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OFFICE OF CIVIL RIGHTS
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ADMINISTRATIVE COMPLAINT

COMPLAINANTS

Feminists United on Campus
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1301 College Avenue
Fredericksburg, VA 22401

Feminist Majority Foundation
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Arlington, VA 22209
(703) 522-2214

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Julia Michels
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Preliminary Statement

1. This Complaint is filed under Title IX of the Education Amendments of 1972, 20
U.S.C. § 1681 et seq. ("Title IX"), and the regulations and polices promulgated there under, see
34 C.F.R. § 106 et seq., which prohibit discrimination and retaliation on the basis of sex in
federally funded educational activities. Sexual harassment, which includes the creation of a
sexually hostile environment by fellow students whether in person or online, violates Title IX
where, as here, the harassment is sufficiently serious as to interfere with a student’s ability to
participate in or benefit from the services, activities, or opportunities afforded by a college or
university.
2. The Complainants, some of whom are students at the University of Mary Washington ("UMW" or "the University") in Fredericksburg, Virginia, request that OCR secure an assurance of compliance with Title IX from UMW in addition to full remedies for those violations for the injuries Complainants have sustained as a result of the University’s systemic failure to protect them from a sexually hostile school environment, from sex-based cyber assaults, and from threats of physical and sexual violence, and as a result of the University’s failure to take immediate effective action to eliminate the sexually hostile environment, prevent its recurrence, and address its effects.

3. As detailed more fully below, the University condoned and ratified a sexually hostile environment by permitting ongoing, gender based cyber-stalking and cyber assaults of members of Feminists United, a University group that is dedicated to educating the student body about gender-related issues and fighting for gender equality. Members of Feminists United were repeatedly verbally assaulted and threatened through an anonymous social media app called “Yik Yak” and other posting sites because they spoke out about the increased incidence of sexual assaults involving fraternities nationwide. The anonymous assailants also attacked the Complainants online because they erroneously believed that Feminists United called for the University to suspend the men’s rugby team over a 2014 incident in which rugby team members engaged in chants that called for violence against women, including rape and necrophilia.

4. The University administration was informed repeatedly that Feminists United students feared for their safety as a result of more than 700 “Yaks,” many of which were overtly sexist and/or threatening, posted about them collectively and individually. Despite being put on notice that the students feared for their safety and were unable to concentrate on their school
work or otherwise enjoy the benefits of their university’s educational programs, the
administration took no action to protect them.

5. In response to these complaints, and in clear violation of its legal obligations
under Title IX, the University’s Title IX coordinator sent an email to students informing them
that the university has “no recourse for such cyber bullying” and advising them that “if you find
yourself the subject of an abusive or threatening comment on social media, please immediately
file a report so that the site can take administrative action.” The University President also
ignored direct and urgent requests from members of Feminists United to protect them and other
students from threats of physical and sexual violence, citing misguided concerns about the First
Amendment rights of the cyber-bullies as a reason to do nothing.

6. The University failed to report the threats of violence to law enforcement
authorities or even to attempt to identify the assailants, even though the University’s computer
server was used to host Yik Yak, thereby facilitating the cyber assaults and threats. In clear
violation of their legal responsibilities under Title IX, University officials failed to take prompt
and effective steps reasonably calculated to end the sexual violence, eliminate the hostile
environment, prevent its recurrence, and, as appropriate, remedy its effects.

7. Upon information and belief, the University also failed to provide adequate
training regarding campus sexual violence to its administrators, and has failed to handle past
complaints of sexual harassment and sexual violence appropriately and effectively, further
contributing to the “rape culture” that is promoted by the sexist Yik Yak posts and other forms of
bullying that women at Mary Washington experience. For example, past sanctions issued by the
University for sexual assault included, in at least one instance, a requirement to write an essay
about the misconduct. Upon information and belief, that student went on to sexually assault another victim at a different university.

**JURISDICTION**

8. OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines. 34 C.F.R. §§ 100.7, 106.71.

9. Complainants have not filed this administrative Complaint with any other agency or institution. This Complaint is timely filed.

10. UMW utilizes the various federal student aid programs that are authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.*, and 42 U.S.C. § 2751 *et seq.*, and is therefore prohibited by Title IX from discriminating on the basis of sex in its programs and activities.

**PARTIES**

11. Feminists United is a student-run organization at UMW that is dedicated to educating the student body and fighting for gender equality. During the period of 2014 through the present, Feminists United had an Executive Board of approximately 10 members and a total membership of approximately 30 to 40 students. As the group increased its visibility on campus and spoke out about sexual abuse and violence at UMW, it and its members began to suffer a backlash in the form of escalating levels of sexist, violent and sexualized comments, cyber-stalking and cyber assaults, and threats posted anonymously on Yik Yak and other social media sites.

12. Feminist Majority Foundation, founded in 1987, is a cutting edge organization dedicated to women’s equality, reproductive health, and non-violence. Led by President Eleanor
Smeal, the Feminist Majority Foundation’s research and action programs focus on advancing the legal, social and political equality of women with men, countering the backlash to women’s advancement, and recruiting and training young feminists to encourage future leadership for the feminist movement in the United States. Feminist Majority Foundation has a Feminist Campus Leadership Program through which it works with student groups and faculty on college campuses across the country to promote women’s rights and equality. One of its program’s goals is to eliminate campus sexual assault and to educate students about their rights under Title IX. Feminists United is affiliated with the Feminist Majority Foundation.

13. Complainant Paige McKinsey was President of Feminists United at all times relevant to this Complaint and was a Senior at UMW during the 2014-2015 school year.

