

1979 WL 43180 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 20, 1979

\*1 Mr. G. William Dudley, Jr.  
Executive Director  
State Board for Technical and Comprehensive Education  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Mr. Dudley:

You have requested an opinion of this Office as to whether Greenville Technical College has the authority to exclude alien students from registration when they have not completed their course of study. This request was made with reference to the following action of the Greenville County Commission for Technical Education (Commission), the governing body of Greenville Technical College, on Friday, November 16, 1979:

‘Mr. Crawford made the motion that the Iranian students not be allowed to enroll for the coming quarter or any succeeding quarter until such time as the hostages are safely released from their situation in which they now find themselves.’

The motion was seconded by Mr. Bonds and six voted in favor and there were two abstentions.

This action by the Commission appears to violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and to the extent that federally funded programs or activities are affected, Title VI of the Civil Rights Act of 1964.

The Fourteenth Amendment to the United States Constitution states, in part, that no State shall deprive any person of life, liberty or property, without due process of law. The protection of this clause is extended to aliens. [Matthews v. Diaz](#), 426 U.S. 67, 48 L. Ed. 2d 478, 96 S. Ct. 1883 (1976). Here, the summary expulsion of all Iranian students from Greenville Tech at the end of this semester appears to have deprived them of property interests in the continuance of their education without due process of law.

The sufficiency of the claim of a property interest under the due process clause must be decided by reference to state law. [Bishop v. Wood](#), 426 U.S. 341, L. Ed. 2d 684, 96 S. Ct. 2074 (1976). No South Carolina Supreme Court case has directly considered the issue of whether students at a college or university have property interests in their education such as that mentioned above; however, the certificates of eligibility for student status which have been signed by Tech officials and which are used by alien students to obtain a visa appear to be sufficient written evidence of the existence of a contractual relationship under South Carolina law. They certify that the student has been accepted for a ‘full course of study’ and set out the expected length of the studies. These terms of the contractual relationship would allow the student to complete his course of study if he satisfactorily complies with the rules and regulations of the technical college and the requirements of State laws.

California, as well as other jurisdictions, has recognized the existence of a contractual relationship between students and colleges. In [Andersen v. Regents of University of California](#), 22 Cal. App. 3d 763, 99 Cal. Rptr. 531 (1972), the Court held as follows:

\*2 ‘By the act of matriculation, together with payment of fees, a contract between the student and the institution is enacted containing two implied conditions: (1) that the student will not be arbitrarily expelled and (2) that the student will submit himself to reasonable rules and regulations for the breach of which, in a proper case, he may be expelled . . . [citation omitted]’ A contract is created with the State which, by its very nature, incorporates constitutional principles of due process. 99 Cal. Rptr. See also [Krasnow v. Virginia Polytech Inst. and State Univ.](#), 414 F. Supp. 55 (WD Va. 1976); 15 A. Am. Jur. 2d, [Colleges and Universities](#), § 26.

This issue was discussed at some length in [Peretti v. State of Montana](#), 464 F. Supp. 784 (DC Mont. 1979) which quoted from Notre Dame Law Journal as follows:

This contract is conceived of as one by which . . . the school agrees to allow the student to pursue his course of studies and be granted a diploma upon the successful completion thereof. 464 F. Supp at 784 quoting ‘Note, Expulsion of College and Professional Students—Rights and Remedies,’ 38 Notre Dame L.J. 174, 183 (1962).

The above authority indicates that Iranian students here have a property interest in the continuance of their education which is based on a relationship with the school that is contractual in nature. This interest, thus, is entitled to due process protection under the Fourteenth Amendment. In addition, the action taken here against the Iranian students here is analogous to disciplinary action taken against students who violate a school's regulations. The application of due process standards to such actions has been recognized by the federal district courts of this State. In a case in which a student was permanently suspended from college, [Bistrick v. University of S. C.](#), 324 F. Supp. 942, 950 (DCSC 1971) stated that ‘. . . it is crystal clear that one does not abandon his constitutional right to due process of the law by matriculating at an institution of higher learning . . .’ See also [Herman v. University of S. C.](#), 341 F. Supp. 226 (DCSC 1971), Aff'd 457 F. 2d 902 (4th Cir. 1972).

