

Title IX in the Fourth Circuit: **Cyber-bullying at the University of Mary Washington**

What happened?

In November 2014, student members of Feminists United at the University of Mary Washington (UMW) questioned the student senate's decision to authorize male-only fraternities on campus. Following the town hall, students debated the vote on Yik Yak, a now-defunct social media application that allowed users to create and view anonymous messages (Yaks) within a 1.5-mile radius. During this discussion, several offensive remarks were made about Feminists United and its members. The offensive remarks were reported to the Title IX Coordinator. Two days later, a UMW student recorded the men's rugby team performing a chant that glorified violence against women, including rape and necrophilia.

On January 29, 2015, one of the Feminists United members published an opinion piece in the student newspaper explaining why UMW "is not a feminist friendly campus." The article led to an escalation of verbal assaults and cyber attacks on members of Feminists United, included several "derogatory, sexist, and threatening" comments posted to the school newspaper's website.

In February 2015, members of the men's rugby team approached one of the Feminists United members in the dining hall and confronted her about the article. She reported their actions to the Title IX Coordinator, stating that she felt unsafe on campus and requesting that the administration take "some sort of action." In March 2015, the university held an open forum about sexual assault, at which the President of the university downplayed the seriousness of the rugby team's chants.

Subsequently, in response to student outrage on Facebook over the rugby team's chant, the President suspended all rugby activities and required all rugby players to undergo sexual assault and violence training. Immediately after the President's announcement, harassing and threatening messages against members of Feminist United appeared on Yik Yak. Some of the Yaks shared one Feminists United member's whereabouts and encouraged her to be personally confronted.

Ultimately, UMW did not investigate the harassment or threats, did not ask any law enforcement agencies to investigate, and told the Feminist United members that they had "no recourse" for such online harassment.

Why does it matter?

In December 2018, the United States Court of Appeals for the Fourth Circuit, reached a decision with implications on how public universities like ours must respond to cyberbullying. The case began in May 2017 when members of Feminists United filed a lawsuit in federal court against

the University of Mary Washington (“UMW”) and its former President for failing to investigate allegations of online harassment. The lawsuit alleged, in part, that the defendants were deliberately indifferent to sex discrimination, which created a hostile campus environment.

In September 2017, the district court dismissed the complaint, finding that UMW did not have sufficient control over the alleged harassment to necessitate a response. Now the appeals court has vacated the dismissal and remanded the case back to the lower court.

Remember that the federal appellate courts create caselaw that is binding on their circuit. So, even though the lawsuit is against a university in Virginia, it is binding on MUSC, which is part of the Fourth Circuit.

Why did the Court of Appeals for the Fourth Circuit reach this decision?

The court relied on the 1999 Supreme Court decision in [Davis v. Monroe County Board of Education](#), which established that an educational institution is only liable for student-on-student sexual harassment when the institution “exercises **substantial control** over both the harasser and the context in which the known harassment occurs.” The appeals court determined that UMW had substantial control over the context of the harassment because the Yaks originated within the immediate vicinity of the UMW campus and relied on the campus’s wireless network. Likewise, the court found that the university “could exercise disciplinary authority over those UMW students who sexually harassed and threatened the Feminists United members.”

The court found that even though the offending Yaks were anonymous, the university still had a duty to “investigate and seek to identify” the perpetrators and “to report the threats to appropriate law enforcement agencies.” The court wrote, “[W]e cannot conclude that UMW could turn a blind eye to the sexual harassment that pervaded and disrupted its campus solely because the offending conduct took place through cyberspace.”

What can we learn from this case?

The court found that the University of Mary Washington could have meaningfully responded to the allegations of sexual harassment without infringing on its students’ First Amendment rights. The court provided specific suggestions for how UMW could have appropriately responded to the allegations of sexual harassment. The court wrote that UMW could have:

- More vigorously denounced the harassing and threatening conduct;
- Clarified that Feminists United members were not responsible for the rugby team’s suspension;
- Conducted a mandatory assembly of the student body to discuss and discourage such harassment through social media;
- Hired an outside expert to assist in developing policies for addressing and preventing harassment; and,

- Offered counseling services for those impacted by the targeted harassment.

The takeaway from this decision is clear. Universities have a duty to meaningfully respond to sexual harassment, even when the harassment is anonymous and virtual. This decision serves as an important reminder that once a university has notice of sexual harassment, it must take prompt and effective action calculated to end the harassment, prevent its recurrence, and remedy its effects on the victim and university community.

Please know that MUSC takes all reports of harassment very seriously. Even in cases where the perpetrator may be unknown or the reporting party does not want to proceed with a formal process, the Title IX Coordinator will explain all the resources and options available to the reporting party. This includes notifying the reporting party of their right to report (or not report) an incident to law enforcement. If you'd like to learn more about the Title IX office, please visit us in person or on our [website](#).

If you have questions about this case, please contact Deputy Title IX Coordinator [Daniela Harris](#).