



1 "is frivolous, malicious, or fails to state a claim upon which relief may be  
2 granted," or "seeks monetary relief from a defendant who is immune from such  
3 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri  
4 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
6 elements: (1) that a right secured by the Constitution or laws of the United States  
7 was violated, and (2) that the alleged violation was committed by a person acting  
8 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

9 B. Legal Claims

10 It is clearly established that neither negligence nor gross negligence is  
11 actionable under § 1983 in the prison context. Farmer v. Brennan, 511 U.S. 825,  
12 835-36 & n.4 (1994); Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.  
13 1990). The applicable standard is one of deliberate indifference to inmate health  
14 or safety under the Eighth Amendment. Farmer, 511 U.S. at 834. A prison  
15 official is deliberately indifferent only if he knows that a prisoner faces a  
16 substantial risk of serious harm and he disregards that risk by failing to take  
17 reasonable steps to abate it. Id. at 837.

18 Although regrettable, plaintiff's allegations must be dismissed because  
19 they amount to no more than a claim for negligence or gross negligence not  
20 actionable under § 1983. That the parties responsible for acid etching the many  
21 showers at PBSP somehow overlooked the showers in plaintiff's section was  
22 classic negligence or gross negligence, not deliberate indifference.

23 **CONCLUSION**

24 For the foregoing reasons, plaintiff's request to proceed in forma pauperis  
25 (doc # 3) is DENIED and the complaint is DISMISSED under the authority of 28  
26 U.S.C. § 1915A(b).

1 The clerk shall enter judgment in accordance with this order, terminate all  
2 pending motions as moot (see, e.g., doc # 2), and close the file. No fee is due.

3 SO ORDERED.

4 DATED: Jan. 17, 2006



5 CHARLES R. BREYER  
6 United States District Judge

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