‘To find a violation of substantive due process, it must appear that a State has unreasonably or arbitrarily deprived a person of a right to which he is otherwise entitled.’ [International Association of Firefighters v. City of Sylacauga](#), 436 F. Supp. 482 (ND Ala. 1977). Here, the Commission has deprived Iranian students of their right to the continuance of their education because of events in a foreign country. See *infra* p. 4. These reasons are not rationally related to legitimate state concerns and, thus, the Commission appears to have violated the student's rights of substantive due process.

Procedural guarantees under the due process clause should be flexible (See [Board of Curators, University of Mo. v. Horowitz](#), 435 U.S. 78, 55 L.Ed 2d 124, 98 S.Ct. 948 (1978); however, regardless of what type of procedure should have been followed here, the students in question here never had the opportunity to have their interests considered. They apparently were given no prior notice of the Commission's action and no opportunity to present reasons why they should not be barred from school. Thus, the Commission has apparently denied them the procedural aspects of due process as well as its substantive aspects.

\*3 The Fourteenth Amendment to the United States Constitution also requires that no State deny to any person within its jurisdiction the equal protection of the laws. An alien is entitled to the protection of this clause. [Sugarman v. Dougall](#), 413 U.S. 634, 37 L.Ed 2d 853, 94 S. Ct. 2842 (1973).

In [Nyquist v. Mauclet](#), 432 U.S. 1, 53 L. Ed. 2d 63, 97 S. Ct. 2120 (1977), the Court subjected to ‘close judicial scrutiny’ a New York statute which barred certain resident aliens from state financial assistance for higher education. Under this standard of review, ‘. . . the governmental interest claimed to justify the discrimination is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieved the goal are necessary and precisely drawn.’ 53 L. Ed. 2d at 69. This standard of review should apply to the barring of alien students by Greenville Tech.

Here, the Commission's action has not been taken with respect to all aliens but only as to those of Iranian descent. The barring of the students is not contingent on any actions by them or on any events happening in or directly affecting this State. It is conditioned only on the release of hostages by a foreign government. The Commission's action seems to have been taken because of its concern with foreign events, but the power to act on such matters is reserved to the United States government. See e.g., [22 USCS § 2651, et seq.](#) Thus, this action does not appear to be motivated by a legitimate state interest so as to justify constitutionally its discriminatory effect.

Finally, Title VI of the Civil Rights Act of 1964 at [42 USCS § 2000d](#) provides as follows: '[n]o person in the United States, shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.' Apparently, no case has previously construed the term 'national origin' under this section; however, the same term has been construed in a somewhat similar provision relating to employment found in Title VII of the same Act and codified under [42 USCS § 2000e-2\(a\)\(1\)](#). See [Espinoza v. Farah Manufacturing Co.](#), 414 U.S. 86, 38 L. Ed. 2d 298, 94 S. Ct. 334 (1973). [Espinoza](#) stated that the term '. . . refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.' 38 L. Ed. 2d at 291. It held that discrimination against aliens is prohibited under Title VII if '. . . it has the purpose or effect of discriminating on the basis of national origin,' 38 L. Ed. 2d at 293.

The [Espinoza](#) holdings with respect to national origin in Title VII should apply to Title VI since it also prohibits discrimination on that basis. Here, in barring only alien students from Iran, Greenville Tech has discriminated against them on the basis of their national origin under Title VI. The consequences of this discrimination could include termination of federal funds which have been going to any program or activity at Greenville Tech which is touched by the discrimination against the Iranian students. See [42 USCS § 2000d-1](#).

\*4 In conclusion, the action of the Greenville County Commission with respect to the Iranian students appears to violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and also violates, to the extent that federally funded programs or activities are affected, Title VI of the Civil Rights Act of 1964. If you have any questions, or if I can be of further assistance to you, please do not hesitate to contact me.

Very truly yours,

J. Emory Smith, Jr.  
State Attorney

1979 WL 43180 (S.C.A.G.)