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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TARIKH DEMEKPE,

Plaintiff,

vs.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE
UNIVERSITY,

Defendant.

Case No. CV11-1177 DDP (MLG)

Date: November 21, 2011

Time: 10:00 a.m.

Courtroom: 3

Judge: Hon. Dean D. Pregerson

**DEFENDANT CSU'S STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Date of Filing: February 23, 2011

Trial Date: Not Set

Pursuant to Central District Local Rule 56-1, defendant Board of Trustees of the California State University submits this Statement of Uncontroverted Facts and Conclusions of Law.

CALIFORNIA STATE UNIVERSITY
OFFICE OF GENERAL COUNSEL

Dated: October 17, 2011



Susan Westover

Attorney for Defendant Board of Trustees of the
California State University

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UNCONTROVERTED FACTS

1. The systemwide CSU grade appeal policy sets forth the principles governing the assignment of grades and the standards for grade appeals for all 23 of CSU's campuses. Under that policy:

- a) Faculty have the sole right and responsibility to assign grades.
- b) Grades are presumed to be correct. Anyone appealing a grade must prove otherwise.
- c) In the absence of compelling reasons (identified as instructor or clerical error, prejudice or capriciousness), grades are final.

[Declaration of Dr. Clarence "Gus" Martin, ¶ 3: Exh. 1, p. 8.]

2. The CSUDH Student Grades Appeals policy/procedure incorporates these principles and establishes the following procedures:

- a) Before proceeding with a grade appeal, a student must first make an informal attempt to resolve the matter.
- b) The burden of proof is by "clear evidence," a heavy burden of proof that rests with the appealing student.
- c) If informal attempts fail, the student must submit a formal written grade appeal that contains "a clear statement of the problem; the specific action requested of the University; and arguments to support the student's request."
- d) The involved faculty member and Department Chair must submit their positions in writing.
- e) The Dean will attempt resolution, and if that does not work, she will forward the case file along with her recommendation on the appeal.
- f) At that point, a tenured faculty member will be appointed as Preliminary Investigator. She will confer with the student, faculty member,

1 Department Chair, and Dean to make a preliminary investigation of the
2 facts alleged by the student. All parties are given a chance to further
3 clarify their positions in writing.

4 g) The Preliminary Investigator will issue a written report, keeping in mind
5 the presumption that grades are correct, and that the burden of proof is
6 on the complaining student “to show that the conduct by the faculty
7 member was contrary to procedures, arbitrary, unreasonable, prejudiced,
8 capricious, or the result of computational or clerical error.” Further, a
9 grade cannot be reversed if it “resulted from the exercise of reasonable
10 judgment.”

11 h) The Preliminary Investigator must indicate in her report whether any
12 cause for a grade appeal exists, and whether the appeal should be
13 dropped or instead proceed to a formal hearing by the entire Board.

14 i) The Appeals Board then convenes to determine by majority vote
15 whether cause for a grade appeal exists. (A quorum consists of three
16 members, including at least two faculty members.) The Board’s
17 determination is final. If the Board concludes that there is no cause for
18 a grade appeal, the proceedings are concluded and the parties are
19 informed in writing. There is no right to a contested hearing at this
20 point.

21 j) If the student believes the procedures have not been properly followed,
22 he must submit a written complaint, including the reasons therefor, to
23 the University President with a copy to the Chair of the Academic
24 Senate. The President or her designee will respond in writing within
25 seven days. But the merits or facts are not appealable beyond the
26 Board, whose decision is final and binding.

27 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 5: Exh. 3, p. 2-7.]*
28

1 3. Over the course of his college career, Tarikh Demekpe has received a
2 number of failing, incomplete, and poor grades, in addition to repeated courses. He was
3 on academic probation during his first three semesters at CSUDH.

4 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 9: Exh. 9.]*
5

6 4. In Spring 2010, Demekpe took Advanced Composition (ENG 350) in
7 Spring 2010, but received a grade of “NC” (no credit). He also took Research Methods
8 for Human Services (HUS 460), and only earned a “D.” He repeated ENG 350 in
9 Summer 2010, and again received an “NC.” And he repeated HUS 460, too – and only
10 slightly improved to a “D+.”

11 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 9: Exh. 9: p. 3-4.]*
12

13 5. Demekpe filed two separate grade appeals in 2010: the first to challenge his
14 “NC” grade in ENG 350, and the second to challenge his “D+” grade in HUS 460.

15 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 10; Exhs. 11, 14, 20, 21, 22.]*
16

17 6. Demekpe terminated his grade appeal in ENG 350 of his own accord.

18 *[Declaration of Dr. S. Noel Sturm, ¶ 4.; Exhs. 31-32.]*
19

20 7. Some informal attempts at resolution were unsuccessfully attempted on the
21 appeal in HUS 460.