14. Complainant Julia Michels is the incoming President of Feminists United and was a member of the Executive Board of Feminists United at all times relevant to this Complaint, and was a Junior at UMW during the 2014-2015 school year.

15. Complainant Kristine Harner was a member of Feminists United at all times relevant to this Complaint, was recently elected to its Executive Board, and was a Sophomore at UMW during the 2014-2015 school year.

16. Complainant [REDACTED] at all times relevant to this Complaint and [REDACTED]

17. Complainant Jordan Williams was a Member of the Executive Board of Feminists United at all times relevant to this Complaint and was a Junior at UMW during the 2014-2015 school year.
18. Complainant Alexis Lehman was a Member of the Executive Board of Feminists United at all times relevant to this Complaint and was a Freshman at UMW during the 2014-2015 school year.

FACTUAL ALLEGATIONS

19. In September 2014, Feminists United members distributed leaflets about campus sexual assault to educate the campus community about the issue of sexual consent. They distributed these leaflets for about two weeks.

20. In November 2014, UMW’s student senate voted on a motion in support of Greek life (i.e., the recognition of fraternities) on campus. Feminists United were active in the discussion and raised a number of issues concerning the well-documented relationship between fraternities and the incidence of sexual assaults on college campuses throughout the United States. At a town hall meeting held after the motion passed the student senate, Paige McKinsey, the then-President of Feminists United, asked those in favor of Greek life to address the studies and research that showed that Greek life on campus increased the number of sexual assaults on campus. She also raised questions about how the University would be able to address the issue, particularly since the University was not able to adequately support victims and survivors.

21. After Ms. McKinsey spoke, students immediately start posting messages on Yik Yak about the issue. Yik Yak is an anonymous social media app that allows people to create and view “Yaks” within a 1.5 mile radius. Students posted Yaks about the Greek life issue and Feminists United, including “this feminist needs to calm the hell down,” and “these feminists need to chill their tits,” and specifically calling Ms. McKinsey “scary.” Later that day and evening, more derogatory Yaks were posted about “the feminists” and Feminists United using
insulting and offensive words, such as “I fucking hate feminists and sour vaginas.” See Yik Yak posts, attached hereto as Exhibit 1.

22. On November 21, 2014, members of Feminists United Executive Board – including Grace Mann, Julia Michels, Ms. McKinsey, Sarah Palmer, and others – met with UMW’s Title IX Coordinator, Dr. Leah Cox, regarding the administration’s sexual assault prevention policy and the need for a full-time sexual assault coordinator. They discussed the sexual assault of a member of Feminists United and the University’s failure to resolve the issue in a prompt manner. The group explained that a full-time sexual assault coordinator was necessary. They also told Dr. Cox that they were concerned that Associate Coordinator of Judicial Affairs, Marissa Miller, was not properly trained and was not effective in her role. Dr. Cox expressed a desire to work with them but indicated that it would be difficult for the University to appoint a full time coordinator.

23. After the meeting with Dr. Cox, as the members of Feminists United were walking home, cars drove by and students yelled out angrily, “Fuck the feminists!”

24. On November 23, 2014, Zakaria Kronemer, then a senior at UMW, texted Ms. McKinsey about a party he attended at which members of the men’s rugby team performed a chant that advocated violence against women, including rape, murder, and necrophilia. Mr. Kronemer taped the chanting on his phone because “he was appalled by the violence and misogyny that was being expressed.” Fifteen to 20 people were chanting, and there were many others (including 15 to 20 women) who were also at the party. Following the chanting, a rugby team member stood on a table and angrily yelled that he wanted to hit a girl. Mr. Kronemer confronted him and said that domestic violence was a serious issue and that his comments were objectionable. At that point, several members of the rugby team joined in making derogatory
remarks to Mr. Kronemer, calling him, among other things, a pussy. Mr. Kronemer told the men that their behavior and attitudes about women contributed to a rape culture at Mary Washington. The men then physically pushed Mr. Kronemer out of the party.

25. In late November 2014, Mr. Kronemer informed UMW administration about the chant performed by some members of the rugby team ("rugby team chant") and provided a copy of the audio recording to the administration.

26. On December 4, 2014, members of Feminists United met with UMW President Richard Hurley and Dr. Cox to discuss the issue of sexual assault on campus and the offensive rugby team chant. President Hurley stated he was disgusted by the chant and that action was being taken.

27. On January 29, 2015, concerned about inaction by the UMW administration to report acts of discriminatory treatment of female students, Ms. McKinsey published an Op-Ed in UMW’s student paper titled "Why UMW is not a ‘feminist friendly campus.’" The article discussed the retaliation that Feminists United faced on campus, including threatening Yaks and verbal harassment targeting "the feminists." The Op-Ed also discussed the rugby chant, describing it as a chant that referenced "violence against women, including murder and battery, sexual violence against women, including assault necrophilia, and rape." The Op-Ed concluded by asserting that Feminists United was not going anywhere and would not stop advocating on behalf of women.

28. The Op-Ed elicited a strong reaction from the UMW community, as demonstrated by the numerous comments attached to the article, and led to an escalation of verbal and cyber-attacks on members of Feminists United and others perceived to be feminists. See Op-Ed, attached hereto as Exhibit 2.
29. On February 20, 2015, the president of the men’s rugby team approached Ms. McKinsey in the UMW dining hall, accompanied by several other members of the rugby team. He introduced himself and asked her, “Are you Paige McKinsey, the one who wrote the Op-Ed?” She replied yes. He said, “Well, I wanted to let you know we are open to talk whenever.” Ms. McKinsey responded that she had said all she needed to in the Op-Ed, and asked him to stop doing the chant. The men did not respond, turned around and walked away. While seemingly an insignificant encounter, it was extremely unsettling to Ms. McKinsey.

