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Tuesday March 2, 2004

University alters code of conduct in wake of challenge

by DON AINES

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SHIPPENSBURG, Pa. - Shippensburg University has changed Portions of its student code of conduct and replaced its Racism and Cultural Diversity Policy in response to a successful court challenge by two students who said it violated their First Amendment rights, the students' attorney said.

The university announced last week it replaced the Racism and Cultural Diversity Policy with a statement of principles regarding its commitment to educational diversity. Sections of the code of conduct also were changed in accordance with a ruling by Judge John E. Jones III of the U.S. District Court for the Middle District of Pennsylvania, a university statement said.

"We feel we've complied with the judge's ruling while still maintaining the integrity of the core values of this institution," Peter M. Gigliotti, executive director for university communications and marketing, said of the changes approved by the council of trustees on Jan. 30.

Walter A. Bair, now a senior, and Ellen Wray, who graduated last year, filed the suit in April 2003, said attorney David A. French of Louisville, Ky. While neither was sanctioned for violating the code, French said the policies had the "chilling effect" of restricting the free speech of them and other students.



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In an affidavit Bair filed as part of the suit, he wrote that messages and pictures began showing up in dormitories after the Sept. 11, 2001, terrorist attacks.

"These messages included, for example, pictures of Osama bin Laden in cross hairs," he wrote.

The university's resident director told Bair and other resident advisers that "these messages and/or posters had to be removed from the dorm room doors because they were offensive to other students and a violation of the Code of Conduct," according to the affidavit. Bair said some students told him they complied only out of fear of punishment.

In September, Jones issued a preliminary injunction preventing the university from enforcing "likely unconstitutional provisions" of the code, which he characterized as "overbroad and vague."

"I never had any doubts that this was an unconstitutional code," said Greg Lukianoff, the director of legal and public advocacy for the Foundation for Individual Rights in Education, a Philadelphia-based organization that helps coordinate litigation against speech codes at colleges and universities.

The code stated "acts of intolerance directed at others for ethnic, racial, gender, sexual orientation, physical, lifestyle, religious, age and/or political characteristics" will not be condoned.

"The expression of ones' beliefs should be communicated in a manner that does not provoke, harass, intimidate or harm another," read another section.

Jones wrote that "the concept of prohibiting communications which 'provoke' suggests that a student's beliefs should not be



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communicated in a way that arouses interest and stimulates a response."

"Communications which provoke a response, especially in a university setting, have historically been deemed an objective to be sought after rather than a detriment to be avoided," wrote Jones.

The code now reads that "No person shall engage in conduct that constitutes unlawful discrimination based on another person's race, color, sex, religion, age or national origin," according to the university statement.

"Preliminarily, it is easy to discern that the provisions of the student code in question were part of an attempt to achieve a utopian community within Shippensburg," Jones wrote.

"Shippensburg University aims to create a campus culture that offers opportunities for increasing knowledge, awareness and understanding of diversity and inclusiveness and promotes a climate which builds upon values that welcome and nurture all members of the university community," reads part of the new statement of principles.

"These changes reflect not only a great deal of discussion, debate and research ... but our continuing commitment to the idea that a university is a marketplace of ideas based on an individual's right to free speech," President Anthony F. Ceddia said in the university's statement.



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