis (“IFP”). (ECF No. 2). On September 14, 2016, the Court denied Plaintiff’s motion to proceed IFP, and ordered Plaintiff to either pay the requisite filing fee or submit a more detailed IFP motion – otherwise the action would be dismissed within thirty days. (ECF No. 3). On September 20, 2016, Plaintiff paid the requisite filing fee. (ECF No. 4).

On October 19, 2016, Defendant filed the Motion to Dismiss. (ECF No. 6). Defendant filed a certificate of service attached to its Motion to Dismiss, stating that Defendant sent Plaintiff a copy of its Motion by overnight courier to Plaintiff’s address

1 listed on the docket of this case. *Id.* at 3; ECF Nos. 6-1 at 4; 6-2 at 3. On November
2 21, 2016, Defendant filed a notice of non-opposition, stating that Defendant “has not
3 received an Opposition to its Motion to Dismiss Plaintiff’s Complaint[.]” (ECF No. 7
4 at 1). As of the date of this Order, the record reflects that Plaintiff has not filed an
5 opposition to Defendant’s Motion to Dismiss.

6 **II. Contentions of the Defendant (ECF No. 6)**

7 Defendant moves to dismiss this case pursuant to Federal Rule of Civil Procedure
8 12(b)(5). (ECF No. 6). Defendant contends that service of process was insufficient
9 under Federal Rule of Civil Procedure 4 and California law. (ECF No. 6-1 at 2-3).
10 Defendant contends that it “has not been properly served with the summons and
11 complaint, whether by mail or personally by Plaintiff[.]” *Id.* at 2. Defendant contends
12 that

13 The District received a copy of the Complaint and summons on September
14 28, 2016. According to the District’s Director of Special Education, Tim
15 Evanson, an unidentified man came and dropped off the summons and
16 Complaint — he gave them to the District’s Administrative Assistant,
Theresa Worth, while she was working at the front desk of the District
Office. There was no proof of service provided and, to our knowledge,
there has been no Proof of Service filed with the court.

17 *Id.* Defendant contends that “public entities, like Defendant, are not required to accept
18 service by mail” under California law. *Id.* at 3. Defendant contends that “[t]here is no
19 indication that Plaintiff ever served any individual who was authorized to accept service
20 on behalf of the District, such as a CEO or other head of the department.” *Id.*

21 **III. Analysis**

22 Under Federal Rule of Civil Procedure 12(b)(5), a party may move to dismiss an
23 action based on “insufficient service of process[.]” Fed. R. Civ. P. 12(b)(5). Federal
24 Rule of Civil Procedure 4(j) governs service of a state or local government¹:

25 (2) A state, a municipal corporation, or any other state-created
26 governmental organization that is subject to suit must be served by:
(A) delivering a copy of the summons and of the complaint

27
28 ¹ Plaintiff alleges that Defendant is a public school district. *See* ECF No. 1 at ¶
9 (alleging that “Carlsbad Unified School District is the Local Educational Agency
under the I.D.E.A.”).

1 to its chief executive officer; or
2 (B) serving a copy of each in the manner prescribed by that
3 state’s law for serving a summons or like process on such a
4 defendant.

5 Fed. R. Civ. P. 4(j)(2)(A-B). Courts have found that California Code of Civil Procedure
6 section 416.50 is “the manner prescribed by [California] state[] law for serving a
7 summons or like process on” a California government defendant. Fed. R. Civ. P.
8 4(j)(2)(B); see *Quansah v. Comm’r, Soc. Security & Disability Admin.*, 2014 WL
9 2214035, at *5 (N.D. Cal. May 28, 2014) (“When proceeding under Rule 4(j)(2)(B),
10 California law [Cal. Code Civ. Proc. § 416.50] provides the who and how a summons
11 can be served on a governmental agency.”); *Gottschalk v. City & Cnty. of San*
12 *Francisco*, 964 F. Supp. 2d 1147, 1165 (N.D. Cal. 2013) (stating that personal service
13 of a state employee “[wa]s required by Rule 4(j)(2) and Cal. Code Civ. Proc. §
14 416.50.”). Under the statute,

15 (a) A summons may be served on a public entity by delivering a copy of
16 the summons and of the complaint to the clerk, secretary, president,
17 presiding officer, or other head of its governing body.

18 (b) As used in this section, “public entity” includes the state and any
19 office, department, division, bureau, board, commission, or agency of the
20 state, the Regents of the University of California, a county, city, district,
21 public authority, public agency, and any other political subdivision or
22 public corporation in this state.

23 Cal. Civ. Proc. § 416.50(a-b).

24 “Once service is challenged, plaintiffs bear the burden of establishing that service
25 was valid under Rule 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).
26 Southern District of California Local Rule 7.1(e)(2) requires that “each party opposing
27 a motion . . . must file that opposition or statement of non-opposition with the clerk and
28 serve the movant or the movant’s attorney not later than fourteen (14) calendar days
prior to the noticed hearing.” CivLR 7.1(e)(2). Local Rule 7.1(f)(3)(c) states that “[i]f
an opposing party fails to file the papers in the manner required by Civil Local Rule
7.1.e.2, that failure may constitute a consent to the granting of a motion or other request
for ruling by the court.” CivLR 7.1(f)(3)(c).

In this case, Defendant has challenged the sufficiency of service, and Plaintiff

1 bears the burden of proving that service was valid under Rule 4. *See Brockmeyer*, 383
2 F.3d at 801. Plaintiff has not filed proof of service in the record of this case, and
3 Plaintiff has not responded to Defendant's Motion to Dismiss for insufficient service
4 of process. The Court finds that at this stage of the proceedings, Plaintiff has not met
5 her burden to demonstrate that service in this case was valid under Rule 4.

6 **IV. Conclusion**

7 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss (ECF No. 6) is
8 granted. IT IS FURTHER ORDERED that this case is dismissed without prejudice.
9 The Clerk of the Court is ordered to close this case.

10 DATED: January 13, 2017

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12 **WILLIAM Q. HAYES**
13 United States District Judge
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