30. Later that day, Ms. McKinsey emailed Dr. Cox to tell her about the interaction with the rugby president:

“I also wanted to reach out to you to ask if you knew of any updates involving the rugby team chants. Today the president of the rugby team along with other team members came up to me in Seaco. They didn’t do anything threatening, the president just said he would be fine to talk with me. I told him I said what I needed to in my op-ed and asked that he stop doing the chants. He didn’t respond and then walked away. While this does not seem concerning at face value, when I couple this interaction with the anonymous yaks and comments made against me, situations like this make me feel deeply unsafe as I have no way of knowing if some of these men wrote those yaks or comments. I was just hoping to know that administration is still planning on taking some sort of action.”

See Email from P. McKinsey to L. Cox, attached hereto as Exhibit 3.

31. On February 24, 2015, Dr. Cox informed Ms. McKinsey that she did not know specifically what was happening regarding the rugby team, but that the University was taking action. Dr. Cox also stated that she would set up a mediated discussion between the rugby team and Feminists United after March 9, 2015. Dr. Cox indicated that she thought the team would have a different perspective at that time. From Dr. Cox’s comments, Ms. McKinsey believed that the team would likely go through a sexual harassment workshop with Dr. Chris Kilmartin, a UMW psychology professor who has trained the military about sexual assault issues.
32. On February 24, 2015, UMW Professor Meghan Conley, recognizing that the Yik Yak postings were creating a pervasive sense of fear among female students, emailed Feminists United members Paige McKinsey, Filagot Taye, Bailey Meeks, Cara Wimberley and Kopper Carter about the Yik Yak issue. She informed them that she wanted to organize three “listening circles” to allow students to talk about their experiences with Yik Yak and other anonymous posting sites, with the goal to “raise awareness (especially among faculty and staff)” about what was happening. She indicated that the circles would consist of 4-5 students discussing their experiences together and 8-10 students/staff/faculty/administrators listening to their stories. See Email from M. Conley, attached hereto as Exhibit 4.

33. In addition to the attacks on women and Feminists United members, Yik Yak posters also attacked UMW’s Black Student Association, referring to its members as “niggers” and demanding that they “Go Back to Africa.” Similarly, Yik Yak posters disparaged UMW’s Islamic Student Association, as well as Latino students in general. Professor Conley, concerned about the Administration’s failure to take effective action in the face of these known cyber assaults and threats, advocated for a strong response from the administration, to no avail.

34. On March 11, 2015, UMW held an open forum about sexual assault on campus. UMW’s President, Vice President, and Provost were present. Several students, including members of Feminists United, raised questions about the rugby team chant. President Hurley attempted to contrast the rugby team chant with the racist chant by students at a fraternity at the University of Oklahoma, who were expelled. President Hurley remarked that if such a racist chant had happened at UMW, he would have suspended the individuals immediately. His comment made clear that he did not view the sexist and threatening chant by the rugby players at UMW to rise to a similar level even though the chant advocated the rape and murder of women.
President Hurley’s comments were highly offensive to Complainants and made clear to them that he and other UMW administrators did not understand their legal obligations under Title IX to maintain a campus environment free of sexual harassment and threats of violence.

35. On March 12, 2015, three Feminists United Executive Board members met with Dr. Cox and asked for yet another update about the rugby team. Dr. Cox informed the group that while a sanction had been issued, the rugby team had appealed the sanction. She indicated that a final decision would come down the following week. Dr. Cox also noted that the administration was still trying to decide whether to inform the student body of the sanctions. Feminists United members advocated for transparency and full disclosure to the student body. In response, Dr. Cox argued that the rugby team members had a right to privacy.

36. On March 17, 2015, Feminists United Executive Board member Julia Michels emailed President Hurley, informing him that Feminists United had decided to release the transcription of the chant to UMW’s student paper, The Blue & Grey Press. Ms. Michels explained that the group made this decision because the administration had failed to act in response to the chart. Ms. Michels also criticized President Hurley’s statement that he would have suspended students if there was an incident similar to the one at the University of Oklahoma, noting “what happened at the University of Oklahoma has happened here . . . and yet [no one has been suspended].” She also reminded him that members of Feminists United felt unsafe and the administration had been on notice of that fact since February 20, 2015. See Email from J. Michels to R. Hurley, attached hereto as Exhibit 5.

37. President Hurley responded to Ms. Michels’ email later that evening, stating “I can assure you that I have been following the university’s response to the off-campus incident.” He informed her that a hearing was held, sanctions were determined, and an appeal was filed and
heard the day before. He noted that a final decision would be made within two days. He also
remarked that he was unaware that any female students had advised the administration on
February 20, 2015, that they felt unsafe on campus, but claimed that he took it “quite seriously.”

38. In the late afternoon of March 18, 2015, President Hurley emailed Ms. McKinsey
asking to meet with her and other members of Feminists United the next day, March 19, 2015,
“to discuss with you the issues that you and your members are interested in learning about.”

39. Later in the day on March 18, 2015, President Hurley sent an email to the UMW
student body generally discussing UMW’s efforts to end “sexual assault, violence against
women, and other forms of discrimination and harassment that prevail in our society.” President
Hurley noted that he was “aware of a recent situation in which our own students (groups and
individuals) have engaged in behaviors that I find repugnant and highly offensive to members of
our community.” The email did not mention anything specific about the rugby team’s chant, or
what behavior he considered to be “repugnant and highly offensive.” See Email from President
R. Hurley, attached hereto as Exhibit 6.