22 *[Declaration of Ginger Wilson, ¶ 13; Exhs. 15-19.]*
23

24 8. Demekpe submitted a written grade appeal in HUS 460. It did not make
25 clear whether it pertained to the HUS 460 grade from Spring 2010 or Summer 2010. He
26 also submitted supplemental written materials.

27 *[Declaration of Dr. Anupama Joshi, ¶ 3; Exh. 20; ¶ 5-6; Exhs. 22-23; Declaration of*
28

1 *Dr. Clarence “Gus” Martin, ¶ 10.]*

2
3 9. Prof. Escamilla submitted a written response, addressing the summer grade.
4 He explained that Demekpe’s assignments were below average, not in the proper
5 format, incomplete, or had not followed the directions. He also explained that Demekpe
6 lost many points because of attendance and lack of class participation.

7 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 21: Exh. 24: p. 2.]*

8
9 10. Ginger Wilson, the Human Services program coordinator, submitted her
10 recommendation, finding that the grade appeal was not substantiated by the facts, and
11 concluding that Demekpe’s grade should remain a “D+.” She found that Prof.
12 Escamilla’s attendance records supported his position, not Demekpe’s, and that there
13 was nothing to substantiate a claim that other students were treated differently. (Id.)

14 *[Declaration of Ginger Wilson, ¶ 17; Exh. 26: p. 3.]*

15
16 11. College Dean Joshi issued a recommendation that stated, “it is my opinion
17 the evidence does not make a convincing argument to merit a reconsideration of the
18 grade.”

19 *[Declaration of Dr. Anupama Joshi, ¶ 7: Exh. 27.]*

20
21 12. Dr. Sturm was appointed as Preliminary Investigator and contacted
22 Demekpe for additional information. Dr. Sturm issued her final report, finding “that
23 this grade appeal should be dropped, not proceeding to a formal hearing by the board.”
24 She also found: “The syllabus clearly states the late assignment and attendance policies
25 and Mr. Demekpe gave no written proof that the instructor was arbitrary, unreasonable,
26 prejudiced, capricious or made a computational error in computing course grades.”

27 *[Declaration of Dr. S. Noel Sturm, ¶¶ 5-7 and 9: Exhs. 26, 35, 36, 37, 38, 39, 40.]*

1 13. Upon consideration of the earlier levels of recommendations, the Grade
2 Appeals Board voted, by majority vote, and determined that the “D+” grade should
3 remain unchanged. Resting on the presumption that grades are correct, the Board found
4 a lack of evidence to support Demekpe’s contentions. It concluded by finding that “no
5 cause for grade appeal exists,” thereby closing the proceedings.

6 *[Declaration of Dr. William R. Whetstone, ¶ 4; Exh. 47.]*
7

8 14. After Demekpe raised a concern about the process, CSUDH offered to
9 allow for a re-reading of the appeal by the newly reconstituted Appeals Board.

10 *[Declaration of Dr. Clarence “Gus” Martin, ¶ 27; Declaration of Dr. Miguel*
11 *Dominguez, ¶¶ 3-4.]*
12

13 15. Demekpe sent separate emails to the campus President and Chair of the
14 Academic Senate alleging he was unfairly denied a grade appeal and was the victim of a
15 conspiracy. Demekpe tried to set a meeting with the campus President, but that request
16 was declined. The President’s executive assistant advised Demekpe that the President
17 was “aware of [his] concluded grade appeal and fully supports the decision made.”
18 Demekpe was directed to address further questions to the President’s designee, Dr. Gus
19 Martin.

20 *[Declaration of Susan Westover, ¶ 10; Exh. 65, p. 1-2; Declaration of Dr. Clarence*
21 *“Gus” Martin, ¶ 27; Exh. 48.]*
22

23 16. Under the new Chair, the Appeals Board reconsidered the appeal but came
24 to the same conclusion: the grade should remain unchanged; there was a lack of
25 evidence to support the student’s contentions; and no cause for a grade appeal existed.

26 *[Declaration of Dr. Miguel Dominguez, ¶¶ 8-9; 50-51.]*
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28

CONCLUSIONS OF LAW

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3 1. Summary judgment is appropriate because there is no genuine dispute on
4 any material fact. FRCP 56(a).

5 2. Plaintiff's civil rights claims have no merit because CSU complied with the
6 requirements of the grade appeals policy and procedure, and plaintiff has no evidence to
7 the contrary.

8
9 3. The Fourteenth Amendment to the United States Constitution protects
10 individuals from being deprived of life, liberty, or property without due process of law.
11 U.S. Const. amend. XIV, § 1. Due process requires notice and some opportunity for
12 hearing. *Dixon v. Alabama State Board of Education*, 291 F.2d 150 (5th Cir. 1961).

