

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
SOUTHERN DISTRICT OF CALIFORNIA**

JOE DEAN CRAWFORD,

Plaintiff,

vs.

SAN DIEGO CITY COMMUNITY
COLLEGE, et al.,

Defendants.

CASE NO. 18cv0831

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS,
SCREENING AND DISMISSING
COMPLAINT, AND DENYING MOTION
FOR APPOINTMENT OF COUNSEL**

Plaintiff Joe Dean Crawford, proceeding *pro se*, filed his complaint along with a motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915(a) and a motion for appointment of counsel.

IFP Motion

Plaintiffs must ordinarily pay a filing fee of \$400 when filing a civil suit in district court; a suit may proceed without payment if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

The Court has reviewed Crawford’s IFP application, finds that he lacks the means to pay the filing fee for this action, and **GRANTS** his application to proceed IFP.

1 **Legal Standards**

2 Under 28 U.S.C. § 1915(e)(2), the Court must screen the complaint of any plaintiff
3 proceeding IFP, and dismiss it to the extent it fails to state a claim. See *Barren v. Harrington*,
4 152 F.3d 1193, 1194 (9th Cir. 1998). Because Crawford is proceeding *pro se*, the Court
5 construes the complaint liberally. See *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d
6 621, 623 (9th Cir. 1988). The Court will not, however, supply facts he has not pled. See *Ivey*
7 *v. Board of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

8 When conducting the mandatory screening under 28 U.S.C. § 1915(e)(2), the Court
9 uses the standard applicable to motions under to Fed. R. Civ. P. 12(b)(6). *Huftile v. Miccio-*
10 *Fonseca*, 410 F.3d 1136, 1138 (9th Cir. 2005). The Court assumes the truth of all factual
11 allegations and construes them in the light most favorable to the plaintiff, drawing all
12 reasonable inferences from the allegations in his favor. *Cahill v. Liberty Mut. Ins. Co.*, 80
13 F.3d 336, 337-38 (9th Cir. 1996). But the Court does not accept unreasonable inferences or
14 assume the truth of legal conclusions cast in the form of factual allegations. *Ileto v. Glock*
15 *Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003) (citing *Western Mining Council v. Watt*, 643 F.2d
16 618, 624 (9th Cir. 1981)). Vague and conclusory allegations are insufficient to withstand
17 scrutiny under this standard. *Ivey*, 673 F.2d at 268.

18 The Court may consider certain materials at the pleading stage, including documents
19 attached to the complaint, documents incorporated by reference in the complaint, or matters
20 subject to judicial notice. See *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).
21 And the Court need not accept as true allegations that contradict these materials. See
22 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

23 **Discussion**

24 **Who the Defendants Are**

25 The Complaint's caption names as Defendants San Diego City Community College
26 ("City College"); the San Diego City Community College District; the District's Board of
27 Trustees, and the Board members, both in their individual and official capacities. The body
28 of the Complaint also names Miramar College and Mesa College.

1 The Complaint's factual allegations only point to things City College did; it alleges
2 that on April 21, 2018, City College refused to disburse proceeds of his federal student loan
3 without giving him advance notice or an opportunity for a hearing. And it alleges the reason
4 for this was that he had already earned a bachelor's degree – a reason he says is illegitimate
5 under federal law.

6 Claims against Defendants other than City College are inadequately supported by
7 factual allegations, and are therefore subject to dismissal. Crawford only has standing to
8 assert his own claims; to the extent he is asking the Court to enjoin a District-wide policy as
9 applied to other students, he lacks standing. See *Warth v. Seldin*, 422 U.S. 490, 498–99
10 (1975). Furthermore, because he is proceeding *pro se*, he has no authority to represent the
11 legal interest of a class. See *Cato v. United States*, 70 F.3d 1103, 1105 n.1 (9th Cir. 1995);
12 *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987);

13 **Claims Against San Diego City College**

14 Crawford previously received a bachelor's degree from the University of North
15 Carolina at Asheville in 2015. (See Compl. Ex. G.) He alleges that San Diego City
16 Community College refused to disburse his federal financial aid “on a claim that he was
17 disqualified because of having [previously] earned a baccalaureate or higher degree.”

18 But exhibits Crawford cites as documenting this, which he has attached to the
19 Complaint, show that was not the reason. Exhibit D to the Complaint is an email to Crawford,
20 showing that the reason given for refusal to disburse loan proceeds was that Crawford had
21 attempted more than 90 units of credit. The email says he attempted 108 units.¹ It gave
22 him the option, if he believed there were extenuating circumstances, to appeal and submit
23 an educational plan. The email also includes a link to the required appeal form.

24 _____
25 ¹ Exhibits to the Complaint, read together, appear to show that Crawford either transferred
26 or attempted to transfer unused credits from the University of North Carolina at Asheville,
27 the University of North Carolina at Chapel Hill, and two other colleges, towards his degree
28 at City College. (See Compl., Ex. C.) The credits City College accepted appear to be unused
credits that were not previously credited towards Crawford's bachelor's degree. (See
Compl., Ex. G (University of North Carolina at Asheville undergraduate transcript).)