40. That evening, President Hurley met with Ms. McKinsey and other members of
Feminists United, including Grace Mann, Kelli Musick, Callie Dolloff, and Sarah Palmer, and
they asked him why his email did not mention the rugby team chant specifically. President
Hurley replied that he was following the advice of his lawyers. He stated that he could not tell
Feminists United what sanctions, if any, had been imposed against the rugby team. The
members of Feminists United responded that a student’s right to privacy should not trump
another student’s right to safety. They also noted that his privacy concern appeared to be
unreasonable given that Ms. McKinsey’s Op-Ed, which discussed the rugby team chant, had over
1,000 views online and was a topic that had been widely discussed on campus. President Hurley
responded that he would rather rely on the student grapevine to spread the word about what happened with the rugby team and why. The members of Feminists United warned him that the student grapevine was not reliable and was an improper way to convey such an important message, and would unfairly place blame on Feminists United for whatever happened. Ms. McKinsey questioned President Hurley about why the process had taken so long, given that the complaint about the rugby chant had been made in November 2014, and she had contacted Dr. Cox in February 2015 about her fears about her physical safety and the increasingly sexually hostile environment at the University. President Hurley responded that he had no excuse for the delay and was sorry.

41. On March 19, 2015, a UMW alumna posted a transcription of the rugby team chant on the Facebook page “Overheard – UMW.” Students expressed outrage at being kept in the dark about the incident and any response by the administration.

42. Later in the day on March 19, 2015, President Hurley sent a more detailed email to the UMW student body to “provide additional information” about the chant performed by some members of the rugby team, noting that it contained “sexually explicit, derogatory, and violent language.” He explained that the disciplinary process had concluded on March 18, 2015, and that all rugby activities had been suspended indefinitely. He further stated that each member of the rugby club was required to participate in training regarding sexual assault and violence.

43. After President Hurley’s letter was received by the student body, there was an explosion of posts on Yik Yak, with sexist comments and threats directed at Feminists United, which was being blamed by many for the situation. At least three students identified with Feminists United were mentioned by name in the Yaks: Paige McKinsey, Kelli Musick, and Grace Mann. The posts, which included physical and sexual threats, and identified Ms.
McKinsey’s locations, were frightening to Feminists United members, and particularly to those who had been specifically named, including Ms. McKinsey and Ms. Mann.

44. Some of the threatening Yaks posted included: “Gonna tie these feminists to the radiator and [g]rape them in the mouth”; “Dandy’s about to kill a bitch . . . or two”; and “Can we euthanize whoever caused this bullshit?” Feminists and Feminists United were referred to in various posts as femicunts, feminazis, cunts, bitches, hoies, and dikes. Paige McKinsey was called out by name in numerous posts, including reporting her whereabouts on campus so that posters could “call her out in person.” See Yaks, attached hereto as Exhibit 7.

45. On March 23, 2015, the website Jezebel.com published an article about the rugby team chant and UMW’s response to the incident. The article discussed the lyrics of the chant, the “Yik Yak” comments targeting Feminists United, the administration’s delayed response to the situation, the rugby team’s perspective, and the administration’s legal obligations under Title IX. See Jezebel Article, attached hereto as Exhibit 8.

46. On March 24, 2015, the Young Democrats club posted on its list-serve that Ms. McKinsey from Feminists United would speak at the Club’s meeting the following day. An anonymous Yak was posted immediately noting Ms. McKinsey’s plan to attend the meeting and the poster’s plans to confront her there, which made her extremely uncomfortable. Ms. McKinsey contacted campus police to report that she felt unsafe as a result of the post and they sent a police officer to attend both the Feminists United and Young Democrats meetings held that night.

47. On March 25, 2015, Julia Michels sent an email to President Hurley, Vice President Searcy, and Dr. Cox, noting the serious concern of the Executive Board of Feminists United for their safety and asking for a meeting. The email stated:
To President Hurley, Vice President Searcy, and Dr. Cox,

I am emailing you today to ask that you hold a meeting with the e-board of Feminists United regarding current events on campus. After news of the men’s rugby club’s suspension was released to students, both unofficially and later officially, members of Feminists United have been threatened hundreds of times, both specifically by individual name, and as a club. We have been threatened with both physical and sexual violence, and have had countless derogatory and misogynistic slurs directed at us, mostly through social media, though the majority of it has come through the anonymous posting app Yik Yak. These are not just a few threats. Counting only what we have been able to document just in the past two weeks, we have nearly 200 examples of students using Yik Yak to post either violent, vitriolic hate or threats against us.

While we fully support and agree with the administration’s decision to suspend the men’s rugby team, we are finding that much of the student body believes that Feminists United is somehow responsible for the sanctions handed down, and believe that some of that is a result of earlier lack of communication, as well as the rape culture that is rampant on our campus. Because of these things, many of us feel immensely unsafe at UMW, for even if none of these threats are acted upon, we have still been severely and relentlessly attacked emotionally and psychologically. We also feel, unfortunately, that at this point, the administration has not done enough to support us, or to help handle the current situation. It is our hope that we can meet with you to show you evidence of what has been occurring, and discuss possible ways that the administration could better involve itself in this ongoing issue, and help to halt the current hateful, divisive environment that has enveloped the school. Please let us know as soon as possible when you might be able to meet, as this is a very serious and urgent issue.

See Email from J. Michels to President Hurley, et al. (emphasis added), attached hereto as Exhibit 9.

