

DEC 31 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TARIKH DEMEKPE,

Plaintiff - Appellant,

v.

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY,

Defendant - Appellee.

No. 12-55562

D.C. No. 2:11-cv-01177-DDP-
MLG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Tarikh Demekpe, a former college student, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging due process

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument, and therefore, denies Demekpe's request for oral argument. *See Fed. R. App. P. 34(a)(2)*.

violations related to an unsuccessful appeal to change one of his grades. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Darensburg v. Metro. Transp. Comm'n*, 636 F.3d 511, 518 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment because Demekpe failed to raise a genuine dispute of material fact as to whether defendant denied Demekpe ample notice of its position regarding the basis for his grade or an opportunity to be heard about why it should be changed. *See Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 85-87 (1978) (due process does not require a formal hearing for an adverse academic decision, but only prior oral or written notice to the student and an opportunity to present his side of the story); *see also Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985) (courts should show deference to the faculty's professional judgment regarding academic decisions absent evidence that the decisions resulted from bad faith or constituted such a substantial departure from accepted academic norms as to show that judgment was not exercised).

The district court also properly granted summary judgment to the extent that Demekpe sought damages because claims against a state or its instrumentalities are barred by Eleventh Amendment sovereign immunity. *See Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006) (noting that the Trustees of

California State University “are an arm of the state that can properly lay claim to sovereign immunity”).

We reject Demekpe’s contentions regarding the magistrate judge’s alleged bias, the appeals board chairman’s alleged lack of impartiality, and the need for subpoenas to obtain evidence documenting unfairness in the appeals process.

AFFIRMED.