IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JASON ANTEBI,

Plaintiff and Appellant,

vs.

OCCIDENTAL COLLEGE, et al.

Defendants and Respondents.

After a Decision by the Court of Appeal
Second Appellate District, Division Four
Case No. B186951

PETITION FOR REVIEW

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I. ISSUES PRESENTED

This is a dispute between Occidental College ("Occidental") and various college administrators, and Jason Antebi, a former Occidental student. Antebi sued after Occidental and its administrators improperly punished him for engaging in constitutionally protected speech in violation of California's Leonard Law, and after they committed various torts against him, including defamation, intentional infliction of emotional distress, and unlawful race and gender discrimination.

The case presents two important issues worthy of this Court's time and attention:

1. This case raises an important issue of standing under California's Leonard Law, which prohibits a private college from "enforc[ing] any rule subjecting any student to disciplinary sanctions" merely for engaging in constitutionally protected speech. (Cal. Educ. Code § 94367.) The Court of Appeal, in a case of first impression, held that a student cannot bring suit under the Leonard Law unless he or she is "currently enrolled" at the college at the time the lawsuit is filed. Jason Antebi asks this Court to reverse the Court of Appeal's decision, which would greatly reduce the scope of the Leonard Law and the protections it was designed to provide.

2. This case also raises an important issue regarding the scope of the rule requiring a party to exhaust the internal remedies of a private organization before filing a lawsuit against the organization. Here, Jason Antebi alleges that Occidental College and various college administrators committed torts against him, and he seeks relief in the state courts. But the Court of Appeal affirmed the dismissal of his tort claims, save one, on the basis that he did not exhaust the internal appeals process allegedly provided by Occidental

College. According to the Court of Appeal, any tort by a student against a college or its administrators that "arises out of the disciplinary process" of the college is subject to the exhaustion of internal remedies rule. Antebi believes this is a significant—and dangerous—extension of the exhaustion of internal remedies rule, which had previously been applied only to disputes over a private organization's own rules and benefits, not disputes over laws of general applicability. By extending the exhaustion of internal remedies rule to apply even to tort claims, the Court of Appeal has effectively granted private colleges and other private organizations immunity from tort liability.

II. FACTUAL BACKGROUND

Jason Antebi was a student at Occidental College, a private college in Los Angeles, from the fall of 2000 until the spring of 2004. Antebi was active in the student council, serving as Senator and Vice President of Policy for the Associated Students of Occidental College ("ASOC"), and in the student-run radio station, where he was a disk jockey. During Antebi's final semester, some of his student-government decisions angered a vocal minority of students. These students spearheaded an unsuccessful recall effort against Antebi, an effort that relied on vicious, unfounded and slanderous accusations, including defamatory comments that Antebi was a "racist," that he "sexually harassed women," and that, despite being Jewish, was "anti-Semitic." Antebi was even targeted by vandals, who wrote the words "You're a fucking racist" on his door.

Antebi reported these incidents to two Occidental College administrators (Defendants Frank Ayala and Sandra Cooper) and identified the students responsible. Ayala and Cooper dismissed Antebi's concerns and made clear that they would not get

involved. They even told Antebi that they and other college administrations were "not [his] parents" and that Antebi "would have to fight [his] own battles" with the students defaming and harassing him.

Antebi did as Ayala and Cooper suggested, using his radio show to mock and criticize the students who were engaged in the campaign against him. Suddenly, the college administrators who had previously been adamant that they were not Antebi's parents and had no role stopping students from harming Antebi with their speech—thus justifying their refusal to take any action when Antebi was defamed and harassed—were now determined to stamp out and punish hurtful speech. On the morning after the show aired, Defendants Ayala and Maryanne Horowitz, Occidental's Title IX Officer, informed Antebi in a private meeting that sexual harassment charges would be filed against him by certain students because of the content of his show. Antebi once again informed Defendants that those students were the same political rivals who had engaged in harassment and defamation against him—acts that went uninvestigated by an uninterested administration.

Defendants, however, pressed forward with an "investigation" of Antebi. The content of the sexual harassment complaints focused almost entirely on the perceived offensiveness of Antebi's show, despite the fact that the program was satire and would have been protected from state action by the First Amendment. Indeed, Defendant Horowitz even conceded that the content of the show was politically "satiric." Nonetheless, Defendants fired Antebi from his radio show; they dissolved the student senate (based on thinly veiled statements blaming Antebi for "abusive, intimidating,

harassing behavior" that was "masquerading as open expression"); and they concluded that Antebi was guilty of sexual harassment, which led to an official report in his file and a suggestion that Antebi seek counseling on relationships and apologize to the student complainants, and even perhaps to the entire Occidental community. Defendants' report also contains a discussion of separate, unproven and untrue allegations against Antebi that were not even included in the sexual harassment complaints levied against Antebi. Defendants attributed some of this additional conduct to Antebi and—consistent with the kangaroo court style of the proceedings—suggested that other allegations "echoed" Antebi's behavior and claimed that if Antebi did not himself commit the acts, he caused them to occur. Defendants had no reasonable basis for attributing any of this alleged conduct to Antebi.

Defendants also committed numerous torts against Antebi as they waged their campaign against him. Defendant Cooper, Occidental College's General Counsel, yelled into a public hallway at Antebi that he was a "racist," "sexist," "misogynist," "anti-Semite," "homophobe," "unethical" and "immoral" "trash." Further, Defendants Cooper and Horowitz had conversations with multiple students in which they asserted that Antebi had committed various crimes and that there was no reason to look elsewhere for the culprit.

Defendants' actions got the attention of outside parties, including the Foundation for Individual Rights in Education ("FIRE"), which sent Defendants a letter reminding them of their obligation to uphold First Amendment standards for free speech under California's Leonard Law. Defendant Cooper quickly responded to FIRE's letter with

knowingly false allegations about Mr. Antebi. Cooper alleged that Antebi had: (1) threatened revenge against complainants; (2) racially taunted persons fired from the student senate; (3) used highly derogatory words towards identified persons; (4) jeopardized financial aid to students by parodying taking prescription medication while on the air; (5) misused his position in the student government to fire those who disagreed with him; (6) demanded and received the resignation of the radio station program director; and (7) subscribed individuals to spam using campus computers. Defendant Cooper further alleged that there would be an investigation into Antebi's perceived involvement in middle of the night sexual telephone calls to the Campus Women's Center, anonymous e-mails to the gay community, defaced brochures with the words "cunt," "bitches," and "pussy," tire slashing, and "loud labeling" of women as bitches across the campus. Cooper had no reasonable basis whatsoever for making these allegations against Antebi. Cooper's sole goal was to scare FIRE and avoid its involvement in the matter.

On or about May 6, 2004, FIRE responded to Cooper's lengthy diatribe against Antebi with a lengthy rebuttal showing Cooper's allegations against Antebi to be completely unmeritorious, and more than likely, nothing more than a brazen attempt to scare away groups like FIRE from defending Antebi. They further outlined the law as it applies to sexual harassment, and how Horowitz's findings were legally untenable. Further, on May 7, 2004, the Executive Director of the American Civil Liberties Union ("ACLU") submitted correspondence to Defendants, informing them that Defendants' alleged reliance on the ACLU sexual harassment policy paper as justification for their

action and Antebi's punishment was not correct. According to the ACLU, Defendants' finding of sexual harassment was untenable. Defendants, however, refused to modify their findings and refused to end their campaign against Antebi.

III. PROCEDURAL HISTORY

Antebi sued Occidental and the individual Defendants, seeking an injunction under the Leonard Law, and alleging tort claims for defamation, unlawful discrimination, invasion of privacy, negligence, breach of fiduciary duty, and intentional and negligent infliction of emotional distress. Defendants demurred to the complaint, and Antebi responded with a First Amended Complaint. Defendants again demurred. The trial court sustained the demurrer and dismissed all of Antebi's claims without leave to amend. The trial court held that Antebi could not assert his Leonard Law claim because, as a former student, he lacked standing. The trial court also dismissed the tort claims, holding that Antebi was required to exhaust his internal remedies at the college before suing, and that even after exhausting his internal remedies, his only remedy would be a mandamus action.

The Court of Appeal affirmed in part. Like the trial court, the Court of Appeal held that Antebi lacked standing to pursue his Leonard Law claim. The Court of Appeal also affirmed the dismissal of Antebi's tort claims except for the defamation claim. The court explained that all of the other claims arose out of the disciplinary proceeding against Antebi, and thus were subject to the rule requiring the exhaustion of the college's own internal remedies. But the court held that the defamation claim arose outside the disciplinary proceeding and, thus, Antebi could assert that claim in court.

The Court of Appeal committed legal error. Because there were no new facts or law that would justify a petition for rehearing, Antebi has filed this petition for review.

IV. DISCUSSION

A. The Court of Appeal's decision undermines the Leonard Law

Under the Leonard Law, "[a]ny student enrolled in a private postsecondary institution that has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court...." (Cal. Educ. Code § 94367(b).) The standing issue here concerns the meaning of the language "any student enrolled." Does this language refer to the time of filing—meaning that a student must be currently enrolled at the college in order to file a lawsuit—or does it refer to the time of the unlawful act by the college—meaning in order to file a lawsuit, the would-be plaintiff must have been enrolled at the time the college took the illegal action? The Court of Appeal chose the former. This was a significant legal error.

In reality, both of the competing positions are viable interpretations of the statutory text. But if you take into account the purpose of the statute—to give private-college students the right to engage in constitutionally protected speech without restrictions or reprisals—then only the latter interpretation makes any sense. If the law requires that students be enrolled at the time of filing to have standing, a college can escape the Leonard Law simply by expelling students who engage in constitutionally protected but disfavored speech. Thus, a law designed to protect students from being punished for their speech would fail to protect students from the most serious form of

punishment a college can administer: expulsion. That makes no sense, and it is not what the Legislature intended.

Yet the problem goes even deeper. Not only can a college expel a student and thereby deprive the student of any rights under the Leonard Law, but depending upon when the college takes its unlawful action, the student might be deprived of any legal action even if he or she is never expelled. If, for example, a student is punished for engaging in constitutionally protected speech a few days before graduation, it is a practical impossibility for the student to bring a claim under the Leonard Law before he or she is no longer enrolled. Thus, the Leonard Law has no effect. Indeed, what if a student is punished a few days before the end of the spring semester? Many students are not enrolled in any classes during the summer break—are these students deprived of any remedy under the Leonard Law? According to the Court of Appeal, they would be.

Finally, if a student only has standing if he or she is currently enrolled at the college, then it stands to reason that the student must be enrolled at the college during the entire course of the litigation. As a general rule, a plaintiff must have standing at all times to pursue litigation, not just at the beginning. Thus, the Court of Appeal's decision requires a student suing under the Leonard Law to be enrolled at the college for the entire time the case is pending—for years, in many cases—and if at any time the student is no longer enrolled—whether it be because of the summer recess, graduation, or expulsion—the student lacks standing and the Leonard Law claim must be dismissed. This sets up an almost impossible standard, and renders the Leonard Law largely ineffective.

The Court of Appeal believed its interpretation was mandated by the fact that the Leonard Law does not provide for damages: "Education Code section 94367, subdivision (b) provides for only injunctive and declaratory relief, which would not benefit a graduated student." (Court of Appeal Opinion, Appendix A, at 10.) This argument is illogical. Even a graduated student might have an interest in an injunction or declaration that overturns unjust and unlawful disciplinary proceedings against him or her; after all, such records could harm a student's efforts to get into graduate school or land a job. And the Court of Appeal's standing ruling does not only affect graduated students. As explained above, the Court of Appeal would deny to an expelled student the right to challenge his expulsion under the Leonard Law. But clearly a student who had been wrongly expelled would have an interest in injunctive relief reinstating the student. The Court of Appeal is simply wrong to argue that only current students could have an interest in injunctive or declaratory relief.

The Court of Appeal's decision does great damage to the Leonard Law, by opening up giant loopholes for colleges to exploit. The law was designed to shield students from disciplinary action when they engage in constitutionally protected speech. Now, because of this Court of Appeal opinion, the law cannot fulfill its purpose. This Court should grant review and fix the Court of Appeal's error.

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B. The Court of Appeal greatly expands the rule requiring the exhaustion of internal remedies, and effectively makes many private organizations immune from tort liability

The issue here is the scope of the rule requiring a member of a private organization to exhaust the internal remedies of the private organization before suing the organization in court. Here, Defendants argued that Antebi could not assert his tort claims because he never exhausted his internal remedies at Occidental, a prerequisite to filing any court action. They also assert that Antebi's only court remedy, even after exhausting the internal remedies at Occidental College, would have been a mandamus action under California Code of Civil Procedure § 1094.5, under which a state court will review the fairness of the procedures followed but will not review the substantive decision reached by the private organization. The Court of Appeal agreed with Occidental.

The Court of Appeal's decision constitutes a significant extension of the exhaustion-of-internal-remedies rule. Historically, this rule was confined to disputes over a private organization's own internal rules, especially rules concerning the right to membership or member benefits. This rule has traditionally not been applied to disputes over laws of general applicability, including tort law. By extending the rule in this fashion, the Court of Appeal has made it possible for many private organizations—not only colleges, but also corporations, labor unions, and virtually any other kind of private organization—to shield themselves from tort liability. Merely by adopting an internal grievance procedure, a private organization can ensure that it alone will review any tort

claims against it or its officers, and no court will ever be able to review the substance of that internal proceeding. Thus, the private organization is given carte blanche to decide its own tort liability. This is the Pandora's box that the Court of Appeal opened. This Court needs to grant review to shut it.

1. The origins of the exhaustion rule

The exhaustion of internal remedies rule is related to the rule requiring a would-be plaintiff to exhaust his or her administrative remedies before filing a lawsuit. But the rule was never designed to replace courts as the primary arbiter of private disputes. Rather, the rule arose out of—and is almost always limited to—disputes between a private organization and one of its members over the organization's own rules, membership policies, or benefits. "The reason for the exhaustion requirement in this context is plain. We believe as a matter of policy that the association itself should in the first instance pass on the merits of an individual's application rather than shift this burden to the courts. For courts to undertake the task 'routinely in every such case constitutes both an intrusion into the internal affairs of private associations' and an unwise burden on judicial administration of the courts.'" (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 86.) In addition, "by insisting upon exhaustion ... courts accord recognition to the 'expertise' of the organization's quasi-judicial tribunal, permitting it to adjudicate the merits of the plaintiff's claim in the first instance. (*Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 476.)

Thus, there are three reasons for the exhaustion of internal remedies rule in the private organization context. First, the rule is designed to ensure that complex disputes

are resolved by a tribunal with more expertise over the issue in question. Second, the rule seeks to promote judicial efficiency. Finally, the rule allows courts to avoid improper interference with the internal workings of a private organization.

But there is obviously a limit to the reach of the exhaustion of internal remedies rule. The rule makes some sense where the dispute concerns the internal workings of an organization, especially its own rules, for courts may be hesitant to impose their will in such disputes. Thus, the rule might make sense where, for example, a doctor has his staff privileges revoked at a private hospital. (*See Anton v. San Antonio Community Hospital* (1977) 19 Cal.3d 802.) The hospital is likely to have greater expertise than the courts when it comes to the competence of a physician, and the courts should be hesitant to interfere with a private hospital's decision as to which doctors are good enough to be part of its club.

But the rule would make very little sense—and, thus, simply does not apply—where the dispute is over generally applicable legal principles rather than a private organization's internal rules. It also makes less sense where the private organization has no special claim to expertise over the subject matter. Thus, in *Holderby v. Int'l Union of Operating Engineers, Local Union No. 12* (1955) 45 Cal.2d 843, the exhaustion rule applied where a union member challenged the union's decision to kick him out. Whether the union's internal rules allowed the union to terminate the plaintiff's membership was an issue on which the courts should tread lightly. But the exhaustion rule did not apply in *Mooney v. Bartenders Union Local No. 284* (1957) 48 Cal.2d 841, where a union member claimed a statutory right to inspect the organization's books, for "exhaustion is

not required where pursuing the internal remedy would in effect deprive the member of a *right guaranteed by law independently of the internal rules*." (*Sahlolbei v. Providence Healthcare, Inc.* (112 Cal.App.4th 1137, 1153 [emphasis added] [explaining the difference between *Holderby* and *Mooney*].)

This distinction makes sense. Whether a doctor can be denied staff privileges is an issue on which courts should be deferential to a private hospital: the hospital has greater expertise in the area, and as a private organization the hospital has a right to pick and choose its own members. But these same concerns do not apply if the dispute involves, for example, a supervising doctor's raping of a nurse. There, the hospital has no special expertise in the subject matter, and in enforcing the rape laws, courts are not unfairly meddling in the private disputes of a private organization.

2. Extension of the rule to private colleges

Although the exhaustion of internal remedies rule did not arise in the private-college context, some recent Court of Appeal decisions have applied it there. The first in chronology and importance is *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716. There, a professor sued Pomona, a private college, for breach of contract after the college refused to give him lifetime academic tenure. His claim was that Pomona failed to follow its own policies and procedures in the tenure review process. The college demurred, arguing that "section 1094.5 should be extended to review *quasi-judicial decisions* of private universities" and that "administrative mandamus is [the professor's] exclusive remedy." (*Id.* at 1721 [emphasis added].)

The Court of Appeal agreed. The court noted that Section 1094.5 had been applied to other types of private institutions, such as private hospitals, and that it has also been applied to public university employment decisions. (*Id.* at 1722-23.) The fundamental question, then, was whether the statute should be extended to cover tenure decisions at private colleges. Are disputes over tenure a type of dispute over which civil courts should defer to the private organization? The court said "yes," listing important public policy interests that justified extending the rule to "quasi-judicial administrative decisions to deny lifetime academic tenure." (*Id.* at 1724.) Specifically, a college or university has a special expertise in this area that judges and juries simply don't have. "Determinations about such matters as teaching ability, research scholarship, and professional stature are subjective ... and must be left to evaluation by the professionals, particularly since they often involve inquiry into aspects of arcane scholarship beyond the competence of individual judges." (*Id.* at 1725.) Only the "candidate's academic peers" are qualified to make determinations in this area. (*Id.* at 1726.) In addition, granting tenure to a professor is an "enormous commitment," and effectively means that the college has elected to "subsidiz[e]" a scholar's work "for the rest of his or her life." (*Id.* at 1725.) For good reason, courts should be hesitant to interfere with a private college's decision as to whether to allocate its resources toward such an "enormous commitment."

Thus, the *Pomona College* court held that the administrative mandamus rule should apply: "[A]bsent discrimination, judicial review of tenure decisions in California is limited to evaluating the fairness of the administrative hearing in an administrative mandamus action." (*Id.* at 1726.) Under this rule, California law only provides a remedy

"to those who feel wronged by the procedural defects in the tenure process—as opposed to those who disagree with substantive evaluations...." (*Id.* at 1727.)

The *Pomona College* rule was applied again in *Gutkin v. Univ. of Southern Cal.* (2002) 101 Cal.App.4th 967. There, a professor sued USC for a variety of tort and contract claims after the university terminated him. The university, of course, asserted that Gutkin's only remedy in court was one for administrative mandamus and argued that the *Pomona College* case was squarely on-point. The Court of Appeal agreed. The court rejected Gutkin's alleged distinction from *Pomona College*, a distinction based on the alleged difference between granting tenure and revoking tenure. The court rightly noted that both types of decisions hinged on the application of special expertise unavailable to judges and juries: "such a determination still requires an assessment of whether the professor's conduct is consistent with or contrary to academic norms, which only academic peers, not lay jurors, are qualified to determine." (*Id.* at 978.) And, of course, both types of decisions impact the university's own resources and direction in a substantial way.

Finally, the *Pomona College* rule was extended to quasi-judicial proceedings concerning student misconduct, in *Gupta v. Stanford Univ.* (2004) 124 Cal.App.4th 407. Gupta sued Stanford after the college decided, in an internal quasi-judicial proceeding, that Gupta had violated the school's honor code by cheating on an exam. He was suspended, placed on probation, and ordered to complete community service. He filed a complaint for damages against Stanford and two college officials, alleging that they "failed to 'fulfill [their] obligations ... [under] the Stanford Judicial Charter of 1997."

(*Id.* at 410.) The defendants demurred, alleging the claims were barred because Gupta did not exhaust his internal remedies. The appellate court agreed, and affirmed the trial court's dismissal of Gupta's claims, believing that "[t]he rationale in *Gutkin* is clearly applicable to the present case." (*Id.* at 412.)

The *Gupta* opinion is short and assumes a working knowledge of the earlier cases, especially *Pomona College*. This is unfortunate, because some of the court's statements, taken out-of-context, appear questionable. For example, the court's conclusory statement that *Gutkin* was "clearly applicable" seems odd. *Gutkin* was based, at least in part, on the concept that universities have special expertise when it comes to deciding which scholar is worthy of a lifetime subsidy. Yet no similar expertise seems to exist when it comes to determining whether a student cheated on an exam. But what goes unstated in *Gutkin* is that the exhaustion rule is also based on the idea that courts should be hesitant to interfere with a private organization's own decisions about which people are worthy of being part of the club. And on this issue, it may be right for a court to defer to Stanford's determinations about whether a student apparently guilty of violating the honor code should remain a part of the Stanford community.

Likewise, *Gupta*'s blanket statement that "[t]he remedy of administrative mandamus applies to any organization that provides for an evidentiary hearing" is, if taken out-of-context, clearly wrong—indeed, shocking. If a college adopts an employee handbook that mandates an internal evidentiary hearing if a supervisor rapes and murders a worker, that does not mean that the decedent's family is forced to go through an internal hearing at the college and has no legal relief other than a mandamus action. That

would be absurd. But what goes unsaid in *Gutkin* is that the dispute in question must be one concerning the organization's own rules and policies, rather than a general legal rule that applies to everybody. This is the very distinction the California Supreme Court articulated in *Mooney*. The *Gutkin* court did not erase—indeed, had no power to erase—this distinction. The court merely had no reason to restate these established principles yet again, as they were clearly articulated in the prior cases.

3. Here, the Court of Appeal ignored the traditional scope of the exhaustion rule

As the cases show, the exhaustion of internal remedies rule has traditionally been applied to disputes between a private organization and one of its members over application of the organization's own rules or the right to membership benefits. But courts have been careful to clarify that the rule does not apply to disputes over legal rules of general applicability.

But the Court of Appeal ignored the traditional distinction in this case and invented a new standard entirely. Rather than asking whether Antebi's tort claims concerned disputes over a private organization's own rules, the Court of Appeal asked whether Antebi's tort claims "arose out of" the college's disciplinary proceeding. (*See* Appendix A at 8-9.) Because the Court of Appeal concluded that all of the tort claims other than the defamation cause of action arose out of the disciplinary proceeding, the court affirmed the dismissal of all those other claims.

In essence, the court concluded that torts committed in the course of a disciplinary proceeding are beyond the scope of court review. But this new standard is a disaster;

under it, all kinds of tort claimants would be denied relief even though the policy reasons supporting the exhaustion of internal remedies rule—deference to the special expertise of certain private organizations, and a desire not to unfairly meddle in private affairs—are clearly inapplicable. If a college administrator uses physical force or threats of force to get a student to admit to conduct in violation of the school's honor code, the administrator's conduct "arises out of" the school's disciplinary proceeding. But is that really a legitimate reason for a court not to hear the student's battery claim? What if the administrator demands certain sexual favors from the student? The student's would-be tort claims may "arise out of" the disciplinary proceeding, but there is certainly no reason why the student should therefore be denied any relief in court.[1] By divorcing the exhaustion of internal remedies rule from its traditional policy justifications and boundaries, the court has imposed on California a new rule that makes no sense legally or as a matter of sound policy.

4. The Court of Appeal's decision makes many private organizations practically immune from tort liability

Forcing an injured party to proceed through the private organization's internal remedies before suing would be unnecessary and damaging even if the only result were a

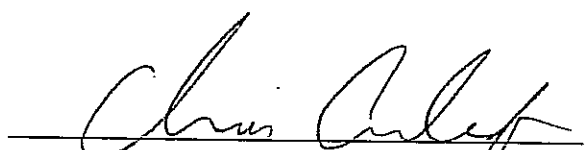
[1] The Court of Appeal apparently believes conduct can "arise out of" a disciplinary proceeding even if the administrator in question was not truly involved in the proceeding at all. Defendant James Tranquada transmitted details suggesting Antebi was guilty of ACLU harassment policy to alumni and other curious parties. Tranquada is the Director of Communications for Occidental College and thus has no role in the sexual harassment procedures against Antebi, yet he spoke about private matters and defamed Antebi. Yet the Court of Appeal found that even his conduct "arose out of" the disciplinary proceeding such that Antebi could not assert a claim against him.

delay in the plaintiff's right to have a court decide the dispute. But this is not just a timing issue. Once the injured party has exhausted his or her internal remedies, the only available court remedy is an action for mandamus. But this only provides for court review of the *procedures* used by the private organization; the court will not review the *substance* of the private organization's decision! Hence, the only tribunal that will ever make a substantive decision about the member's claim against the private organization is the organization itself. Can we really expect private organizations to find themselves liable for defamation or other torts? And if they do, can we count on them to award damages voluntarily to make the injured party whole? If we have such faith in private parties to overlook their own interests, why have courts at all?

Under the Court of Appeal's ruling, Occidental College could commit torts against Jason Antebi, could demand that he proceed through their internal review procedure—which would be handled by the same administrators who took the wrongful action in the first place, the college could absolve itself of responsibility, and no court would ever review the substance of the dispute. How does this process allow for any meaningful remedy for tort claims? How is this justice?

Dated: September 20, 2006

Respectfully submitted,

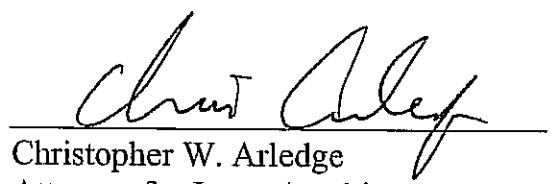


Christopher W. Arledge
Attorney for Plaintiff and Appellant
Jason Antebi

I hereby certify this Brief uses a proportionally-spaced typeface, consists of 5,223 words, and complies in all respects with California Rules of Court, rule 14(c)(1). This word count does not include the Table of Contents, the Table of Authorities, this Certificate of Compliance, or the Proof of Service.

Dated: September 20, 2006

Respectfully submitted,



Christopher W. Arledge
Attorney for Jason Antebi

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JASON ANTEBI, Plaintiff and Appellant, v. OCCIDENTAL COLLEGE et al., Defendants and Respondents.	B186951 (Los Angeles County Super. Ct. No. BC330249)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jane Johnson, Judge. Affirmed in part, reversed in part.

Turner Green Afrasiabi & Arledge and Christopher W. Arledge for Plaintiff and Appellant.

Musick Peeler & Garrett, Stuart D. Tochner and Kent A. Halkett for Defendants and Respondents.

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts I, II, III A-C, E and IV of the Discussion.

Jason Antebi appeals an order dismissing his lawsuit following sustaining of a demurrer. The suit was against the college where he was disciplined as a student, the members of its governing board, and certain named individuals. He contends the court erred in finding he was limited to judicial review through administrative mandamus pursuant to Code of Civil Procedure section 1094.5[1] and that he should have been permitted to pursue his civil claims for tort and violation of statute. In the published portion of this opinion, we conclude that "Leonard Law" (Ed. Code, § 94367 et seq.) does not apply to appellant since he was no longer enrolled as a student when he brought suit. In the unpublished portion of this opinion, we conclude that one of his causes of action, for defamation, is distinct from the disciplinary proceedings and was sufficiently pleaded against the college and one individual, and conclude that in all other respects, the order of dismissal was proper and is affirmed.

FACTUAL AND PROCEDURAL SUMMARY

Antebi entered Occidental College (Occidental) in the fall of 2000 as a full-time student. He graduated from this private institution in 2004. While a student there, he was a self-described "shock jock" on a radio program broadcast by the student-run radio station. This show consisted of political satire, parody, provocative humor, and mockery of people of every size, religion, gender, or political affiliation.

The following summary is taken from the first amended complaint, which is the charging pleading, and reasonable inferences from that pleading. Antebi's role as an outspoken disk jockey and some decisions he made as a member of the student council caused him to be disliked by some students. Three of them published statements that he was a racist and an anti-Semitic, and that he sexually harassed women. He reported the acts of these three students to Frank Ayala, the dean of students, and Sandra Cooper, the Occidental College general counsel. Ayala and Cooper dismissed his complaint because

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[1] All statutory references are to the Code of Civil Procedure unless otherwise noted.

the actions by the other students did not constitute harassment or defamation. They told him to "fight [his] own battles."

Angered, Antebi used his radio show to fire back against the three students. On March 11, 2004, he made insulting comments attacking satirical characters based on these students and others, and engaged in sexual discussions. Within two weeks, the three students filed separate sexual harassment complaints against him based upon his on-the-air statements on the March 11 broadcast. By then, Ayala had removed Antebi from the show.

Maryanne Horowitz, Occidental's Title IX[2] officer, conducted an investigation of the complaints against Antebi. She shared summaries of all the complaints with the students who had complained against Antebi. The investigation also covered allegations that Antebi had threatened physical violence and retribution in e-mails to the gay community, and that he had defaced brochures with terms derogatory towards women.

On March 22, 2004, as Cooper stood in an office at Occidental, she yelled into a public hallway at Antebi that he was a "racist," "sexist," "misogynist," "anti-Semite," "homophobe," "unethical" and "immoral" "trash." Numerous persons heard the comments.

On March 29, 2004, Occidental President Ted Mitchell transmitted a campus-wide e-mail expressing concern over the increasing sexual and racial harassment on campus. He did not accuse anyone specifically, nor did he cite a specific harassing event.

Horowitz submitted her formal report on the sexual harassment complaints on April 12, 2004. She concluded that Antebi's March 11 program violated Occidental's policy against hostile environment and sexual and gender harassment. She recommended that Antebi apologize to the complainants, or to the Occidental community, and suggested that he seek counseling.

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[2] Title IX of the Educational Amendments of 1972 prohibits discrimination on the basis of sex in educational institutions receiving federal financial assistance. (20 U.S.C. § 1681 et seq.)

Ayala accepted the recommendations and ordered Antebi to apologize to the complainants or face "alternative disciplinary action." Antebi refused. He appealed those findings on May 6, 2004. Rameen Talesh, the associate dean of students, conducted a disciplinary conference with Antebi to discuss acts related to the Title IX investigation. On May 14, 2004, Talesh found Antebi guilty of harassment, sending "spam" e-mail and lying to Cooper. Talesh ordered disciplinary censure until May 17, 2004. The findings stated that Antebi could appeal the decision by following the appeals section of the Student Code of Conduct. Antebi appealed to President Mitchell and the Board of Trustees nearly a month later, after the seven-day deadline specified in the student handbook. There is no information in the record about the outcome of this appeal.

In March 2005, Antebi brought this action in superior court against Occidental, its Board of Trustees, Ayala, Horowitz, Mitchell, Cooper, Talesh, and James Trandquada, Occidental's director of communications. Respondents demurred, and Antebi filed a first amended complaint. Respondents again demurred. The trial court sustained the demurrer without leave to amend because Antebi had not exhausted his internal remedies and, even if he had done so, his exclusive remedy was by administrative mandamus.

Antebi appeals to all respondents from the order of dismissal of seven out of eight causes of action: (1) defamation; (2) violation of Civil Code sections 51 and 52.1; (3) invasion of privacy; (4) intentional infliction of emotional distress; (5) negligence; (6) breach of fiduciary duties; and (7) declaratory relief under California's Leonard law (Ed. Code, § 94367 et seq.).

DISCUSSION

I

The sustaining of a demurrer is reviewed *de novo* to determine "whether the complaint states facts sufficient to constitute a cause of action." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) For these purposes, facts properly pleaded are accepted as true and construed

liberally. (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) Matters judicially noticed may be considered. (*Blank v. Kirwan, supra*, 39 Cal.3d 311, 318.)

II

In our review, we consider whether the trial court properly held that Antebi's only remedy was through administrative mandamus. We also consider whether he has stated any causes of action which fall outside the administrative mandamus requirement. We first dispose of respondents' argument that even if the trial court erred in finding that Antebi was required to seek administrative mandamus for any of his causes of action, he has abandoned all of his causes of action on appeal. They contend that he did so by not discussing the merits of each claim in his opening brief. Applying the *de novo* standard on review of an order sustaining a demurrer, we are not limited to plaintiff's theory of recovery in testing the sufficiency of his or her complaint against a demurrer, "but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have, of course, long since departed from holding a plaintiff strictly to the 'form of action' he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained." (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

Respondents demurred to Antebi's first amended complaint on two grounds: (1) all causes of action are barred because his exclusive remedy is administrative mandamus under section 1094.5; and (2) he failed to allege facts sufficient to constitute the second through eighth causes of action. In his opposition to the demurrer, Antebi insisted that he alleged sufficient facts for each cause of action. By doing so, he has preserved his claims, not abandoned them. The trial court sustained the demurrer on the administrative mandamus ground but did not deal with the sufficiency of factual allegations. Antebi's opening brief primarily argues that the trial court was wrong in deciding his exclusive remedy was administrative mandamus. He briefly mentions that his first amended complaint had separate causes of action that he would like to pursue if

we agreed with him on the administrative mandamus issue. Along with the allegations in his first amended complaint and his preservation of his claims in his opposition to the demurrer, this demonstrates that Antebi has not abandoned the second through eighth causes of action.

III

A

Antebi argues his civil action for declaratory and injunctive relief and damages is not precluded by his failure to pursue administrative mandamus. He contends that he is not challenging the result of Occidental's disciplinary hearing or its internal rules. Rather, he is seeking rights and remedies under California law.

Under section 1094.5, a plaintiff may challenge the result of a quasi-judicial proceeding provided by a public or private organization only through a petition for writ of administrative mandamus. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70.) By enacting section 1094.5, "the Legislature provided [that remedy, which] was to be used in all cases '[w]here *the writ* [i.e. the writ of mandate] is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which *by law* [1] a hearing is required to be given, [2] evidence is required to be taken and [3] discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer . . . .'" (*Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 814; see also *Gupta v. Stanford University* (2004) 124 Cal.App.4th 407, 411.)

Section 1094.5 applies to private universities (*Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1722-1723) and in particular, to students subject to university disciplinary procedures. (*Gupta v. Stanford University, supra,* 124 Cal.App.4th 407, 411.) "The remedy of administrative mandamus applies to any organization that provides for an evidentiary hearing. Whether the aggrieved party is seeking redress for termination of employment, denial of tenure or academic discipline is irrelevant to the applicability of section 1094.5." (*Ibid.*)

"Section 1094.5 expressly provides that it is the *requirement* of a hearing and taking of evidence—not whether a hearing is actually held and evidence actually taken—that triggers the availability of mandamus review." (*Pomona College v. Superior Court, supra*, 45 Cal.App.4th 1716, 1729.) Here, the trial court took judicial notice of the Occidental student handbook submitted by respondents, which provided for a hearing and the taking of evidence, and vested discretion in the panel reviewing the proceeding. The hearing procedure was incorporated into the code of student conduct. That code had its own appeals process for disciplinary determination, requiring a hearing if a student appeals. Antebi admitted in his pleading that in order to appeal Occidental's decision, he had to follow the appeals section of the code of student conduct. "[A]dmissions of material facts made in an opposing party's pleadings are binding on that party as 'judicial admissions.' They are *conclusive* concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her. [Citations.]" (*St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003) 111 Cal.App.4th 1234, 1248.)

Antebi argues that each of his causes of action is based on general principles of tort rather than a private organization's internal rules and, hence, he was not limited to administrative mandamus for review of the disciplinary proceedings. The requirement of exhausting internal remedies is limited to disputes between a private organization and its member(s) over the organization's own rules, membership policies or benefits because of the organization's expertise over such issues. (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 86; *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 476.) But, if the tort claim arises from a dispute over the private organization's own rules, membership policies or benefits, such as a disciplinary hearing, the exclusive remedy is administrative mandamus. (*Gupta v. Stanford University, supra*, 124 Cal.App.4th 407, 412-413.) Given the university's expertise with its own rules, including quasi-judicial proceedings concerning student discipline, the *Gupta* court reasoned that such claims were "'precisely the type of claims that administrative mandamus is designed to address.'" (*Ibid.*)

Antebi appeals the dismissal of seven of eight causes of action in his first amended complaint: (1) defamation; (2) violation of Civil Code sections 51 and 52.1; (3) invasion of privacy; (4) intentional infliction of emotional distress; (5) negligence; (6) breach of fiduciary duties; and (7) declaratory relief under Leonard law. As we shall explain, four of these causes of action, for violation of Civil Code sections 51 and 52.1, invasion of privacy, breach of duty, and under the Leonard law, are based on allegations challenging the disciplinary action taken against him. We discuss the remaining three causes of action separately.

B

In his discrimination cause of action, Antebi argues that respondents discriminated against him in violation of the Unruh Act. (Civ. Code, §§ 51, 52.1.) He claims that they did so on the basis of sex, race, color, religion, and ancestry, and that they failed to provide full and equal accommodations. He alleges that respondents targeted him, as a Caucasian male, for harassment while letting three other students, either non-Caucasians or female, engage in the same behavior without disciplinary action. He further claims that respondents' threats of expulsion and disciplinary action in their correspondence violated Civil Code section 52.1. He argues that because of respondents' aversion to him, the actions were taken with the intent to cause injury. Each of these allegations stems from the disciplinary procedures, particularly the allegations of threats of expulsion and disciplinary action which occurred as Occidental was investigating complaints against him. Hence, Antebi was required to seek administrative mandamus for review of the disciplinary action. (*Gupta v. Stanford University, supra,* 124 Cal.App.4th 407, 412.) His argument that this claim is independent of the disciplinary action is without merit.

C

In his invasion of privacy cause of action, Antebi claims that Occidental invaded his privacy, specifically, that it violated The Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g). The United States Supreme Court has ruled that FERPA does not create a private cause of action. (*Gonzaga University v. Doe* (2002) 536 U.S. 273, 287.) Even if Antebi identified a cognizable cause of action for invasion of

privacy, his alleged facts arise out of the disciplinary procedure. These alleged facts concern disclosure by Occidental of summaries of all the complaints and facts of the investigation to the three students who filed a complaint against him and discussion of the case with other students and civil rights organizations which Antebi had contacted to help him in the case. He is limited to judicial review by administrative mandamus since the factual allegations supporting this claim arise from the disciplinary proceeding.

Allegations of the breach of fiduciary duty cause of action also arise from the disciplinary procedure, and therefore are barred by the doctrine of administrative mandamus according to the rule in *Gupta v. Stanford University, supra,* 124 Cal.App.4th 407.

D

Antebi argues the administrative mandamus rule does not apply to his Leonard law claim. The Leonard law, Education Code section 94367 et seq., prohibits private universities from disciplining students for speech that would be protected by the First Amendment if made off campus. Specifically, Education Code section 94367, subdivision (a) provides that "[n]o private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution."

A plaintiff cannot avoid the administrative mandamus rule by simply alleging constitutional violations. (See, e.g., *Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 637, 645.) In this case, however, Antebi was specifically authorized by statute to bring his Leonard law claim in the trial court without having to seek administrative mandamus.

Even with this exception to the exclusivity of a section 1094.5 proceeding for a Leonard law claim, Antebi lacks standing to pursue it. He graduated from Occidental before filing this action. Education Code section 94367, subdivision (b) provides: "*Any*

student enrolled in a private postsecondary institution that has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate *injunctive and declaratory relief* as determined by the court." (Italics added.) "'Where possible, "we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law . . . .' [Citations.]" (*Major v. Silna* (2005) 134 Cal.App.4th 1485, 1493.) Not surprisingly, both sides argue that the plain meaning of the provision, "[a]ny student enrolled . . ." supports its position. (§ 94367, subd. (b).) Antebi asserts that the language requires only that the student be enrolled at the time of the unlawful act; respondents argue it applies the law only to students enrolled at the time the action is filed.

We agree with respondents, for three reasons. First, the plain language of the statute—"any student *enrolled* . . . may commence a civil action" indicates that the student must be enrolled when the legal action begins. (Ed. Code, § 94367, subd. (b), italics added.) Second, the Legislature easily could have extended application of the statute with the words "any student enrolled or *who was enrolled*" or by a similar formulation. The inference from the fact that it did not do so is that the remedy is afforded only to currently enrolled students. Finally, this reading is consistent with the structure of the statute as a whole. "Significance should be given, if possible, to every word of an act." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) Education Code section 94367, subdivision (b) provides only injunctive and declaratory relief, which would not benefit a graduated student. If the Legislature intended to extend the applicability of the Leonard law to graduated students, such as Antebi, it would have permitted the recovery of damages to remedy past wrongs.

E

Alternatively, Antebi argues his case is an exception to the administrative mandamus rule. One of the requirements for administrative mandamus is that the party seeking that relief must exhaust his or her internal remedies. (See *Board of Medical Quality Assur. v. Superior Court* (1977) 73 Cal.App.3d 860, 862.) Antebi reasons that he is excused from this exhaustion requirement because the administrative remedy is

inadequate. "'The doctrine [of exhaustion of administrative remedies] is inapplicable where "the administrative remedy is inadequate [citation]; where it is unavailable [citation]; or where it would be futile to pursue such remedy [citation]."'" (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 620.)