48. On March 26, 2015, Feminists United Executive Board members Paige McKinsey, Jordan Williams, and Julia Michels met with Dr. Cox, Vice President Searcy, Associate Vice President and Dean of Student Life Cedric Rucker, and Marissa Miller to discuss the Yik Yak threats and the students’ increasing fear for their personal safety. They provided examples of some of the most offensive Yaks and explained how much the postings were affecting their safety on campus as well as their ability to concentrate on classes. They requested that the University:
• Contact Yik Yak to have the app disabled for their location (which is made possible because of its geographic function);
• Ban Yik Yak from Apogee, UMW’s Wi-Fi (forcing students to use their own internet access);
• Be more transparent and continuous in their communication;
• Clarify exactly what happened with the rugby situation, and explain that Feminists United had no role in the University’s decision; and
• Require a mandatory assembly to explain rape culture and go over harassment, cyber bullying and social media issues.

49. The University failed to take the actions requested by Complainants to remedy the sexually hostile environment. Rather, on March 27, 2015, Dr. Cox sent an email to the student body and posted a statement on UMW’s “Diversity and Inclusion” webpage regarding “cyber bullying.” She stated that she had received questions from students regarding how to handle abusive or threatening comments on social media, which she referred to as “a serious matter.” She then went on to state: “While the university has no recourse for such cyber bullying, Yik Yak and other social media sites do have control over the content and rules around the propriety of posts. Should you find yourself the subject of an abusive or threatening comment on social media, please immediately file a report so that the site can take administrative action.” See Online Statement by Dr. Cox, attached hereto as Exhibit 10.

50. Dr. Cox’s statement was in clear violation of Title IX and UMW’s own policy statements which provide that “sexually based stalking, cyber stalking, and cyber bullying” are prohibited and considered a form of sex discrimination under Title IX. See UMW’s Sexual Harassment and Consensual Relations Policy, attached hereto as Exhibit 11. Moreover, Dr. Cox’s statement was demoralizing and disconcerting to the members of Feminists United, who were increasingly experiencing significant anxiety and fear on campus.

51. On March 27, 2015, Ms. Michels sent an email to Dr. Cox, objecting to the email she sent to the university community. Ms. Michels stated:
"I, along with several of my peers am disappointed in this email that was sent out today. Several of us fear that the university has not been taking enough action on its own, and has instead been relying on students to take actions that are very much the responsibility of the administration. As we discussed in our meeting yesterday, can you tell me when we can expect to hear from you as to what the administration itself is doing to contact Yik Yak and address this problem? It should not be the responsibility of students to prevent their own bullying, or to address threats aimed against them. We ask that the university itself be the one to take the lead against this problem."

See Email from J. Michels to L. Cox, attached hereto as Exhibit 12.

52. Because the administration was taking no action, members of Feminists United did appeal directly to Yik Yak about the offensive and threatening posts, but received no response.

53. Shortly thereafter, Vice President Searcy reached out to Ms. Michels and asked that she call him. During the call, he explained that the University was considering holding some sort of assembly, but did not elaborate. Dr. Searcy advised her that the University’s lawyers told the administration that they could not consider disabling Yik Yak on campus because of concerns about the First Amendment. Ms. Michels responded that the First Amendment does not give individuals the right to issue threats to other students, and that other schools had successfully disabled Yik Yak on their Wi-Fi without any issues. She reiterated that she and other students felt unsafe on campus and that the University needed to take remedial action.

54. On March 30, 2015, Feminists United member Kristine Harner sent an email to President Hurley and Dr. Cox expressing her concern that the University was in violation of Title IX. In this email, Ms. Harner once again put the University on notice that Feminists United had received well over 700 anonymous Yik Yak posts that were “hateful, threatening, degrading, and psychologically damaging.” She further stated:

*These posts have affected my mental health and ability to concentrate and feel safe at this school. We have evidence of these posts and have showed them to*
administrators, and your response is to “report them to yik yak”? an app that was created by two fraternity guys? We have been trying to do this for months and this approach clearly has not worked in the slightest. You say this is a serious matter but the deafening silence of administration to take serious action is shameful. I should not have to put up with such hateful speech while trying to get an education.

As I am sure you are aware, title nine states that: “Schools are required to be prompt when receiving a complaint of sex discrimination, sexual harassment, or sexual violence in order to remedy any hostile educational environment created by such behaviors.” However, I see no evidence of the school promptly taking our concerns into account, and I would like to know why that is, and more importantly, what you plan to do to take this seriously. If it is really your “first and foremost priority to create a respectful and safe environment where all of us can learn and grow”, you would do so much more to address this problem of discrimination and hate.”

See Email from K. Harner to R. Hurley and L. Cox, attached hereto as Exhibit 13.

55. On March 31, 2015, Feminists United, led by Grace Mann and Paige McKinsey, organized and led a March to End Campus Rape.

56. Also on March 31, 2015, Feminists United member Kelli Musick started a petition at Change.org, asking President Hurley to “Address Rape Culture on Campus.” The petition, which garnered over 110 signatures, requested a meeting to discuss how the process could be handled better; asked for more transparency in communicating with the UMW community; again requested that Yik Yak be banned from being accessed via the University’s Wi-Fi; and asked that the University devote documented time and resources to the issue of sexual assault. See Petition, attached hereto as Exhibit 14.

