

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CHARLIE E. BROOKS,

Plaintiff,

No. C 10-1134 PJH (PR)

vs.

**ORDER OF DISMISSAL**

C. E. DUCART, Acting Warden,

Defendant.

---

Plaintiff, a prisoner at Pelican Bay State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

Venue is proper in this district because a substantial part of the events giving rise to the action occurred in this district. See 28 U.S.C. § 1391(b).

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the  
2 grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (per  
3 curiam) (citations omitted). Although in order to state a claim a complaint "does not need  
4 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
5 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation  
6 of the elements of a cause of action will not do. . . . Factual allegations must be enough to  
7 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S.  
8 Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to  
9 state a claim for relief that is plausible on its face." *Id.* at 1974. The United States  
10 Supreme Court has recently explained the "plausible on its face" standard of *Twombly*:  
11 "[w]hile legal conclusions can provide the framework of a complaint, they must be  
12 supported by factual allegations. When there are well-pleaded factual allegations, a court  
13 should assume their veracity and then determine whether they plausibly give rise to an  
14 entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

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

19 **B. Legal Claims**

20 Plaintiff wants to obtain his GED. However, the prison has stopped all its education  
21 programs, including one formerly available by mail.

22 There is no constitutional right to education or rehabilitation in prison. *Rhodes v.*  
23 *Chapman*, 452 U.S. 337, 348 (1981) (deprivation of rehabilitation and educational programs  
24 does not violate Eighth Amendment); *Wishon v. Gammon*, 978 F.2d 446, 450 (8th Cir.  
25 1992) ("Prisoners have no constitutional right to educational or vocational opportunities  
26 during incarceration."); *Beck v. Lynaugh*, 842 F.2d 757, 762 (5th Cir.1988) ("[A] state has  
27 no constitutional obligation to provide basic educational or vocational training to  
28 prisoners."); *Rizzo v. Dawson*, 778 F.2d 527, 530 (9th Cir. 1985) (no right to vocational

1 course for rehabilitation); *Baumann v. Arizona Dept. of Corrections*, 754 F.2d 841, 846 (9th  
2 Cir. 1985) (general limitation of jobs and educational opportunities is not considered  
3 punishment); *Hoptowit v. Ray*, 682 F.2d 1237, 1254-55 (9th Cir.1982) (“there is no  
4 constitutional right to rehabilitation”); *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir.  
5 1977) (state has no obligation to provide prisoners with educational programs).


6 The complaint therefore must be dismissed for failure to state a claim. And because  
7 no amendment could change the fact that there is no constitutional right to education in  
8 prison, the dismissal will be without leave to amend. See *Lopez v. Smith*, 203 F.3d 1122,  
9 1127, 1129 (9th Cir. 2000) (en banc) (district courts must afford pro se prisoner litigants an  
10 opportunity to amend to correct any deficiency in their complaints, unless no amendment  
11 could save the complaint).

12 **CONCLUSION**

13 For the foregoing reasons, the complaint is **DISMISSED** with prejudice. The clerk  
14 shall close the file.

15 **IT IS SO ORDERED.**

16 Dated: October 25, 2010.



\_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge