Suspended students have no federal case

By PATRICIA MANSON

Three black women suspended from Southern Illinois University for hazing another student who was pledging their sorority do not have a federal case, an appeals court has ruled.

The 7th U.S. Circuit Court of Appeals on Monday declined to reinstate a lawsuit that claimed the trio's suspensions violated the Civil Rights Act of 1964 and the equal protection and due process clauses of the Fourteenth Amendment.

The court held that the plaintiffs had not shown that SIU officials treated whites who hazed their fellow students more leniently than blacks who engaged in the same actions.

The court also held that the plaintiffs had no property right to a college education and therefore had nothing on which to base their claim that they were deprived of property without due process of law.

The court affirmed a decision by U.S. District Judge J. Phil Gilbert of the Southern District of Illinois to dismiss the due process claim and to grant summary judgment in favor of SIU officials on the discrimination claims.

In 2004, a student who was pledging Zeta Phi Beta claimed that sorority members repeatedly struck her with paddles over four days.

SIU ultimately suspended sorority members Monet Williams, Nakia Collins and Teqeira Johnson -- Williams for two years and the others for three -- for violating a university policy against hazing.

The three women later filed a suit contending that their suspensions violated the Fourteenth Amendment as well as Title VI of the Civil Rights Act.

Title VI bars recipients of federal grants from discriminating on the basis of race.

In affirming Gilbert's decision, a three-judge panel of the 7th Circuit said the plaintiffs would have a case under Title VI and the equal protection clause if they could prove that SIU "treats black hazing more unforgivingly than white hazing."

But the plaintiffs did not make such a showing, the panel said.

The panel said the plaintiffs did point out that individual members of a fraternity were not punished after a pledge drowned during a camping trip.
But while the fraternity was found to have violated SIU's drinking and safety rules, there was no evidence that its members hazed anyone, the panel said.

And the panel said the fraternity was permanently banned from campus following the drowning.

The plaintiffs also cited a separate incident in which a white fraternity pledge who tied another pledge to a tree was placed on one year of probation, the panel said.

But the panel said the victim of the hazing did not suffer physical injuries.

And the fact that the "victimizer" was a pledge might have made him less culpable for his "dumb behavior" than a full-fledged fraternity member might have been, the panel said.

The panel also rejected the claim that SIU violated the due process clause by conducting a disciplinary process that the plaintiffs described as a "sham."

"To have a due process claim you must show that you have been deprived of a property right," Judge Richard A. Posner wrote for the panel.

The panel said the plaintiffs had no such right to a college education at SIU.

The panel did concede that the word "property" has been interpreted "to include pretty much any legally protected entitlement."

Such entitlements include a job with tenure, "which means that you can be fired only for cause," the panel said, citing Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).

Citing cases that included Goss v. Lopez, 419 U.S. 565 (1975), the panel said another legally protected entitlement is an education at a public high school.

But a college education is a different matter, the panel said.

The panel said a student cannot base a claim that she was deprived of property without due process on the "bald assertion" that she was suspended from college.

Instead, the student must present evidence of some kind of entitlement, the panel said.

The panel conceded that an entitlement can be qualified and can include an entitlement not to be suspended unless good cause is shown.

But such a qualified entitlement must be included in an express or implied contract between the student and the university, the panel said.

And while Williams, Collins and Johnson contended in their appellate brief that they each had a personal contract with SIU, the panel did not see it that way.
"There is no suggestion of such a contract in this case because the plaintiffs, while calling their claim a 'property' claim, deny that they need to establish an entitlement -- an enforceable right -- and not merely an entitlement to fair procedure, as that would dissolve the requirement of showing a deprivation of life, liberty or property as a precondition to complaining about a denial of due process," Posner wrote, citing Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). "They have denied themselves out of court."

Joining the opinion were Judges Ilana Diamond Rovner and Terence T. Evans. Monet Williams, et al. v. Walter V. Wendler, et al., No. 07-3315.

Carbondale attorney Richard S. Fedder argued the case before the 7th Circuit on behalf of the plaintiffs. Chicago attorney Donyelle L. Gray argued the case on behalf of the SIU officials named as defendants in the suit.

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