13 4. State and federal courts generally adhere to a policy of non-interference in
14 academic or disciplinary decisions pertaining to students, except when those decisions
15 result from bias, bad faith, or arbitrariness. *University of Michigan v. Ewing*, 474 U.S.
16 214, 225, 106 S.Ct. 507, 513 (1985); *Board of Curators of University of Missouri v.*
17 *Horowitz*, 435 U.S. 78, 85, 98 S.Ct. 948, 952 (1978); *Disesa v. St. Louis Community*
18 *College*, 79 F.3d 92 (8th Cir. 1996); *Meginity v. Stegner*, 27 F.3d 1120 (6th Cir. 1992).

19
20 5. CSU's undisputed evidence shows that CSUDH implemented a reasonable
21 Student Grade Appeals policy and procedure, and that it was followed in this case to a
22 final and binding decision. It did not result in an full-fledged adversary hearing because
23 various preliminary decision-makers all concurred that no cause for a formal grade
24 appeal existed. Demekpe has not produced any evidence of discrimination, prejudice,
25 arbitrariness, or capriciousness. Due process does not require a full-fledged adversarial
26 hearing in every context. *Horowitz, supra*, 435 U.S. at 85, 98 S.Ct. at 952.

27 6. And even if a university fails to comply with every one of its own internal
28 procedures, such a failure does not amount to a constitutional violation so long as the

1 procedures meet the minimal due process requirements. *Schuler v. University of*
2 *Minnesota*, 788 F.2d 510, 515 (8th Cir. 1986). Here, CSU's procedures provided
3 plaintiff with ample notice and an opportunity to be heard, and the faculty and staff
4 complied or substantially complied with all of the procedural requirements. In sum, the
5 constitutional requirements were met.

6
7 7. CSU is immune from a claim for damages under the Eleventh Amendment.
8 The Eleventh Amendment provides: "The judicial power of the United States shall not
9 be construed to extend to any suit in law or equity, commenced or prosecuted against
10 one of the United States by Citizens of another State or by Citizens or Subjects of any
11 Foreign State." U.S. CONST. amend. XI. Eleventh Amendment immunity extends to
12 suits between a State and a citizen of that State. *Hans v. Louisiana*, 134 U.S. 1, 10-11
13 (1890); *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974); *Montana v. Peretti*, 661 F.2d
14 756, 759 (9th Cir. 1981).

15 8. The Eleventh Amendment also bars suits against any entity that is an arm
16 of the state, such as state agencies, departments, and officers. *Pennhurst State Sch. &*
17 *Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) State universities in California are arms
18 of the state for the purpose of Eleventh Amendment immunity. *Doe v. Lawrence*
19 *Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997) (University of California is an
20 arm of the state); *BV Eng'g v. Univ. of California*, 898 F.2d 1394, 1395 (9th Cir. 1988)
21 (holding that the University of California was entitled to Eleventh Amendment
22 immunity because it was an instrumentality of the state).

23
24 9. CSU Dominguez Hills is a state university, and thus, is an arm of the state.
25 *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982); *Stanley v. Tr. of California*
26 *State Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006). CSU has not consented to federal
27 jurisdiction or otherwise waived its sovereign immunity, and all claims against it are
28 barred as a result.

1 10. Because plaintiff's due process rights were not violated and the Eleventh
2 Amendment bars plaintiff from suing CSU in federal court for damages, summary
3 judgment should be entered in favor of defendant CSU.

4
5 Dated: October 17, 2011

CALIFORNIA STATE UNIVERSITY
OFFICE OF GENERAL COUNSEL



Susan Westover
Attorney for Defendant Board of Trustees of the
California State University

PROOF OF SERVICE
Demekpe v. Board of Trustees of the California State University
U.S. District Court Case No.: CV11-1177 DDP (MLG)
OGC No.: 11-0186

I, Jason T. Taylor, declare as follows:

I am employed in the County of Los Angeles, State of California. I am at least 18 years old, and not a party to this action. I am an employee of California State University, Office of General Counsel, whose business address is 401 Golden Shore, 4th Floor, Long Beach, CA 90802-4210.

On **October 17, 2011**, I served the document described as **DEFENDANT CSU'S STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:


Tarikh Demekpe
688 Caliburn Drive, #24
Los Angeles, CA 90001

Plaintiff *In Pro Per*
tdemekpe@toromail.csudh.edu
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☒ **BY MAIL—COLLECTION BOX:** I placed each document in a sealed envelope with postage fully prepaid, in the California State University Office of General Counsel's mail collection box in Long Beach, California, so that following ordinary business practices, the envelope would be collected and mailed on this date. I am readily familiar with this office's business practice for collection and processing of mail. In the ordinary course of business, each document would be deposited with the United States Postal Service on that same day.

☒ **BY E-MAIL:** I served each document on the parties by emailing each document in PDF format to each email address listed above. Each e-mail was successfully sent via CSU's email server.

Signed on October 17, 2011, at Long Beach, California. I declare under penalty of perjury under the laws of the State of California that this declaration is true and correct.



Jason T. Taylor