The inadequacy of the administrative remedy, Antebi claims, is that the monetary damages he seeks to resolve his tort claims cannot be awarded in an administrative mandate proceeding. Since the precluded tort claims are based on his disciplinary proceedings, the real question is whether the disciplinary proceeding provides an adequate, available and satisfactory remedy to Antebi. The California Supreme Court has held that even if a plaintiff seeks monetary damages which an internal process cannot provide, he or she must exhaust his or her administrative remedies. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 323; see also *Westlake Community Hosp. v. Superior Court, supra,* 17 Cal.3d 465, 476.) Antebi cannot escape the exhaustion rule by seeking monetary damages; hence administrative mandamus is triggered in respect to the causes of action solely based on allegations arising from the disciplinary proceeding.

Antebi argues he should be excused from his requirement that he exhaust his administrative remedies because he claims he could not. As he alleges in his first amended complaint, two administrators told him that he could not have a hearing on an appeal. But, attached to the first amended complaint is a letter dated May 14, 2004 from Associate Dean of Students, Rameen Talesh. This letter advised Antebi: "If you would like to appeal this decision, you may do so following the appeals section of the Student Code of Conduct." Antebi did not allege whether he took advantage of this opportunity for review. Therefore, Antebi has failed to establish this exception to the administrative mandamus requirement because he did not pursue a hearing which he was offered.

IV

One of the causes of action is distinct from the quasi-judicial disciplinary proceeding: the claim that Cooper yelled disparaging names at Antebi in a public

hallway. Although the statements were made during the period of the disciplinary investigation, they were not a part of the administrative procedure. As we explain, Antebi has pleaded a cause of action for defamation, but not for intentional or negligent infliction of emotional distress.

In Antebi's first amended complaint, he alleged that "[o]n March 22, 2004, from the office of the General Counsel for Occidental College, Defendant Cooper yelled into a public hallway at Mr. Antebi, that he was a 'racist,' 'sexist,' 'misogynist,' 'anti-Semite,' 'homophobe,' 'unethical' and 'immoral' 'trash.' These words were published to numerous persons, both identifiable and unidentifiable." "[Defamation] involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645, Civ. Code, §§ 45, 46; 5 Witkin, Summary of Cal. Law (9th ed. 1998) Torts, § 471, pp. 557-558.) Publication consists of communication to a third person who understands the defamatory meaning of the statement and its application to the alleged victim. (*Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1179.) If the statement is unambiguous, a pleading needs only an allegation that the statement was made in the presence of third persons. Antebi's allegation meets this test. Cooper's alleged statement was unambiguously defamatory and was made in the presence of other people in a public hallway.

Respondents contend that Antebi, as a public figure, must make a showing of malice by Cooper. In *Curtis Publishing Co. v. Butts* (1967) 388 U.S. 130, the United States Supreme Court applied its rule of requiring actual malice in a defamation action filed by a public official in *New York Times Co. v. Sullivan* (1964) 376 U.S. 254 to public figures. There are two kinds of pubic figures: (1) an "all purpose" public figure who has "achiev[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts," and (2) a "limited purpose" public figure who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 351.) "Unlike the 'all purpose' public figure, the 'limited purpose' public figure

loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy." (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 253-254.) Assuming that Antebi is at least a limited purpose public figure to the local community as a radio jockey on the college station, respondents are incorrect in their claim that Antebi failed to plead malice. He did so in his first amended complaint, which stated that the defamatory statement was "motivated by factors which were beyond [the individual defendant's] purview as representatives of the College, including but not limited to personal dislike of [Antebi] and ill will towards [Antebi]." The demurrer should have been overruled as to the cause of action for defamation against Cooper and Occidental.

Antebi also may use the hallway name-calling allegation to support his cause of action for intentional infliction of emotional distress (IIED) action, but his pleading is not sufficient to support that tort. IIED requires that the plaintiff allege the defendant intentionally or recklessly caused "severe emotional distress" by "extreme and outrageous conduct." (Rest.2d Torts, § 46; see also *State Rubbish Etc. v. Siliznoff* (1952) 38 Cal.2d 330, 336.) To be "outrageous," the conduct "'must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.' [Citation.]" (*Conley v. Roman Catholic Archbishop* (2000) 85 Cal.App.4th 1126, 1133.) "[T]he court may determine in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." (*Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883; Rest.2d Torts, § 46.) Name-calling in public has been held not to be outrageous as a matter of law. (*Yurick v. Superior Court* (1989) 209 Cal.App.3d. 1116, 1129.) Cooper's act of calling Antebi names within earshot of others at Occidental is not. Antebi fails to state sufficient facts for an IIED action.

Antebi also fails to state a cause of action for negligent infliction of emotional distress (NIE) even with the hallway name-calling allegation. A NIED claim cannot be based upon intentional conduct. (See *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1105.) Antebi has alleged that the conduct of Cooper and other respondents was "intentional." He has not stated a cause of action for a NEID claim.

V

Respondents claim, and we agree, that the Board of Trustees of Occidental cannot be liable for Antebi's causes of actions. The trustees of a nonprofit educational corporation are recognized as its directors, and a director of a nonprofit corporation cannot be personally liable for the debts, liabilities, or obligations of the corporation. (*Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 10.) Given that Antebi filed the present action against Occidental as a corporation and the trial court took judicial notice that a board of trustees of nonprofit educational organization was its directors, the action against Occidental's Board of Trustees was properly dismissed.

Because only the defamation cause of action survives the demurrer, only Occidental and Cooper, the individual who allegedly made the hallway statements, can be held liable.

DISPOSITION

The judgment is reversed as to the cause of action for defamation against Cooper and Occidental College . In all other respects, the judgment is affirmed. Each party is to bear its costs.

CERTIFIED FOR PARTIAL PUBLICATION.

EPSTEIN, P. J.

We concur:

SUZUKAWA, J.

HASTINGS, J.*

*Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 Anton Boulevard, Suite 850, Costa Mesa, California 92626.

On September 21, 2006, I served the document (s) described as **PETITION FOR REVIEW** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

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[X] (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY OVERNIGHT DELIVERY) I caused said envelope (s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s).

[ ] (PERSONAL) I caused _____ to personally serve the addressee(s).

Executed on September 21, 2006, at Costa Mesa, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Robin Golder

Robin Golder