57. At 2:14 a.m. on April 1, 2015, Ms. McKinsey, increasingly concerned about the threats she and other members of Feminists United had been receiving, emailed President Hurley to remind him that Feminists United had requested that the administration ban Yik Yak on the University Wi-Fi. Dr. Hurley responded that
afternoon, advising her that the “Yik Yak question is complicated” and that he was
asking several experts for advice. He explained his reasoning as follows:

“On the one hand, UMW is an arm of the government because we are a taxpayer
supported institution and thus bound by the First Amendment (Freedom
of Speech) but, on the other hand, I certainly understand concerns about threats
and feelings of safety on campus. I have, however, cut and pasted a comment
from a well known activist group below to help answer the questions asked
yesterday about why private colleges can remove YikYak and we can’t. FIRE’s
comment underscores what I mean when I said that I would have to be careful in
taking an action that stifle’s free speech. I will get back to you with more
information later.

The Foundation for Individual Rights in Education argues, however, that while
private institutions like Bucknell are not legally required to follow the First
Amendment, even they are meant to be a place where freedom of expression is
paramount.”

See Email from R. Hurley to P. McKinsey, attached hereto as Exhibit 15.

58. Also on April 1, 2015, Dr. Cox emailed Ms. Harner to thank her for expressing
concerns about Yik Yak. Echoing President Hurley’s comments to Ms. McKinsey, Dr. Cox
noted that it was especially difficult for public institutions like UMW to take action against Yik
Yak because “First Amendment rights allow individuals to express themselves without
interference from the government.” She noted that other universities were facing similar
challenges with Yik Yak on their campuses and advised Ms. Harner to contact campus police or
her office if she felt threatened by “identified members of our community.” See Email from L.
Cox to K. Harner, attached hereto as Exhibit 16. Once again, Dr. Cox made clear that UMW
was unwilling to protect Complainants from the type of cyber assaults and threats they had been
experiencing despite being put on notice repeatedly that it was creating a terrifying environment
for them and was interfering with their educational pursuits.

59. Ms. Harner emailed the following response to Dr. Cox: “I know numerous
institutions are having difficulties with yik yak, but my friends from other schools who use the
app were shocked at the posts at UMW that used names and threats and bullying tactics. That is not normal. More importantly, I’m sure you are also aware that numerous schools have blocked the app from school wi-fi. Why is our administration unwilling to do so? First amendment rights do not absolve the consequences of threatening and bullying people. This is absolutely not okay.” See Email from K. Harner to L. Cox, attached hereto as Exhibit 17.

60. On April 2, 2015, Ms. McKinsey informed President Hurley via email that she was looking forward to hearing what his experts had to say about Yik Yak. President Hurley responded: “What I have to say is a reiteration of what I have said before: this is a complicated issue that has significant First Amendment implications. I refer you back to Dr. Cox for any further concerns or questions you have related to YikYak or your safety.” See Email from R. Hurley to P. McKinsey, attached hereto as Exhibit 18.

61. On April 8, 2015, Feminists United members Paige McKinsey, Julia Michels, and others met with University officials at a “sharing circle” to discuss, once again, how disturbed they were by the offensive and threatening Yaks. University President Hurley and other members of the Administration were present and once again heard concerns about how frightened Feminist United members were of physical violence and sexual assault at UMW given the University’s “rape culture” which they noted was being fueled by the sexist, sexualized and threatening Yik Yak posts. Ms. Michels once again reported to the administration that Ms. McKinsey, Ms. Mann, and Ms. Musick had been mentioned by name in the Yik Yak posts and were increasingly scared about their safety. Ms. Michels also described how her fear had led her to carry a rape whistle, and how the threats and harassment had heightened her anxiety, as she did not know if those who threatened and harassed them were sitting with them in class. Ms.
McKinsey also talked generally about the threatening Yaks and the climate of fear they created. Once again, the UMW administration failed to act.

62. On April 15, 2015, Feminists United members, including Paige McKinsey, Julia Michels, and others, met with University officials at a sharing circle to develop a set of proposals to address the Yik Yak threats to which they and other members of the University community had been subjected. Professor Conley led a discussion of possible solutions, including better training and more transparency and communication at all levels. Dr. Cox responded that such solutions would violate privacy rights, but offered no alternative solutions.

63. On April 17, 2015, members of Feminists United, including Grace Mann, attended a “Day of Silence” event, aimed at raising awareness about the bullying of sexual minorities. Shortly after the event, Ms. Mann returned to her home, where she was murdered. Ms. Mann’s roommate, Steven Vander Briel, a former member of the University’s rugby team, was subsequently arrested and charged with First Degree Murder and Abduction.

64. In an email to President Hurley and Dr. Cox dated April 18, 2015, a Feminists United member expressed the anger and despair that she and other members of Feminists United had about the administration’s inaction in the face of threats to Ms. Mann and other members of their group:

“What will it take for the administration to take its students seriously? The murder of one of the most passionate people at this school? Why was nothing done to address the threats directed towards Grace and the rest of [Feminists United] BEFORE THIS TRAGEDY? . . . You turned away when the members of [Feminists United] showed you 700 bullying and threatening posts. . . . . My
friend was murdered today, and you did nothing to protect her even when you
were made aware of death and rape threats directed toward her.”

See Email to R. Hurley and L. Cox, attached hereto as Exhibit 19.

65. University administration never responded to that email.

66. The Complainants who were or are members of Feminists United have each
suffered significant fear and anxiety, with some having experienced disruption to their education,
and others having suffered emotional and/or psychological harm for which they have sought
professional treatment.

LEGAL ALLEGATIONS

67. Title IX of the Education Amendments of 1972 (“Title IX”) provides in relevant
part: “No person in the United States shall, on the basis of sex, be excluded from participation
in, be denied the benefits of, or be subjected to discrimination under any education program or

68. The United States Department of Education Office for Civil Rights (“OCR”) is
responsible for enforcing Title IX and the Department of Education’s implementing regulations,
which prohibit sex discrimination in education programs and activities operated by educational
institutions that receive Federal financial assistance. See 34 C.F.R. § 106.