1 Colleges that participate in federal student loan programs are required to maintain
2 policies for satisfactory academic progress, and to confirm that students who are otherwise
3 eligible for student aid under the Higher Education Act are making satisfactory academic
4 progress under those policies. See 34 C.F.R. §§ 668.16(e), 668.32(f), and 668.34. As
5 required under these regulations, City College maintains a policy which outlines the school's
6 standards for maintaining satisfactory academic progress and provides reasons which may
7 result in a student's disqualification from financial aid, and Crawford has attached this policy
8 to as Exhibit H to the Complaint. Under the policy, having attempted more than 90 academic
9 credits renders a student ineligible for financial aid. This policy is based on federal
10 regulations that set a maximum time frame for obtaining a degree. (See Compl., Ex. H.)
11 Because City College offers only associates' degrees requiring 60 hours, students who have
12 attempted more than 150% of that amount (*i.e.*, 90 hours) are ineligible. See 34 C.F.R.
13 § 34(b) ("Maximum timeframe").

14 Although the email offered Crawford an opportunity to appeal the decision, he alleges
15 that the appeal form "makes it clear that no appeal is provided unless and until the student
16 waives all their rights." (Compl. at 4.) Because this allegation relies on and incorporates the
17 appeal form, the Court may consider it even though Crawford did not attach it to the
18 Complaint. *Ritchie*, 342 F.3d at 908.

19 The email includes a link to the appeal form.² Although the form requires
20 acknowledgement that a student understands and is willing to comply with certain
21 requirements, it does not include a waiver of rights. In other words, contrary to his
22 allegations, Crawford had an avenue of appeal open to him, even if he did not use it.

23 Even though Crawford's having earned a bachelor's degree was not the reason for
24 City College's refusal to disburse loan proceeds, various documents do establish that
25 students at City College who already have bachelors' degrees are normally not eligible for

26
27 ² <[http://www.sdccity.edu/CollegeServices/StudentSupportResources/FinancialAid/
28 FormsDocuments](http://www.sdccity.edu/CollegeServices/StudentSupportResources/FinancialAid/FormsDocuments)>.

1 financial aid. But both the policy document the appeal form explains this is because the
2 District's community colleges offer two-year degrees, and the District asks students who
3 already have bachelor's degrees (or higher) to explain their reasons for pursuing a two-year
4 degree.

5 Crawford cites 20 U.S.C. § 1091(m) as requiring that he be eligible. That subsection
6 provides that "[a] student shall not be ineligible for assistance . . . because such student has
7 previously received a baccalaureate or professional degree." But this subsection does not
8 guarantee that a student who has received a baccalaureate or higher degree will be eligible;
9 rather, it provides that having a bachelor's or higher degree does not render a student
10 ineligible. Other requirements must be met as well, including the requirement that the
11 student be making satisfactory progress. § 1091(a)(2) and (c).

12 Crawford claims his Fourteenth Amendment due process rights were violated. Such
13 a claim arises when a person is deprived of a protected interest without due process of law.
14 *Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 643
15 (1999). Crawford has not shown that his expectation of entitlement to the benefit of federal
16 student loans to enable him to attend City College is reasonable, so as to create a protected
17 interest in it. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972);
18 *Waugh v. Conn. Student Loan Foundation*, 966 F. Supp. 141, 143–44 (D. Conn 1997).
19 Furthermore, he had an opportunity to appeal, and has not pled facts to show he was
20 deprived of this benefit without due process. *See Fla. Prepaid*, 527 U.S. at 642–43 (holding
21 that deprivation of a protected interest is not unconstitutional, as long as due process of law
22 is provided).

23 Although Crawford did not attempt to bring his claim directly under the Higher
24 Education Act of 1965, that statute does not create a private right of action. *Waugh*, 966 F.
25 Supp. at 143.

26 Having screened the Complaint, the Court finds it does not state a claim.

27 ///

28 ///

1 **Motion to Appoint Counsel**

2 There is no constitutional right to counsel in a civil case. *Lassiter v. Dept. of Social*
3 *Services*, 452 U.S. 18, 25 (1981). However, a district court “may request an attorney to
4 represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). This discretion
5 should only be exercised in “exceptional circumstances.” *Aygean v. Corrections Corp. of*
6 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004) (quoting *Franklin v. Murphy*, 745 F.2d 1221,
7 1236 (9th Cir. 1984)). A finding of exceptional circumstances requires “an evaluation of the
8 likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability to
9 articulate his claims ‘in light of the complexity of the legal issues involved.’” *Id.* at 1103
10 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

11 Crawford has not shown a strong likelihood of success on the merits of the case.
12 And although he has not yet done so, it appears he has the ability to articulate his claim. No
13 is it appropriate to appoint counsel merely so that Crawford can bring his claims as a class
14 action. The Court finds no no exceptional circumstances exist in this case to warrant
15 appointment of counsel, and the motion to appoint counsel is **DENIED**.

16 **Conclusion and Order**

17 For the reasons set forth above, the IFP motion is GRANTED. The Complaint does
18 not state a claim, and is **DISMISSED** as required by 28 U.S.C. § 1915(e)(2). The claims he
19 is attempting to raise on behalf of other students, or against schools he is not attending are
20 **DISMISSED WITHOUT LEAVE TO AMEND**, for lack of standing. The remaining claims are
21 **DIMISSED WITHOUT PREJUDICE**.

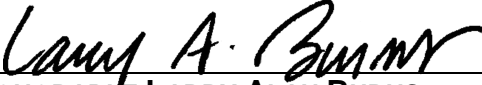
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

If Crawford believes he can successfully amend his complaint to cure the defects identified in this order, he may do so by filing an amended complaint no later than **August 17, 2018**. If he fails to do so within the time permitted, or if his amended complaint does not state a claim, this action may be dismissed without further notice to him.

IT IS SO ORDERED.

Dated: July 30, 2018



HONORABLE LARRY ALAN BURNS
United States District Judge