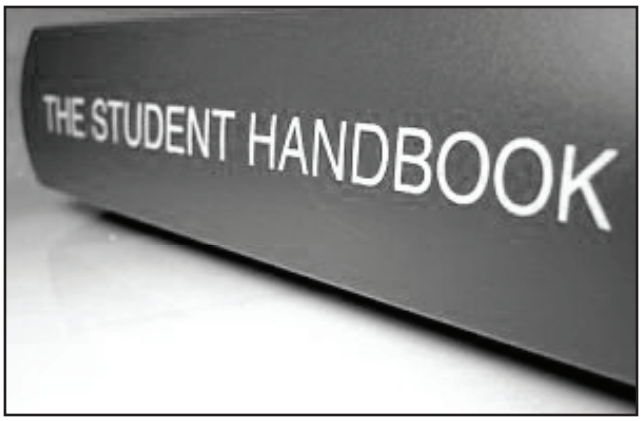
Here's to Change

The Good, the Bad, and the Questionable in the New Student Code of Conduct

by Adam Shamah '11

One of the issues that we at *Binghamton Review* have taken extremely seriously over the years is the system of Judicial Affairs and the University Code of Conduct. Policies like failure to cooperate (see article on page 10), and parts of the harassment code have landed Binghamton University a "yellow" rating from the Foundation for Individual Rights in Education (FIRE) for maintaining policies that may threaten free speech. This being said, there is good news: in April, the Binghamton University Council is set to deliberate and vote on an overhaul of the student code of conduct and judicial affairs system.



A look at the proposals shows that many of them are in fact very student friendly, though there are some that we look at with moderate skepticism. Perhaps the biggest victory for students is the upping of the standard of evidence. Under the current system, Judicial affairs uses what is called the "preponderance" standard, meaning that a student can be convicted if his or her hearing board believes that he or she is more likely than not to be in violation of a rule. The judges are allowed up to 49% doubt. The changes proposed include raising this standard to "whether it is substantially more likely than not that the student charged violated the rules of student conduct," or what is commonly known as the clear and convincing standard. If a number had to be assigned, you can describe "clear and convincing" as 75% certainty.

A second victory for students present in the proposed changes is the removal of the "transferred culpability" clause that is present in the current code. What this means is that, under the current system, one can be charged simply for being present at the time a violation occurs. For example, if a student is present in a dorm in which there is underage drinking taking place, that student can be charged simply for being there, even if he or she is in no way partaking in the underage drinking. Under the new system, that student would be safe. Only those who actually actively participate in a violation will be forced through the judicial affairs process.

A recommendation that has us less excited is one that concerns the handling of cases. Under the current system, the flow chart of the judicial process can be described as follows: after an incident occurs, a report is sent to the Judicial Affairs office or Reslife administrator. The student involved is then sent a letter to meet with an administrator. At this meeting, the administrator will determine whether or not formal charges will be

filed. If he/she decides that they will not, the incident is resolved and not heard of again. If charges are filed, however, the student then is given what is known as an administrative agreement, which is essentially the equivalent of a plea bargain (without the plea). The student can either sign the agreement and accept the sanctions, or reject it and go to a hearing in which his or her case is heard either by a board made up of two students and one administrator, or, in certain cases, one made up of three administrators.

Under the proposed changes, cases are split into two categories, Level I, and Level II. Level I cases are the less serious ones, those that "do not include disciplinary probation until graduation, final probation, suspension, expulsion or a change in housing status." Level II cases are those that do include such sanctions. Under the proposed new system, Level II cases will be tried as all cases currently are, using the process described above. Level I cases, however, will follow a different procedure.

Level I cases will be "assigned to a student conduct administrator for resolution… The student conduct administrator may conduct an investigation to determine if the charges have merit and/or if they can be handled administratively by mutual consent of the parties involved...If the charges are not admitted and/or cannot be resolved by mutual consent, the student conduct administrator will make a determination as to whether the student charged violated the rules of student conduct and assign sanctions if appropriate." What this essentially means is that if the administrative agreement is not signed, the student conduct administrator (usually an administrator or RD) will determine whether or not to impose sanctions—without the student going before a full hearing board as he or she would now.

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The intent of this change seems to be to alleviate Judicial Affairs of its heavy hearing load. Vice President for Student Affairs Brain Rose mentioned at various meetings last year that the university he used to work at, Rutgers, has more students than Binghamton does yet conducts fewer judicial hearings. Because it has not yet been implemented, it obviously remains to be seen what effect this will have on students who are accused of committing Level I offenses. Will they have as great of a chance to defend themselves? Will more be given sanctions? Will judicial affairs be given a lighter hearing load at the expense of students? We would like to keep an open mind, but these are all questions we must keep in mind next year when the new process is implemented.

Beyond all of this there are several other victories for student rights contained in the new code. The Rules of Student Conduct section has been greatly simplified, with only 24 rules under that section. The controversial "Harassment 3" section has been removed. This was the section that FIRE considered a possible threat to free speech which read, "Communicating or causing a communication be initiated with such person, anonymously or otherwise, by telephone, electronic mail, mail or any other form of written communication, in a manner likely to cause annoyance or alarm" is prohibited as "harassment."

However, failure to cooperate still remains, as does this potentially dangerous section of the preamble: "All member of the university community are expected to…continue the tradition of exercising First Amendment rights keeping in mind that while encouraged and protected, the expectation is that one's rights are practiced with respect and responsibility. Abusing the rights of any one person or group ultimately endangers the rights of all. Obscene speech or conduct — which appeals to prurient interests, is patently offensive and lacks serious literary, artistic, political or scientific value — is not protected by the First Amendment." Then there is also the questionable new hearing process. All in all, the new code represents many great victories, but we must still keep a watchful eye out next year to be sure that student rights are being protected.

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