69. OCR has instructed funding recipients, through a serious of policies issued over
the course of many years, regarding their obligations under Title IX when responding to
students’ reports of sexual harassment, gender-based harassment, sexual violence, and retaliation
by other students at the school. These policies include:

- United States Department of Education Office for Civil Rights, “Revised Sexual
Harassment Guidance: Harassment of Students by School Employees, Other
Students, or Third Parties.” (January 2001) (“2001 Guidance”);
• United States Department of Education Office for Civil Rights January 2006 “Dear Colleague” letter concerning sexual harassment of students (“2006 Dear Colleague Letter”);


• United States Department of Education Office for Civil Rights, October 26, 2010 “Dear Colleague” letter concerning bullying and harassment (“2010 Dear Colleague Letter”);


• United States Department of Education Office for Civil Rights, April 2013 “Dear Colleague” letter concerning retaliation (“2013 Dear Colleague Letter”);

• United States Department of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 29, 2014) (“2014 Q&A”);


• United States Department of Education Office for Civil Rights, April 24, 2015 “Dear Colleague” letter concerning Title IX Coordinators (“2015 Dear Colleague Letter”).

70. Together, these OCR publications set the standards with which funding recipients must comply when responding to reports of sexual harassment or violence at school in order to comply with Title IX.

71. Sexual harassment or gender-based harassment of students, including acts of sexual violence, can constitute discrimination prohibited by Title IX. When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program. See 2001 Guidance at p. vi.

72. Title IX also prohibits gender-based harassment, “which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-
stereotyping, even if those acts do not involve conduct of a sexual nature.” 2011 Dear Colleague Letter at p. 3; see also 2001 Guidance at p. v. This type of harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. See 2010 Dear Colleague Letter at p. 2.

73. If a school knows, or reasonably should know, about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. See 2011 Dear Colleague Letter at 4; 2001 Guidance at pp. ii-v. “If harassment has occurred, doing nothing is always the wrong response.” 2001 Guidance at p. iii.

74. Title IX also prohibits retaliation against students for reporting sexual harassment. Schools must “take steps . . . to prevent any retaliation against the student who made the complaint (or was the subject of harassment) . . .” 2001 Guidance at p. 17. If the harasser retaliates against the complainant, the school should take “stronger responsive actions.” 2008 Guidance at p. 15.

75. In this case, Complainants were harassed by other students and subjected to a hostile environment at UMW based on their efforts to combat sexism and sexual assault on campus. Beginning in late 2014, Feminists United became more vocal about issues related to sexism and sexual assault on campus. In November 2014, after Feminists United members spoke out about the increase in incidents of sexual assaults involving fraternities, students began harassing Complainants by posting hostile comments about them on Yik Yak (insulting and offensive posts to describe the “feminists” and Feminists United), and verbally harassing specific members of the Feminist United leadership, such as Ms. Mann, Ms. McKinsey, Ms. Michels,
Ms. Palmer, and Ms. Tiemann (yelling “fuck the feminists!” as they walked by). These Yaks and verbal comments were both subjectively and objectively offensive to Feminists United and the Complainants.

76. In late November 2014, members of the men’s rugby team at UMW performed a chant that advocated violence against women, including rape, murder, and necrophilia. An audiotape of the chant was provided to Feminists United, who were extremely offended and scared by the sexist and violent nature of the chant. UMW administration became aware of the chant in late November, and Feminists United met with President Hurley in December 2014 to discuss the issue and their concerns. No immediate action was taken by the University.

77. Further (retaliatory) harassment occurred after Paige McKinsey published an Op-Ed in the school’s student newspaper titled “Why UMW is Not a Feminist Friendly Campus,” in which she specifically noted the threatening Yaks, verbal harassment and the rugby team chant. Comments attached to the online article included heightened attacks on Complainants and others perceived to be feminists. Complainants and members of Feminists United found the derogatory, sexist, and threatening postings to be offensive and humiliating. University administration knew or should have known about the comments posted to the online school newspaper site, but did nothing to address the harassing and retaliatory posts.

78. UMW administrators were repeatedly put on notice of the harassment that was occurring. In February 2015, after Ms. McKinsey and other members of Feminists United were approached in the UMW dining hall by members of the men’s rugby team, she wrote to Dr. Cox and stated: “While this does not seem concerning at face value, when I couple this interaction with the anonymous yaks and comments made against me, situations like this make me feel deeply unsafe as I have no way of knowing if some of these men wrote those yaks or
comments." Several days later, Dr. Cox offered to set up a “mediated discussion” between the rugby team and Feminists United the following month, but otherwise took no action in response to Ms. McKinsey’s stated fears.

79. President Hurley was also apprised of the hostile environment, and chose to take no meaningful action. In fact, rather than acknowledge the hostile environment that was being created on campus for members of Feminists United, among others, the University President made clear that he did not appreciate or credit what was happening on campus. In an open forum on sexual harassment on March 11, 2015, President Hurley compared and contrasted the sexist chant by the rugby team and to the racist chant by fraternity members at the University of Oklahoma. President Hurley stated that if such a racist chant had occurred at UMW, he would suspend the individuals immediately – making clear that he did not equate the sexist rugby chant with the racist fraternity chant at Oklahoma. These comments were humiliating and offensive to members of Feminists United, and revealed that UMW administrators did not intend to take any meaningful action to address the harassment that was occurring.

80. President Hurley was again put on notice of the hostile and threatening environment faced by members of Feminists United when Julia Michels emailed him on March 17, 2015 to note the administration’s failure to act in response to the rugby chant, and to remind him that members of Feminists United continued to feel unsafe on campus, as they had previously advised Dr. Cox in February.

81. The hostility and threats against Feminists United only escalated from there. On March 19, 2015, President Hurley sent an email to the UMW student body advising them that due to the chant, all rugby activities had been suspended indefinitely and team members would be required to undergo training. At that point, there was an explosion of hostile, sexist, and
threatening posts on Yik Yak, directed primarily at Feminists United and its supporters, and mentioning Paige McKinsey, Grace Mann, Kelli Musick, and Zakaria Kronemer by name. The posts, which included physical and sexual threats, and identified Ms. McKinsey’s location at various times, were extremely offensive and frightening to members of Feminists United and particularly to those who had been called out by name.

82. Due to the escalating harassment, Complainants’ ability to participate in or benefit from the school’s educational programs was severely limited. Complainants were deterred from leaving their homes, attending classes, or participating in University events out of fear that students would subject them to additional harassment and perhaps act on their threats of physical and sexual assault.

83. The University was made aware of this latest development in an email from Julia Michels on March 25, 2015 to President Hurley, Vice President Searcy, and Dr. Cox. The email noted the threats of physical and sexual violence, the “countless derogatory and misogynistic slurs directed at us,” and the fact that “many of us feel immensely unsafe at UMW.” On March 26, members of Feminists United met with administration officials to reiterate their concerns and provide examples of some of the most offensive and threatening Yaks. The students specifically requested that the administration do something to address the problem with Yik Yak, including having the app disabled at UMW or banning Yik Yak from the school Wi-Fi.

84. The University took no action in response and instead, through Dr. Cox, asserted (incorrectly) that it had “no recourse for such cyber bullying,” and encouraged members of Feminists United and others in the student body who felt harassed on social media to contact the site (Yik Yak) directly. Such a position was contrary to the directive of OCR; contrary to UMW’s own “cyber bullying” policy (stating that it was a prohibited form of sex
discrimination); and more importantly, did nothing to “eliminate the harassment, prevent its recurrence, or address its effects.”

85. As the hateful and threatening Yaks continued to be posted, members of Feminists United continued to alert UMW to the harassment and their concerns for their safety. In addition to receiving numerous emails, a petition, and meeting requests, President Hurley and other administration officials heard again at “listening circle” meetings on April 8 and 15, 2015, how frightened Feminist United members were based on the postings on Yik Yak, which they believed only fueled a “rape culture” at UMW.

86. President Hurley and other members of the administration continued to take the position that they could do nothing about Yik Yak, citing First Amendment concerns and the position of FIRE (Foundation for Individual Rights in Education), an organization that essentially defends verbal harassment on campus based on free speech grounds. UMW also suggested that those who feel threatened contact campus police.

87. The University’s position that students should take steps to contact Yik Yak directly, or contact law enforcement if they feel threatened, is contrary to the directives of the OCR that students should not be forced to resolve harassment by themselves and that “school personnel must determine . . . whether appropriate law enforcement or other authorities should be notified.” 2011 Dear Colleague Letter, at p. 5.

88. The University could have taken any number of steps to address the harassment suffered by members and supporters of Feminists United, including but not limited to blocking Yik Yak from the campus Wi-Fi or asking law enforcement to investigate the threatening posts. Instead, it did nothing. By failing to take “immediate action to eliminate the harassment, prevent
its recurrence, and address its effects," the University of Mary Washington violated its Title IX obligations.

**REMEDIES SOUGHT**

Complainants request that OCR:

1. Investigate UMW to determine whether it violated Title IX by permitting Complaints to be subjected to pervasive gender-based harassment; whether it maintained a sexual hostile environment; and whether it failed to take prompt and effective action calculated to end the harassment, eliminate the hostile environment and its effects, and prevent its recurrence.

2. Secure an assurance of compliance with Title IX from UMW if any violations are found, as well as full remedies for the violations found.

3. Monitor any resulting agreements with UMW to ensure that compliance with Title IX is achieved, as well as compliance with UMW’s own policies prohibiting discrimination, harassment, bullying, cyber-bullying, cyber-stalking, and intimidation;

4. Take all steps necessary to remedy any unlawful conduct identified in its investigation or otherwise on the part of UMW, as required by Title IX and its implementing regulations.

5. Require UMW to implement and enforce strong policies and procedures governing UMW’s response to student-on-student gender-based harassment. These policies should require UMW to implement remedies that are likely to prevent future harassment of complainants subjected to such harassment. UMW employees should be required to attend training on these policies and procedures, as well as on how to recognize and respond to conduct that constitutes gender-based harassment.
6. Require UMW to implement measures to ensure that the burden of preventing further harassment is never placed on the victim of gender-based harassment.

7. Require UMW to implement meaningful measures to remedy the effects of harassment on victims and to ensure that victims are able to participate fully in student life without experiencing future harassment and threats.

8. Require UMW to implement appropriate policies and practices to protect students from gender-based cyber-bullying, threats and attacks;

9. Require UMW to reimburse Complainants for any quantifiable costs they have had to bear as a result of UMW’s discriminatory treatment of them, including remediating transcripts and refunding tuition.
CONCLUSION

We urge OCR to investigate Complainants’ Complaint so that the University of Mary Washington will take meaningful action to fulfill its Title IX obligations to prevent and remedy gender-based harassment. Such action will, among other things, help to prevent other students from experiencing the harassment and trauma that the student Complainants endured at the University.

Respectfully submitted,

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